

# The APPM Dispute: The Dinosaur and Turtles vs the ACTU

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## Abstract

*This article examines the Australian Pulp and Paper Mills Ltd. (APPM) dispute which took place in Burnie, Tasmania between March 3 and June 10, 1992. The dispute is placed within the context of major changes in Australian industrial relations, which have been in process since 1986. Management and unions throughout Australia are still experimenting with a variety of industrial weapons to achieve their aims and goals within the parameters of the "Structural Efficiency Principle" and "enterprise bargaining", constructed in Accords III through VI, from 1986 to the present.*

*It is argued that the crucial change during the past six years has been the ability of companies to re-establish managerial prerogative through litigation. This has provided management with the power to confront secondary issues and agents of change such as the Accord, the Australian Industrial Relations Commission, Structural Efficiency, Enterprise Bargaining and Restructuring with a new vigour, toughness and effectuality. Increasingly docile, debilitated and legally disabled union officials and workers seem to be coming to the view that a union victory occurs if the company agrees to abide by the law while directing its workforce, and recognises the workers' right to be represented by a "third party".*

## 1. Introduction

This article examines the Australian Pulp and Paper Mills Ltd. (APPM) dispute which took place in Burnie, Tasmania between March 3 and June

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10, 1992. The dispute is placed within the context of major changes in Australian industrial relations, which have been in process since 1986. These changes are partially represented by the mode and consequences of the Pilbara iron ore Robe River dispute in that year, but also by the attempt of industrial antagonists to determine the *modus operandi* of "enterprise bargaining" (Thompson & Smith, 1987; and Smith & Thompson, 1987). In this particular industrial conflict as in the case of many others since 1986, to paraphrase Bertrand Russell, "change is indubitable, whereas progress remains a matter of controversy" (1950). Management and unions throughout Australia continue to experiment. They both have a variety of industrial weapons to achieve their aims and goals within the parameters of the Structural Efficiency Principle and enterprise bargaining, constructed in Accords III through VI, from 1986 to the present. But only management possesses the power of the law to back up its "right to manage".

## 2. The Industrial Dinosaur

The Certificate of Incorporation for APPM was issued in Melbourne, April 18, 1936, and the company was de-listed from the Australian Stock Exchange when taken over by North Broken Hill Holdings Ltd. (NBH) on April 4, 1984 (University of Melbourne Archives, 1990).<sup>1</sup>

APPM is described in the financial media as an industrial dinosaur and the classic case of a company in a death spiral. Its machinery is ancient and hopelessly inefficient. It is incapable of meeting now, and most likely in the future, any of the competition from more efficient papermakers in nations as diverse as Indonesia, Brazil, America and Japan. Barring a miracle, the only choice left for management in the next few years will be when - not whether - to close the group's Australian paper mills for good and shift to merchandising imported paper (Australian Financial Review, 10-6-92, p. 64).

APPM's financial strength is in the large freehold forest resource in Tasmania and its paper merchanting network. It earns most of its cash with woodchip exports and paper merchandising, but given the marginal profitability of paper and pulp exports over the past few years, there is now a serious question mark over the \$240m value attributed to those assets in the books of North Broken Hill-Peko (NBH-Peko). The main problem is the age and small scale, by international standards, of its paper-making facilities. The fine-paper market (printing and writing papers) is becoming internationalized and the economies of scale generated in production are promoting the concentration and centralization of big foreign papermakers who are presently carrying surplus capacity and setting prices accordingly.

In the United States during 1984, less than 1 per cent of fine paper was produced on machines with a capacity of more than 180,000 tonnes. Today that figure is 15 per cent and rising. APPM's biggest mill, at Wesley Vale, produces just 70,000 tonnes and is more than 20 years old (*Australian Financial Review*, *ibid.* and 9-6-92, p. 5). It is general knowledge among the workforce that for APPM to survive at Burnie, at least \$800 million worth of investment in new equipment is needed in the near future.<sup>2</sup>

Nationally, APPM has faced three major setbacks in the past four years. First, the volatile investment plan for a \$1.2 billion pulp and paper mill at Wesley Vale collapsed under "green" pressure in 1988. Second, the company was depending on passage of the federal "resource security" legislation to safeguard investment in new pulp and paper equipment, and was disappointed in early 1992 when the legislation failed. Third, the "slam-dunk" workplace reforms hoped for by APPM management, initiated in March, 1992, using the style of Robe River Iron Ore Associates (RRIA) were short-circuited, to a degree, by political and industrial pressure. We turn to the specific timeline of events.

