Enterprise Bargaining: an Overview

Nicholas Blain*

Abstract

The primary aim of this paper is to contribute to the debate on the merits of enterprise bargaining by providing a wideranging overview. It provides a comprehensive definition of enterprise bargaining which enables a broad range of perspectives to be encompassed and helps to structure the discussion of the immediate context and the wider policy settings of the debate. The paper demonstrates that enterprise bargaining is not new. It identifies a number of current or proposed systems of enterprise bargaining the present federal system, the New South Wales model, the BCA proposal, the Federal Liberal/National Party approach, and the New Zealand model. These are then evaluated, making use of a simple conceptual framework. The analysis indicates that each system has its advantages and disadvantages, its supporters and critics. Its findings suggest that positive and negative features of all models should be taken into account, not only in the continuing debate on enterprise bargaining, but also in the improvement of existing enterprise bargaining systems and in the design of new models.

1. Introduction

In April 1991, the federal Industrial Relations Commission delivered its most significant national wage decision since the Hawke Labor Government

* Chief Policy Advisor to the Minister for Industrial Relations in Western Australia.
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took office in 1983. In February 1990, prior to the federal election, the federal govemment and ACTU had entered into an agreement covering their industrial relations objectives. This agreement, amended in November 1990, became known as Accord Mark VI and formed the basis of the submissions by the government and ACTU to the national wage bench. In April 1991, for the first time since 1983, the Commission did not accept the basic proposals of the Accord partners. It rejected their case for a flat $12 a week pay rise and for additional increases in minimum rates awards resulting from enterprise bargaining. Instead, it authorised a 2.5% structural efficiency adjustment to all award wage rates, subject to compliance with its principles. The decision sparked a major national controversy. The ACTU dismissed as "gratuitous" the statement by the Bench that the parties still have to develop the maturity necessary for the further shift to enterprise bargaining. The Prime Minister was quoted as saying that the Commission was guilty of a "massive error of judgment" in deciding to put enterprise bargaining on hold (The West Australian, 26/4/91, p 6). Employer responses were varied. The CAI welcomed the strengthening of productivity as a criterion in the wage system and the MTIA welcomed the rebuff to enterprise bargaining. The Business Council (BCA), however, expressed disappointment with the Commission's "marking time" on enterprise agreements (The Australian, 17/4/91, pp 13).

In its landmark October 1991 national wage decision, the Commission yielded to the widespread calls for enterprise bargaining. It gave cautious approval to enterprise bargaining in a new, but restricted form. The Commission indicated its preparedness to approve enterprise agreements made pursuant to section 112 (consent awards) and section 115 (certified agreements), subject to them conforming to its established principles and standards. However, in July 1992, the Commission's powers in relation to enterprise bargaining were significantly reduced when the Government replaced sections 112 and 115 with new statutory provisions.

This paper has its main focus on the use of enterprise bargaining to achieve better industrial relations outcomes in Australia. Its primary aim is to contribute to the debate on the merits of enterprise bargaining by providing a wideranging overview. It seeks to provide a definition of enterprise bargaining which can encompass the broadest range of perspectives and help structure the discussion of the immediate context and wider policy settings of the debate. The paper attempts to trace briefly the evolution of enterprise bargaining. It then endeavours to identify a number of current and proposed systems of enterprise bargaining and to evaluate these, making use of a simple conceptual framework. The paper does not examine the wider topics of labour market and workplace reform.

2. What is Enterprise Bargaining?

The heated controversy surrounding the April 1991 national Wage Case decision focused attention on the confusion and divergence in the community concerning what enterprise bargaining means and how it should be conducted. The strong polarisation of views on the topic reflects its highly politicised nature. In reality, there are many competing and conflicting definitions and models of enterprise bargaining.

This paper views enterprise bargaining as including both the operation of collective bargaining within an enterprise and individual bargaining between a single employee and employer. Collective bargaining is the process of fixing the terms and conditions of work of employees collectively and settling disputes arising from those terms by negotiations between unions or employee representatives, on the one hand, and employer or employer association representatives on the other; as part of collecdve bargaining, the pardes reserve the ultimate right to use economic coercion, including the strike or lockout (Isaac, 1968, p 497). This definition includes both "interest" and "rights" disputes as part of the agenda of collective bargaining, although some writers may not consider that economic power should legitimately be used in disputes over rights (Niland, 1989, 149150); it also includes bargaining over both award and overaward matters. Individual bargaining, on the other hand, is the method of fixing terms and conditions of work by direct negotiation between the employer and employee.

An enterprise can be viewed as an economic and organisational unit with a set of identifiable human, technological and financial resources (Business Council, 1989, p. 2). It may vary in size from a small corner store, for example, to a large international manufacturing or banking business. An enterprise, depending on its size, may be divided into a number of sections or subsections, such as plants or workplaces. A plant is located at one site and produces a definable array of products or services (Kelly, 1990, p. 1). Each plant may be further subdivided into workplaces, which are discrete subsections within a plant, divided on either a spatial or an occupational basis, or both. For example, clerical workers in a factory constitute a workplace on the basis of occupation and perhaps also in a spatial sense if such workers are located together in one area. A small enterprise may be constituted in its entirety in a single plant or workplace, whereas a large enterprise might consist of many plants and hundreds of workplaces.

Enterprise bargaining is the process used to negotiate the wages and conditions of employees, individually or collectively, within an enterprise. Negotiations may be conducted directly between employees and employers or between representatives of employees and employers. Such repre-

sentation may include that provided by unions and employer associations. In a large enterprise, one agreement may cover all or most employees within the entire enterprise; alternatively, employees at each plant or workplace may have separate agreements negotiated for them. Another possibility is for discrete groups of employees within each plant or workplace to negotiate separate agreements. In a small business, negotiations might result in only one agreement to cover all or most employees. Enterprise outcomes reflect the pervasiveness of the conciliation and arbitration system, including its extensive interaction with collective bargaining; they may take the form of a "selfcontained" enterprise agreement or award, an enterprise agreement or award operating in conjunction with an industry award, an enterprise agreement operating with an enterprise award, or an appendix to an industry award.

Enterprise bargaining is, therefore, a generic term which has a number of variants. It may take the form of individual bargaining, workplace bargaining, plant bargaining, occupational group bargaining, company bargaining, or "framework" bargaining, a type where bargaining must conform with tribunal, multiemployer (e.g. industry), single employer, or other models of bargaining.

3. The Wider Seiting to the Debate

The immediate context of the debate over enterprise bargaining must be viewed in the light of the April 1991 national wage bench's challenge to the players to clarify their ideas and objectives on enterprise bargaining. The bench argued that many large, unresolved issues need careful attention and further debate. It commented that probably most of these had been recognized in its decision but that there could well be others (National Wage Case, April 1991, Statement, p. 2).

The wider context of the debate has its origins, however, in a number of deepseated sources of change in Australian industrial relations. The first of these is the Labor Government's economic, labour market, and industrial relations reform agenda. The initial economic priority of the first Hawke Government was to get the right macroeconomic settings to create a conducive climate for investment, sustainable economic growth, and an improvement in the balance of payments. The Prices and Incomes Accord quickly emerged as the centrepiece of Labor's strategy. Later, the Government focused on microeconomic reform as a necessary additional measure to maximise the efficiency of industry, including its ability to compete internationally. Labour market and industrial relations reform, together with a reduction in tariff protection, have been seen as essential ingredients in

the Government's microeconomic strategy. In particular, the Government sought to achieve, through consensus, a changed work culture which attaches greater emphasis to the need for increased labour flexibility and productivity, and for a more efficient, although equitable, wage structure. In 1992, the Government revamped the Industrial Relations Act 1988, its key objective being to facilitate workplace bargaining arrangements that would boost productivity and improve the living standards of workers. The amendments totally removed the power of the federal Commission, after a transitional period, to ensure that single employer certified agreements comply with the public interest.

A second factor has been the significant role played by the federal Commission in reform of the wage system since 1987, including the decentralisation of wage fixing. It has evolved a consistent policy of reforming wage structures and award conditions to achieve greater productivity. In the April 1991 decision, the Commission drew attention to the great importance of its policy, which had received extensive support from the parties, of linking wage increases to the adoption by employers and unions of measures designed to raise productivity and to reduce costs. This policy commenced with the adoption of the "restructuring and efficiency'' system in 1987 and was continued with the "structural efficiency'' principle in August 1988. The decentralisation process received a further significant stimulus from the October 1991 enterprise bargaining decision.

A third, more radical source of change has been the reform proposals of the federal Liberal Party. In 1986, the Liberals released an extensive new policy which called for the focus of industrial relations to be shifted to the enterprise level. In the federal election campaign in 1987, they advocated a more flexible industrial relations framework with maximum decentralised decisionmaking. In the 1990 election campaign, Senator Chaney released a further policy statement outlining the operations of their threestream approach awards, certified agreements, and individual voluntary agreements. Under the LiberaVNational Coalition's latest policy, "Jobsback", released by John Howard in October 1992, compulsory arbitration will be abolished, workplace agreements with mandatory minimum standards will be introduced, and unionism will be voluntary.

A fourth innovation which engendered interest in enterprise bargaining at state level was the introduction of legislative changes in Queensland in 1987 and 1989 to permit voluntary employment agreements between employers and unions, and between employers and at least 65 per cent of their employees. Agreements had to satisfy specified minimum standards of wage rates and a variety of employment conditions and had to be approved by the Industrial Registrar of the state tribunal as being consistent with the public interest.

A fifth, controversial development which has helped to shape the context of the debate was the publication of Professor Niland's proposals for reform of the New South Wales industrial relat,ions system. In 1989, he called for *reregulation,* rather than *deregulation,* of New South Wales industrial relations. The principal direction of Niland's recommendations was to shift the focus of industrial relations away from central institutions to enterprises, thus creating a partly decentralised system.

The Greiner Government commenced its program of legislative reform in 1990 when it introduced the Industrial Arbitration (Enterprise Agreements) Amendment Act. The legislation aimed to promote a new form of enterprise agreement (pursuant to section 13, replacing the previous section 11 agreements), which could be negotiated directly between an employer and a union, or an employer and at least 65 per cent of employees to be covered by the agreement. In 1991, the NSW Government introduced legislation to facilitate such enterprise agreements.