### 3. Legacy of Robe River

Even with the most docile workforce available anywhere in the world, APPM would be hopelessly uncompetitive against the big low-cost producers overseas. Yet, in the early 1980's, with its outdated pellet plant, low throughput and declining quality of iron ore shipments, much the same was being said about the Robe River Iron Ore Associates (RRIA) operation in the Pilbara until the arrival of Mr. Charles Copeman, Managing Director of Peko Wallsend. Following the takeover of RRIA, Mr. Copeman proceeded in very rapid fashion to give trade union leaders a lesson in industrial conflict that not only changed the company and the pattern of industrial relations in the Pilbara, but also had an immense impact on the development of industrial relations strategy since that time. Six years after that metamorphic dispute at RRIA, that impact, like an aftershock, was evident in the Burnie dispute.

In evidence given on May 4, NBH-Peko Managing Director Peter Wade told the Australian Industrial Relations Commission (AIRC) that if an appropriate example of "sustained successful workplace change" was sought, "the group's Robe River Operations in Western Australia were appropriate." He went on to say, "since July 1986, management at Robe River requires all employees to work as directed, subject to legislative and industrial award provisions but without reference to previous non-award

industrial arrangements, concessions, work bans, demarcations or other restrictive work practices" (*CFMEU Amalgamated News*, 1992, p. 8).

Mr. Wade was alluding to the fact that the present RRIA and APPM companies are under the common parentage of NBH-Peko, and was suggesting that the problems of APPM in 1992 were analogous to those of RRIA in 1986. As he saw it RRIA re-established managerial prerogative, and in doing so created what he would define as "that miracle" which is needed. It cannot be denied that in 1992, RRIA is the star performer in the Pilbara. Productivity has tripled (9,054 tonnes of iron ore/employee in 1985-86 to 27,286 tonnes/employee in 1991-92). The size of the workforce has been halved (1,662 in 1985-86 to 824 in 1991-92). And the loss of throughput due to industrial disputation is zero. In 1985, 75,740 hours of production were lost from industrial action. In 1986, 309,716 hours were lost. In 1991-92, zero hours were lost (*The West Australian*, 25-5-92, p. 8). Other companies in the Pilbara have attempted to take a softer "Accordist" line, but when the crunch comes, such as the recent dispute over non-union labour being used by Hamersley Iron at their Tom Price operations, they too have followed the Robe River style. This includes: calling in the police to arrest picketers; issuing writs against union officials and unions for damages incurred during strike action; and getting an injunction from the State Supreme Court against the unions to cease and desist all action, against the company, to prevent non-union labour from being used on site.

Then, on March 3, APPM management formally gave 30 day notice of withdrawal from all agreements, it also informed the sub-contracting transport cartage drivers that their rates for haulage were to be frozen for three years. Public relations spokesman for APPM, Chris Oldfield said at the time: "We are on the same basic premise as Robe - who has the right to run the operation, us or unions? We're happy to consult with unions but what we're not looking for is consensus. All we want our employees to do is work in accordance with their award and to recognise our right to manage the operations" (*The West Australian*, 25-5-92, p. 8).

According to union informants,<sup>3</sup> the workers were aware that change was about to transpire when Mr. Herbert Larratt arrived on the scene a few months before the company withdrew from all agreements. Mr. Larratt one of the major figures, if not the chief strategist, in guiding RRIA through its dispute in 1986 arrived at APPM in late 1991. Workers on site were immediately informed of his background by their officials.

From December, 1989 right up to March 3, 1992, negotiations had proceeded slowly around issues raised in the "Structural Efficiency" decisions of the AIRC in 1988-89. Restructuring was taking place and the workers and townspeople had resigned themselves to the fact that the

number of employees in the plant would of necessity, have to decline. All of the workers saw award restructuring, reskilling, retraining, increasing efficiency and productivity, and the acceptance of voluntary redundancy, as their way of assisting management to keep the plant operational. Because of this and the acknowledged dependence of the community on the plant, union militancy and/or radicalism on the shop floor were unheard of at APPM. There was neither a "Pilbara syndrome" nor were there "Pommie stirrers", to be found in this company, although company concerns about high labour costs were continually voiced.