The recent experience in NSW is broadly consistent with a sixth development, the entry of the BCA into the debate. In 1987, the Council announced that a Study Commission would be set up to advise what institutional changes would be necessary to make its proposed system of enterprise agreements work. In 1989, the publication of this report stimulated a lively debate over the desirability of the introduction of enterprise-based bargaining units as part of the process of industrial relations reform. A further policy statement in 1991 reaffirmed the BCA's view that the transition to enterprise bargaining would require much better rules for writing and enforcing enterprise agreements.

A seventh significant event occurred with the publication of The Australian Workplace Industrial Relations Survey Report *Industrial Relations at Work* (Callus et al, 1991). It details the results of an extensive investigation of 2,353 workplaces. The findings show that as many as 70% of small workplaces (five to nineteen employees) were not unionised, compared with only 4% of large workplaces (five hundred or more employees). This result evidences the view that the organisational basis for unions and management to negotiate collective bargains does not exist in a large number of Australian workplaces.

An eighth development has been the widening of the debate to encompass the New Zealand industrial relations reforms, which constitute the most extensive programme of labour market deregulation in that country's history. The New Zealand model of labour market reform has been heavily criticized by Australian union officials but strongly praised by leading Liberal Party politicians and some senior business representatives. The Labour Relations Act 1987 promoted greater decentralisation of bargaining

and granted unions the right to choose enterprise bargaining; but they could not normally choose to have both an award and a registered enterprise agreement for the same group of workers. In 1991, the new National Party Government passed the radical Employment Contracts Act which abolished the Arbitration Commission and established a system of individual and collective contracts. Employees were given the right to choose their own bargaining agent to represent them, and unions were converted into incorporated societies with no privileged role under the new legislation.

Finally, in November 1992, the new Coalition Government in Victoria enacted sweeping industrial relations reforms. Under the Employee Relations Act 1992, employers and employees are to be forcibly removed from awards; if they are unable to agree to opt back into an award, they must enter into either a collective or individual employment agreement. Space constraints do not permit detailed consideration of these reforms.

4. Development and Current Forms of Enterprise Bargaining

Enterprise level bargaining between individual employers and their employees has always been a characteristic of Australian industrial relations. Collective bargaining between firms and unions first developed in the 1850s when the earliest trade unions were formed. During the twentieth century, with the introduction of compulsory conciliation and arbitration, the making of industrylevel awards became a major activity of the industrial tribunals. Nevertheless, enterprise bargaining continued to evolve within the tribunal framework, although it has sometimes resulted in agreements which have not been registered with a tribunal (Blain and Dufty, 1989, p 564).

Since World War II, there has been a marked growth in enterprise level bargaining activity. For example, in the private sector, single employer federal awards, as a percentage of total federal awards, rose from only 12 per cent in 1954 to 35 per cent in 1974 and to 39 per cent in 1987. This change has partly resulted from "award splitting", a process in which companies, especially large firms, have withdrawn from industry awards in favour of enterprise awards.

Nevertheless, a large proportion of enterprise awards merely supplement, rather than replace, industry awards; many are either singleissue enterprise awards or take the form of an appendix to an industry award. In 1988, only about one third of the total of enterprise awards (in both federal and state systems) could be classified as comprehensive and almost all of these were federal awards (Rimmer,1988, 614, 36, 42).

The trend towards enterprise bargaining is further evidenced when data for the federal public sector, where typically a single employer is involved, is taken into account. In 1954, private sector singleemployer federal awards, combined with public sector federal awards, accounted for 42 per cent of all federal awards; by 1974, this ffgure had reached 56 per cent and by 1987 it was 68 per cent. By 1987, in Australia as a whole, singleemployer awards had become more common than multiemployer awards. Singleemployer awards and determinations, which represented some twothirds of total awards, were common not only in the federal system but also in the state systems of NSW, Queensland and WA (Rimmer, 1988, 4).

In 1987, the federal Commission's "restructuring and efficiency" principle placed the emphasis of wagefixing on productivity bargaining at either the industry, enterprise or workplace levels, subject to a "second tier" 4 per cent wage ceiling. In 1988, section 115 of the Australian Industrial Relations Act introduced a new provision under which, for the first time, a certified agreement could override the provisions of relevant awards and state laws, even if the agreement was inconsistent with Full Bench general principles. However, any such agreement still remained subject to a "public interest" test. By September 1991 only 118 such agreements had been registered (Plowman, 1992, 291), representing a tiny proportion of the 2,000 to 2,500 federal awards in existence.

The April 1991 national wage case witnessed some 20 or so parties and interveners making submissions on enterprise bargaining. Almost all favoured increased committment by the Commission to the broad concept of enterprise bargaining. Only one totally rejected enterprise bargaining. The Australian Federation of Business and Professional Women argued that female employees would be disadvantaged by a wage fixing system best suited to groups possessing industrial strength.

In rejecting the plea for enterprise bargaining, the bench emphasised that it was confronted by a variety of proposals, outlined in differing degrees of detail, the main common element being the very term used to describe the proposals, namely, "enterprise bargaining". In the bench's view, the apparent high level of consensus between submissions was, in reality, largely semantic (Hancock 1991, 4). Six months later, the Commission concluded that the time was opportune to introduce new guidelines for enterprise bargaining.

(i) The federal system

In introducing the October 1991 enterprise bargaining principle, the Commission sought to devise a system which had at least four objectives: to place primary responsibility for successful enterprise agreements on the

direct parties; to require unions and employers to comply with negotiated outcomes for a fixed timeperiod and to accept ongoing responsibility for reviewing the effectiveness of such outcomes; to provide itself with a conciliation role in disputes over enterprise agreements but to exclude any formal arbitration role; and to give enterprise agreements the same legal status as awards.

The Commission decided its objectives could be best satisfied by agreements forming the basis of applications for consent awards, pursuant to section 112 of the federal Act, and by certified agreements made in accordance with section 115. Under its enterprise bargaining principle, no agreement was to continue in force after an expiry date unless renewed. Agreements could not involve any reduction in earnings or any departure from Commission standards governing hours of work and paid leave. Agreements were not subjected to any ceiling on the extent of productivity based pay rises, but the parties were required to negotiate agreements through a single bargaining unit either in an enterprise or in a section of an enterprise. Unions and employers were also expected to show that a broad agenda had been considered in negotiations.

From July 1992 onwards, section 134 of the federal Act required certified agreements to satisfy the following criteria: there should be no disadvantage to employees covered; disputesettling procedures must be included; consultation should occur between unions and members; and, for a single employer agreement, there should normally be a single bargaining unit comprising all relevant unions. As previously, the Commission could refuse to certify a multiemployer agreement if the agreement was considered to be contrary to the public interest. But, if the agreement was confined to a single enterprise, this power no longer existed, except on application by the Minister during an eighteenmonth transitional period. The amendments removed the requirement for a Full Bench to examine enterprise agreements considered by the President to be inconsistent with general wage principles. They also repealed the provision prohibiting a certified agreement from being based on the terms of another certified agreement. The previous consent award provisions (section 112) continued to exist but were vested in a new section 111.

(ii) The NSW alternative to common rule awards

The Niland proposals for enterprise agreements advocate the introduction of enterprisefocused bargaining units which may be characterised by rationalised union coverage within workplaces or even by an enterprisewide union. Enterprise agreements or awards could be achieved by either a majority of unions, or a majority of employees, requesting the Commission

to endorse new arrangements. The Commission could then call for a secret ballot of employees to be held and, subject to the outcome, change union coverage of employees and introduce a new award or endorse an agreement which would override previous provisions (Niland in Easson and Shaw eds., 202).

Pursuant to Niland's recommendations, the NSW Industrial Arbitration (Enterprise Agreements) Amendment Act 1990 provided for the appointment of a Commissioner for Enterprise Agreements to assist employees and employers to make enterprise agreements. Three types of enterprise agreement were possible: agreements between an employer and one or more unions; those between an employer and at least 65 per cent of the employees in one or more trades or occupations voting in favour in a secret ballot; and agreements put in place by an employer and a works committee established to represent the employer's workforce. Enterprise agreements could only take effect when approved by the Industrial Commission, which could refuse to approve them if unfair, unconscionable, or contrary to the public interest. When registered, they overrode state but not federal awards.

The NSW Industrial Relations Act 1991 significantly increased the scope for such enterprise agreements. It abolished the requirements for approval by an industrial tribunal and for a "public interest" test. The role of the Industrial Commission in approving enterprise agreements was removed and replaced by a power of review after registration. The Act laid down minimum conditions for enterprise agreements to satisfy concerning wages, hours and sick leave. It prevented contractingout of other NSW statutory provisions such as annual leave, long service leave, redundancy, and parental leave.

(iii) Business Council Proposal: enterprise based bargaining units

In 1987, the Council began to promote the idea of enterprise agreements to be directly negotiated between individual companies and enterprise unions, outside the scope of the industrial tribunals. Such agreements were to be legally enforceable under civil or industrial law. In 1989, the Council's Study Commission published a major report which ,proposed amending the federal Act to allow such agreements to have the status of federal awards, thereby enabling them to prevail over state awards. Enterprise agreements were to have a fixed term and would not need to satisfy a 'public interest' test. The 1989 report prposed the rationalisation of bargaining units to accommodate an enterprise focus; this would involve steps such as the formation of site committees of unions and the adoption of enterprise

awards. It also called for major changes in the union structure so that ultimately there would be only one union branch or union in each workplace and enterprise. The report did not put the case for individual contracts between employees and employers.

(iv) Federal LiberalNational Party two stream approach

The 1992 Policy provides employers and employees with two basic choices they can either continue within a revamped award system or enter into a signed collective or individual workplace agreement which will exclude any award; parties will no longer have the option of new certified agreements. If both sides are unable to agree on which stream to enter, any existing award covering them will remain in place until it expires on the next anniversary of its commencement, but employees will continue to enjoy all benefits of the award after it ceases. The term "workplace" is not specifically defined or explained in the Policy; however, it is clear that workplace agreements are to be made between individual employers and one or more of their employees. Employer organizations, unions or other agents can act for the signatories. Every workplace agreement is required to comply with compulsory minimum standards in relation to hourly wage rates, annual leave, unpaid maternity leave, and noncumulative sick leave. Employees will have access to free advice and representation, in reladon to grievances arising from workplace agreements, from the governmentfunded Office of the Employee Advocate. Legislation will be enacted to prevent any flowon from workplace agreements into awards. The authority of the common law courts in industrial matters will remain, but there is to be a limit of $5,000 to their discretion to award damages against an individual employee resulting from a breach of a workplace agreement. All forms of compulsory unionism are to be outlawed and independent contractors will be removed from the purview of the Commission.