Twenty years earlier, W.D. Brookes, in his Chairman's address to shareholders, had voiced many of the complaints being repeated in 1992:

During the year our costs have been adversely affected as a result of increases in labour costs.

... In a period such as the Company is passing through, when substantial new papermaking capacity is being made, new operations must be expected to be conducted at a loss or, at best, on a marginal basis. The aim of both management and labour should therefore be to restrain costs to enable the marginal production to be accepted and successfully sold. ... While we recognize that we live in a changing world and accept the right of employees to receive adequate and equitable remuneration for their services, it is to be hoped that the Unions concerned will be realistic in deferring any substantial requests at this time ... Let us all recognize ... that one of the most significant factors undermining our competitive position is our cost increases, not the least of which are those applicable to labour (APPM Ltd., 1972).

There is some irony in the present situation if one reviews the analysis of the problem of labour costs, made by Chairman Brookes on October 28, 1970, which suggest that the positions in union-company conflict were reversed (APPM Ltd., 1970):

Over the past few months the pulp and paper industry was selected as one of the first to face the new form of direct bargaining being adopted by the ACTU, in a form not dissimilar from that which is proving so costly in the USA, UK and Canada. . . These union demands for disproportionately more money can only be met, in the long run, by greater productive efficiency. . . It is one of our major national problems to devise an improved system of industrial relations (which is) primarily a task for government, the trade unions and employer groups to work out ... (An Accord perhaps?)

According to employees of the company, shortly after a major \$16 million investment in a continuous sheet cutter was made in late 1991, the

industrial atmosphere began to heat up. This included a new “World Series” system with multi-coloured charts, graphs and incentive schemes placed before the workforce in a number of meetings. Although the intent was to indicate problems and define the solutions from the management perspective, many workers saw the entire process as a disingenuous attempt to manipulate the workforce. On March 3, the World Series abruptly ended, to be replaced by what one worker called “slam-dunk manager directives” with no discussion or contact with union representatives. Workers were given 30 days notice that the company intended to terminate all awards and what was described as “subtle intimidation” by middle-management began in both the production and maintenance sections (such as individual workers being told that they were “trouble makers” and were being watched).

Union overtures to management were ignored, as was ACTU President Martin Ferguson who publicly called on the company to negotiate with the unions. On April 1, Martin Ferguson send a letter to NBH-Peko Executive Director Bill Paisley notifying the company of the unions’ intention to hold a stop-work meeting on April 6, and reaffirming the unions’ commitment to negotiations with the company. In response, on April 2, APPM sent a list of directives and restrictive practices to individual workers informing them of company expectations which were to be followed under threat of dismissal. The main restrictive practices which were to end included no showering or washing up, or reading of newspapers on company time. Workers were also accused of abusing sick leave and it was indicated that the use of contractors throughout the operation would be increased at the management’s discretion. April 6, 1,100 workers attended a stop-work meeting addressed by Mr. Ferguson. The following day each worker received a warning letter with the threat of instant dismissal should they attend any further meetings on company time. Union newsletters headlined the fact that the recently arrived company official, Herbert Larratt had recently told a Mining Conference in Perth that “every worker should go to work each day expecting to be sacked”. The Structural Efficiency process had ended and “enterprise bargaining *ala* RRIA” had begun.

#### **4. Confrontation and Conflict**

April 9, management directed the boiler operators to train staff employees to operate the equipment. When the eleven FEDFA members refused the order they were immediately dismissed. On grounds of inadequate safety measures being taken in the boiler room, other employees refused to work in the plant and a “safety picket” was set up on company gates. On April

13, the AIRC handed down a decision ordering APPM to reinstate the eleven boiler operators and for workers to return to their duties in the plant.

April 16, an affray began on the Burnie wharves when the freighter, *Anthos*, arrived from the United States with a load of 6,000 tonnes of imported paper. Union officials determined that the company was stockpiling paper in order to carry on production if halted by industrial action. Public protests begin on the wharves and there were a number of ugly confrontations between security guards and the protestors. In support of the APPM workers, but treading cautiously for fear of violating the secondary boycott provisions of the Trade Practices Act (as had been the case in the RRIA dispute), the Merchant Service Guild, the Institute of Marine and Power Engineers and the Seamen's Union went on strike for a pay claim.