(v) New Zealand Model

The New Zealand reforms facilitate enterprise bargaining but do not make it mandatory. The legislation replaces awards by employment contracts which bind only those who are parties to them. No arbitration machinery is available to help employees and employers to reach bargains. Various types of bargaining formats are possible. Industrywide bargaining may continue to operate if each individual employer specifically agrees and becomes a "cited party" to the agreement. Within individual enterprises, one or more enterprise agreements negotiated by unions or other bargaining agents can

be made or, alternatively, individual contracts may be introduced instead of, or in conjunction with, enterprise agreements. An Employment Tribunal and Employment Court are available to deal with any dispute arising from an employment contract.

(vi) Radical alternative forms

Other forms of enterprise bargaining systems would require more fundamental changes to the structure of the existing industrial relations system. The first such scenario would involve the enactment of legislation to abolish common rule awards where they exist in both the federal system and in the states, and allow enterprise bargains which override existing awards. A second option, similar to the New Zealand approach, would be the abolition of the entire conciliation and arbitration machinery and award system; in such circumstances, employers and employees would be forced to choose new methods of dealing with each other at the enterprise level.

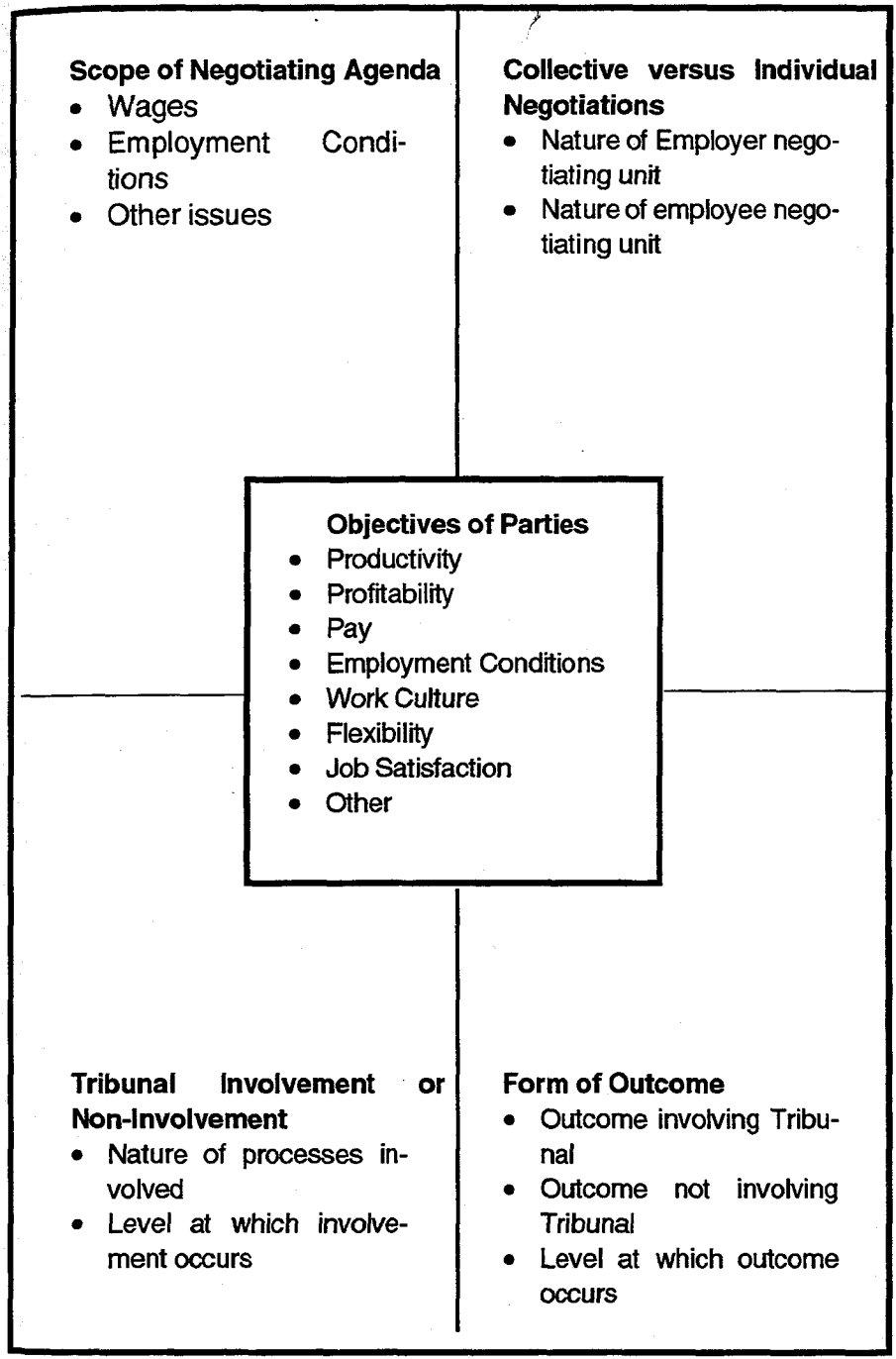
5. Evaluation of the Forms of Enterprise Bargaining

This section discusses some of the positive and negative aspects of the proposals previously outlined. The examination will fall within a broad analytical framework comprising five distinctive, interrelated characteristics of enterprise bargaining: the objectives of the parties; the scope of the negotiating agenda; whether bargaining is conducted collectively or with employees individually; the involvement or noninvolvement of an industrial tribunal; and the form of outcome. Diagram 1 illustrates these features. It can be seen that the central characteristic the objectives of parties exists at a different level from the other four characteristics and overlaps them. The diagram also provides constituent elements of each of the five features.

(i) The federal system

The first issue is that of the objectives of the participants and whether the existing system satisfies their goals. There were major differences amongst submissions in the April 1991 wage case. For example, the Australian Wool Selling Brokers Employers Federation advocated a complete dismantling of the centralised system, arguing that enterprise bargaining should occur with no floor and no ceiling and that it should not be a part of a uniondominated matrix or a tribunal rationalised system. In contrast, most parties were overwhelmingly supportive of the introduction of tribunal guidelines designed to encourage and supervise the move to a more devolved system.

Diagram 1
Interrelated Features of Enterprise Bargaining



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The Commission responded by designing workable principles which recognised objectives, such as the need for higher productivity, the protection of basic pay, and maintenance of standard conditions of employment. These particular objectives have since been adopted by parties and incorporated in enterprise outcomes approved by the Commission; such objectives have also been given statutory recognition in the Government's 1992 legislative amendments.

The scope of the negotiating agenda under the federal system needs further consideration. One feature of the Commission's present guidelines is that they do not impose maximum limits on outcomes reached via section 112 awards (now section 111) and via 115 certified agreements (now section 134). The BCA expressed its concern to the April 1991 bench that, in the absence of a ceiling on enterprise based wage increases, unjustifiable wage flowon, based not on productivity gains but on wage rises in other enterprises, is likely to occur. However, the presence of a ceiling could lead to expectations amongst workers that it constitutes an entitlement. Without a ceiling, there is more freedom for negotiators to make desirable changes. There remains a potential problem for those industries and firms whose use of labour is currently very efficient; they may have limited scope for productivity bargaining with resultant wage gains considered unsatisfactory by employees. Conversely, those enterprises that are less efficient will have more opportunity to negotiate wage increases commensurate with higher increases in productivity. On balance, the advantage of greater bargaining freedom permitted by the absence of tribunal specified maxima should not be underrated.

The scope of bargaining is, however, constrained by minima. In general, there is the general legislative provision that employees covered by a certified agreement should not be disadvantaged. However, in special circumstances, such as to prevent business failure, parties might agree to introduce some reduction in conditions, perhaps temporary, which the Commission may feel obliged to overrule on the grounds that it breaches the Act. Such action could constitute an undesirable restriction on the scope of bargaining.

A third issue is that of collective versus individual bargaining. The Act specifies that an employer or a registered organisation which is a party to an industrial dispute can apply to have an agreement certified. Consequently, the Commission's enterprise bargaining principle, which requires agreements to be negotiated by a single bargaining unit on behalf of employees collectively, effectively precludes nonunionised employees from applying to the tribunal for ratification of an agreement. Furthermore, unionists wishing to enter into such an agreement without their union's

consent are precluded from doing so. These restrictions constitute distinct disadvantages to the federal model. On the other hand, in those enterprises which are unionised the formation of single bargaining units comprising a variety of unions could create closer and more harmonious relationships between different groups of workers, with a possible reduction in demarcation disputes and a more unified approach to bargaining.

Another issue to consider is tribunal involvement. Section 111 awards must be ratified by the Commission, which has two main benefits. First, it allows the Commission to satisfy itself that wage increases are or will be linked to productivity improvements, thus reducing the possibility of 'sham' agreements which do not legitimately adhere to its enterprise bargaining principle; such agreements could result from industrial action and might not involve any real change in work practice. Second, tribunal involvement may help to minimise flowon pressures. Section 95 of the Act prevents the Commission, in normal circumstances, from ratifying a section 111 award based on the terms of a certified agreement unless satisfied that the award does not conflict with Full Bench principles or the public interest. Public interest as defined by section 90 of the Act makes particular reference to the state of the national economy. The Commission is obliged to question an agreement which it believes may be harmful to employment or inflation. A significant wage increase in a key award could constitute such a threat due to flowon pressures.

Section 134 agreements must also be ratified by the tribunal. The risk of wage flowon has significantly increased as a consequence of the abolition, in normal circumstances, of both the public interest test for single employer enterprise agreements and the requirement preventing one agreement from being based on another. On the other hand, the easing of the criteria for singleenterprise agreements can be expected to lead to a significant speedingup of enterprise bargaining.

Tribunal involvement in section 134 enterprise agreements and section 111 enterprise awards can take the form of conciliation but not arbitration. In its October 1991 decision, the tribunal argued that, in the absence of satisfactory submissions on the measurement and distribution of "achieved productivity", if it attempted to arbitrate it would have difficulty in maintaining a rational system of wage fixation. From an outsider's viewpoint, an advantage of the denial of arbitration to interested parties is that more pressure exists to seek resolution through direct bargaining, thereby enhancing the prospects of stronger committment to the outcome.