APPM then issued a "Second and Final Warning" to employees who had stopped work over the safety issue, and all workers were informed that they could no longer use company phones or faxes for private or union business. One week later the company brought civil action against union officials, including Martin Ferguson, for damages resulting from loss of production during union meetings and strike action.

May 7, management directed the boiler operators to attend a "Train the Trainer" course at TAFE, to gain the ability and credentials to train staff personnel to work in the boiler room. The FEDFA immediately sought and received an AIRC order directing APPM to cancel the training course and allow workers to undertake their normal duties. On May 11, APPM rejected the AIRC order as flagrant interference in company commercial affairs, and ordered the day shift employees to hand over the plant and leave the premises. The workers refused to leave, citing the AIRC order, so the company called in the police to have the workers arrested for trespass. When the company tried the same tactic on the night shift, the police refused to respond on the grounds that they were misled by the company and had been unwillingly drawn into an industrial dispute. On May 12, all of the workers attended a mass meeting at the plant. They voted to stop work and set up a 24-hour picket. May 13, the ACTU announced a \$6 million fighting fund and national union support for the picketers at Burnie. Martin Ferguson then called together the National Secretaries of all unions represented on site and organized their attendance at a mass rally of 1,100 workers and their families in Burnie on May 18, 1992 to pledge support for their strike. The main issues of contention according to union representatives were the "right to work in a safe environment and union representation in negotiations with the company".

A compulsory conference was convened by AIRC deputy president Justice Munro on May 21 which brought the parties to the negotiating table.

The unions argued for a return to the status quo on March 2. APPM argued for the "right to manage". Further, according to APPM (1) Unions had no role in matters outside basic award arrangements and conditions. All restructuring and efficiency agreements were part of non-award and over-award conditions which had been cancelled. In the future, APPM would only observe laws and government regulations. (2) Employees will work as directed. (3) Management and contractors will be trained to operate any plant and equipment at the company's discretion. (4) Existing awards are to be replaced with enterprise agreements at each of 8 plants located in Tasmania, Victoria and New South Wales. (5) All over-award agreements still in existence at the company's discretion regarding hours of work, superannuation and redundancy, will also be reviewed in enterprise negotiations. APPM argued that only those workers who were willing to accept all company directions would be allowed to return to work; that all disciplinary warnings would stand; trespass transgressions would be prosecuted and court proceedings for damages would continue. In short, the status quo was a tale of a forgotten past and there was very little room left for compromise. May 22, the workers voted 650 - 2 to remain on strike until a return to the conditions of March 2 was operative (*The Pulp and Paper Worker*, 1992).

May 23, APPM applied for a writ of mandamus from the Supreme Court in Hobart against Tasmanian police commissioner John Johnson to enforce the performance of a public duty. Management argued that the police had failed to protect public property and to assist people who wished to go about their normal, lawful daily business, which included going to work across picket lines (*The Australian*, 26-5-92, p. 2).

In the meantime, Martin Ferguson and Peter Wade had been meeting and within a week appeared to have struck a deal to end the dispute. Mr. Ferguson announced publicly that the "agreement had the potential to turn APPM into a model workplace for enterprise agreements around the nation". However, when he presented the 3 page draft proposal for peace to a meeting of federal and Tasmanian union leaders on the night of May 26, the local union officials informed him, in no uncertain terms, that the draft was not acceptable and he would be embarrassed if he recommended it to the membership the next day. Given this advice, Mr. Ferguson placed the agreement on the table at the mass meeting for discussion and a vote, but without his recommendation. The major reasons for the rejection were: the shop stewards felt strongly, reflecting the membership, that the log haulers should be supported in return for the support they had provided the picketers; and second, the agreement came no where near a return to pre-March 3 conditions because APPM continued to insist on the right of staff doing



union jobs, and their right to manage without union veto. Much of the document was also seen to be vague and open-ended, leaving much to negotiation only after a return to work.<sup>4</sup>

Managing director, Mr. Peter Wade and mill manager, Mr. Ken Henderson criticized both the Transport Workers Union for "tacking their complaints onto an agreement at the last minute in order to torpedo the peace deal", and Mr. Ferguson for going back on his word to recommend the package to the workers. To hold together some semblance of order, Mr. Ferguson announced to the media that "there was overwhelming support for the agreement but that clarification was needed on the rationalisation of log haulage contracts and other issues". Mr. Wade countered that the company refused to negotiate further and described the "memorandum of understanding" as null and void (*The Australian*, 29-5-92, p. 5).