The final issue is the form of outcome provided for. The Commission's enterprise bargaining principle provides for agreements in an enterprise or section of it. The Commission provides no definition of an enterprise. Some

guidelines as to what constitutes an enterprise would be a definite advantage, allowing parties to be more confident that their agreements cover an enterprise as viewed by the Commission.

The Commission's enterprise bargaining principle has provided sufficient flexibility to allow a workable alternative for each industry or business, but it conflicts with section 134 in relation to single employer agreements and, to this extent, has become redundant. The MTIA strongly supports framework bargaining, pursuant to an industry Agreement, under which enterprise outcomes take the form of individual consent awards or certified agreements directly tied to the metal industry award. The framework agreement provides an enterprise based wage increase to employees; however, each employer must separately negotiate and agree on measures to achieve real gains in productivity, efficiency and flexibility. In the new era of framework bargaining, the MTIA has mainly used section 112 (later section 111), and has opposed the removal of the public interest test from the certified agreements provisions of the Act. It believes that genuine scrutiny of enterprise outcomes by the Commission will result in better productivity gains. The BCA, on the other hand, advocated "tailormade" certified agreements, designed to satisfy the individual needs of enterprises, as the most appropriate vehicle.

Section 134 agreements and section 111 awards require an expiry date. In addition to providing flexibility in bargaining, the requirement to adopt a fixed timeperiod promotes a stronger sense of commitment to the outcome than might otherwise exist and prevents the parties from treating the exercise as a oneoff affair.

One potential problem with the form of outcome approved by the tribunal is that anticipated improvements in productivity might not occur. A novel proposal, made by the Australian Road Transport Industrial Organization to the April 1991 Bench, was the introduction of a trial period, in which increased wages would be paid; however, if productivity gains did not materialize, the increase would be withdrawn and the previous arrangements resumed. This idea might not be workable unless both parties agreed.

(ii) The New South Wales system

The increased bargaining freedom provided by the 1991 Act, particularly that resulting from the removal of the public interest test and the requirement for Commission approval, has enabled a small, but growing number of parties to pursue a variety of specific objectives. For example, an agreement covering Toohey's Auburn brewery seeks to facilitate the profitable manufacture of the highest quality products at the lowest cost, in return for measures such as new pay rates and adherence to a new dispute resolution

procedure. Between 31 March and 3 September 1992, 64 applications for enterprise agreements were made, 7 of which were approved; 6 other agreements were awaiting approval at the completion of their "coolingoff" period.

Two major similarities between the NSW and federal models are the absence of a ceiling on outcomes and the requirement of an expiry date. However, unlike the federal system, there is no requirement for unions to be involved. As of 3 September 1992, only 42% of applications involved union respondents, compared to 47% with individual employees and 11% with works committees. In this respect, the NSW legislation, unlike the federal Act, does not disadvantage nonunionised workplaces, which constitute the great majority of small workplaces.

In relation to tribunal involvement, the NSW legislation provides for the Industrial Registrar to review and register agreements after the Commissioner for Enterprise Agreements has certified that the parties have understood their rights and obligations. After registration, the Industrial Court has a power of review, upon application. Although the Industrial Registrar can monitor agreements to ensure that minimum standards are not contravened, there is little control over negotiated outcomes. Agreements could be struck which do not embrace the Commission's wage fixation principles. Furthermore, the Registrar is not empowered to vet an agreement based on the terms of another agreement; this means that the legislation provides no safeguard against flowon pressures.

(iii) Business Council Proposal

The BCA Report argues that a more enterprisebased approach would fit better with both the emerging competitive culture of Australian enterprises and the values and aspirations of most Australians. It claims such an approach could help to boost labour productivity, arguing that if labour could be deployed in an optimum way, productivity in the workplaces concerned could rise by an estimated 20 to 25 per cent.

In March 1990, Frenkel and Peetz challenged these findings. They argue that the BCA's own data indicate that a move to enterprise bargaining would lead to lower levels of commitment, trust, job satisfaction and work effort (Frenkel and Peetz, p. 78). They also assert there are no reliable data to support the claim of a 25 per cent productivity gap.

Although some issues raised by the Report remain the subject of controversy, the progress of enterprise bargaining since 1990 has, to some extent, overtaken the debate. The Report's proposal for comprehensive enterprise agreements, without a public interest test, is consistent with the NSW legislative amendments in 1991 and the federal Government's 1992 reforms

concerning single employer agreements. However, the "large company" bias in the Report is reflected in the proposals that enterprise agreements should, firstly, be reached exclusively through collective bargaining, with no provision for individual bargaining and, secondly, that outcomes should receive tribunal ratification. This approach is more restricted than that of the federal Liberal Party, which permits individual workplace agreements enforceable under common law. The BCA's proposal for unions to be rationalised into single bargaining units within the enterprise, has since been adopted both by the federal Commission and by federal legislation. Although its call for legislative change to achieve one union or one union branch for each workplace and business has not been taken up, the ACTU has been prepared to endorse single union "greenfields" enterprise agreements.

(iv) Federal Liberal/National Party Policy

This two stream approach provides a wider choice of bargaining frameworks than is offered by the federal or NSW models. The options of an award or a workplace agreement (either collective or individual) have a greater potential to satisfy industrial relations objectives of small businesses. Many such businesses might prefer to deal with employees on an individual, rather than a collective basis, and to have a less restricted bargaining agenda than that permitted under the federal system. Individual contracts might also be appropriate for many professional, managerial and highly skilled or talented employees seeking freedom to negotiate rewards without the constraints of an award or collective agreement. The New Zealand experience between 1984 and 1990 demonstrated that a move to voluntarism, combined with legislation to encourage decentralisation of bargaining, helped to promote a shift from occupational to industry and enterprise bargaining. A similar move to enterprise bargaining could be expected in Australia if the Coalition's reforms were introduced.

The statutory requirement for workplace agreements to provide "safety net" wages and conditions would provide basic protection to employees but, without tribunal scrutiny, there is a greater risk that minimum conditions could be circumvented, particularly in times of high unemployment. However, enforceability of agreements by employees under common law, using the free service of the Office of the Employee Advocate, would provide a practical avenue for redress. As in New Zealand, workplace agreements must contain a form of dispute settling procedure.

The Coalition proposes to encourage the emergence of enterprise unions where that is the desire of the majority of employees. It intends to legislate to prevent existing unions from opposing applications for registration by

new enterprise unions. Such developments could further stimulate the growth of workplace agreements and enterprise awards.

(v) New Zealand model

The National Government's objectives in introducing the Employment Contracts Act 1991 include: creating a more efficient labour market; stimulating growth in labour productivity; and encouraging a move to enterprise and plant bargaining. The evidence from the first year of operation demonstrates a widespread move to single employer bargaining. Prior to 1991, only about 6 per cent of private sector employees and less than 50% of public sector employees were covered by an enterprise settlement. Recent research demonstrates that, since 1991, multiemployer bargaining in New Zealand has all but ceased. The single employer contracts that employers have reached are more "genuine" in that they have introduced demarcation free work patterns (Harbridge and Moulder, 1992, p. 1).

A major criticism by New Zealand unions relates less to what the Act contains than to what it omits. In particular, there is no minimum wage for employees under the age of twenty. Employees over the age of twenty years are protected by minimum standards, such as a minimum wage of $NZ 6.12 per hour. However, surveillance of such standards is a real problem, given that only ten Department of Labour officials are responsible for some 70,000 employers and 1,400,000 workers.

Although the legislation provides for a choice of collective or individual bargaining, the first year of bargaining appears to have produced a strong shift to decollectivisation. Compared with 1989/90, some 410,000 workers are no longer covered by awards or collective agreements; typically, they work for smaller private sector employers with regional rather than national operations. Under the Act, every employee has the freedom to choose a bargaining agent, who can be a union representative. Since the introduction of voluntary unionism in 1991, a decline in unionisation of some 20 per cent has occurred. Although an employee may choose his own bargaining agent, there is no obligation on the parties to negotiate in good faith. For any of a number of reasons, an employee may be forced to negotiate on his own behalf, which could prove a daunting task.

The New Zealand system provides much less opportunity for third party intervention than does the Liberal/National Party model. However, both provide the option of individual contracts. The New Zealand experience is relevant, therefore, especially because outcomes do not involve tribunal scrutiny. Harbridge and Moulder argue that many of the collective contracts reached under the new legislation were "presented" to workers rather than bargained. They also conclude that considerable flexibility in upwards wage

adjustment is taking place. The New Zealand experience suggests that benefits can flow from a more flexible system, but that sufficient attention must be given to ensuring that bargaining processes are conducted fairly and that outcomes actually meet accepted minimum standards .

(vi) Radical alternatives

The abolition of common rule awards in favour of enterprise agreements which override existing awards, would greatly stimulate the enterprise bargaining process. A second scenario, the dismantling of the existing conciliation and arbitration machinery, might be expected to produce a similar outcome, as evidenced by the New Zealand experience. Neither scenario seems a practical possibility in the foreseeable future, due to political and other obstacles, but each remains an option in the longer term for those wanting more dramatic reform.

6. Conclusion

Enterprise bargaining is a generic term which encompasses both individual and collective bargaining. It can occur with or without the involvement of bargaining agents such as unions or employer organizations. Enterprise bargaining may be conducted within the enterprise as a whole or in sections of it, and it may take place within a bargaining framework established at tribunal, industry, company or other levels.

The controversy sparked by the April 1991 national wage decision on enterprise bargaining has its origins in a diverse range of political, economic, and industrial relations influences. The paper also emphasises historical factors. Although enterprise bargaining has always been a characteristic of Australian industrial relations, there has been a clear trend to single employer awards and agreements since World War II. The October 1991 national wage decision has provided a recent stimulus to enterprise bargaining.

Five models of, or approaches to, enterprise bargaining were presented the present federal model, the NSW model, the BCA proposal, the Federal Liberal/National Party approach, and the New Zealand system. These were evaluated using five criteria. The evaluation indicates that each approach has advantages and disadvantages, supporters and critics. This paper does not support one or more models in preference to others. Rather, its findings suggest that both the positive and negative features of all models should be taken into account, not only in the continuing debate on enterprise bargaining, but also in the refinement of existing enterprise bargaining systems and in the design of new models.

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