As it turned out, and it is not clear whether or not the APPM management team was aware of Mr. Ferguson's quick response to the transport workers' issue. However, within 24 hours, Mr. Ferguson had the agreement of Senator Peter Cook, Minister for Industrial Relations, and the Premier of Tasmania, Mr. Groom, to provide a \$1 million compensation plan for the log truck drivers in the form of long-term loans during restructuring of the haulage contracts. Even though this would have most likely resolved the truckers' problem, it was too late as far as the company was concerned.

May 29, Justice Munro ordered a change to the award which required the employees to return to work and legally compelled the parties to negotiate "in good faith" over work practices. He said the "new award" was designed to provide for a "stabilisation period" for the next four months. Mr. Justice Munro also ordered a clause setting out a number of provisions that aimed to resolve the dispute, one of which legally enshrined key over-award agreements including a 25 per cent over-award payment and a shorter working week. Another provision enabled APPM to take striking workers to the Federal Court if they failed to return to work within a week. The Queen's Counsel for APPM, Robert Buchanan, responded by accusing the commission of trying to force the company to the negotiating table. He said the commission was on a "flight of fancy" if it believed it could direct the way the parties should think (*The Age*, 30-5-92, p. 12).

This intransigent position of the company brought forward what appeared to be some cracks in the industrial relations policy of the Liberal Party. Dr. Hewson said that "he had some sympathy for the company's position". John Howard, coalition spokesman for industrial relations, said "At no stage have I said I support the conduct of the company, I don't". Liberal Premier of Tasmania, Mr Groom, accused his federal colleagues of "siding at every opportunity with the employer", and notified APPM that it

could lose the Crown timber concessions that supply the paper mill and export woodchip operations.. The Labor Party spokespeople, on the other hand were taking a vitriolic stand in opposition to APPM, with Senator Cook talking about "blood in the streets and the use of extraordinary powers to intervene in the dispute", Resource's Minister Griffiths threatening to withdraw the company's export licenses for using hired thugs, and Prime Minister Keating singling out Managing Director, Peter Wade, as having a recalcitrant attitude (*The Age*, 3-6-92, p. 6; *Australian Financial Review*, 3-6-92, p. 4; *The Australian*, 2-6-92, p. 3; and *The Saturday Mercury*, 6-6-92, p. 1-2). The company's response to political rhetoric was swift. It launched the fifth legal action of the dispute, filing a new damages claim against nine unions and individuals for damages under the *Trade Practices Act* over the delay in the delivery of paper from the freighter Anthos.

On June 3, the dispute took a particularly nasty turn. APPM had sent letters to workers setting a deadline of midnight for a return to work, and Justice Wright of the Tasmanian Supreme Court upheld APPM's argument that the police must ensure that traffic could pass through the picketers. The Justice was satisfied that since May 12, "the picketers had been guilty of indecent language, disorderly conduct, jostling, assault, and similar breaches of the Police Offences and Traffic Acts and the Criminal Code. The police had a right and duty to take action". Police Commissioner John Johnson said: "Force is the only answer now" (*The Mercury*, 4-6-92, p. 3; and 5-6-92, p. 1 and 3). On June 3 and 4, hundreds of workers and their families confronted the 18 strike-breakers and the police. A dangerous level of violence ensued with 41 people being arrested and dozens of police and picketers injured. To most observers, the greatest surprise after it was over was that more serious injuries had not resulted from the brawl.

One day before the brawl turned ugly, on June 2, the company imported a number (approximately 6, but rumoured to be 13) of kickboxers from the Sydney-based company Toraguard Security, self-described as elite-specialists in strike-breaking (*The Mercury*, 5-6-92, p. 1-3). Dressed in all-black rap pants, windcheaters, Dryzabone raincoats and gloves, they were quickly dubbed the "Ninja Turtles" by picketers. These newest employees of APPM were seemingly imported to provide a menacing presence, justified by management as protectors of company property. Their actual contribution to either resolving or deepening the dispute was little more than the presentation of a variety of martial-like flexes and poses, a photogenic collection of smirks for the camera, showing off long, sharpened thumb nails, and the driving of a hire car through one of the company gates at 6:00am at very high speed to scatter a group of picketers. When they later attempted to protect a Sea Pak truck in the car park opposite the east mill

gate and were surrounded by workers, they had to be saved and driven off by police in their cars. If nothing else, moving from the sublime to the absurd, the Ninja Turtles did give the dispute a Disney-like quality of entertainment - not exactly what APPM must have had in mind. When the media started to focus on them more than the strike itself, the Turtles were sent back to Sydney.

There is one ominous portent of the Ninja Turtles, which must be kept in mind. In the United States, during the early 20th century, as mega-unionism developed, mafia control of a number of unions became a fact. This was partially due to union officials who accepted criminal assistance in order to offset the threats of physical violence against their members by employer-enlisted private security agencies. The Ninja Turtles at Burnie did heighten the symbolic content of violence, drawing verbal responses from union members that "they would call on the mainland for four-by-two hit-squads" or that they would "bring in some heavies from Hobart and the West Coast" to handle the Turtles. It is not a large step from the symbolic to the real in volatile disputes such as that at Burnie.

In the meantime, talks had been continuing at an IRC conference. Pressure was mounting on Messrs. Ferguson and Wade as well as Justice Munro to achieve a truce, if not a resolution. The strike was beginning to move to the mainland and was taking on national overtones. The Transport Workers' Union had put a nationwide ban in place to prevent the movement of APPM paper supplies. The Construction, Forestry and Mining Employees Union announced that a nationwide miners strike was planned for the following week, and company public relations representatives noted that people from "out of town" were being arrested on the picket line.

On June 8, ACTU president Ferguson announced he would be putting a return-to-work recommendation to workers at a mass meeting in Burnie following weekend talks with Mr. Wade. Premier Groom announced that "an end to the APPM dispute is now clearly in sight. That's great news for Burnie and Tasmania". Senator Cook called for APPM and its workers to put the dispute behind them. He said they would have to show patience and work through the consultative provisions in the agreement to sort out any problems that might arise. Both Senator Cook and Mr. Groom congratulated the IRC. The workers and their representatives on site were much more reticent. Machine operator Simon Inkson said "the workers would need guarantees that the agreement was a solid one and that it could not be "twisted" by the company. The over-riding issue was the right of workers to be represented by unions". Tasmanian Trades and Labor Council Secretary Bacon said "any decision on a return to work would be left entirely up to the striking APPM employees" (Interview and *The Mercury*, 8-6-92,

p. 1-3).

A mass meeting was held June 9, at 3:00pm at the Burnie Civic Centre to discuss the agreement and accept recommendations. It was taken for granted that if the agreement was rejected the dispute would escalate and become increasingly bitter. Mr. Murrphy, APPM spokesman said "If they decide not to accept the return-to-work recommendation then they leave very few options open for the company" (*The Mercury*, 9-6-92, p. 1-2). Union officials made it very clear to the mass meeting, that there was little choice but to accept the agreement. The agreement, with little recognizable difference from what had been rejected at the previous mass gathering, passed by a large majority. Only 20 workers, out of 860, voiced their dissent formally. The company withheld its signature until all bans were lifted the next day. On June 10, bans were lifted, picket lines removed, leaving it to both management and union officials to claim a victory.

## 5. The Agreement

The eight page agreement, entitled *APPM/ACTU Workplace Reforms - Competitiveness Memorandum*, had three components: (1) Company strategy and management policy to improve competitiveness; (2) APPM/ACTU commitment to workplace reforms and competitiveness agreement; and (3) Return to work criteria.<sup>5</sup>

Company strategy and management policy to improve competitiveness

This section informs the workers, signed and noted by union officials, that:

While employees will be consulted, final decision-making authority belongs to management and the union use of veto on line-management decisions must be stopped.

Management will return to a strict interpretation of the Award, which includes total demarcation free sites, use of staff when needed, the right to set manning levels, and the right to use contractors on site. Employees are required to work as directed provided they have been trained and the work is safe.

"Consultation" means that the company will inform its employees, encourage them to contribute ideas and promote genuine discussion having regard for management's timetable. Final decision will be taken by management.

The development of site agreements would be the only case where negotiation is applicable.

The company recognises that the unions have a role to play and that

employees who are union members can request that they be represented by union officials.

The following consultative committees will exist - Training, Occupational Health & Safety and Mill Communication.

#### **APPM/ACTU Commitment to Workplace Reforms**

Site agreements need to be established at a workplace level across all APPM sites and will be ratified by the IRC. At each site a single bargaining unit will be established central to which will be the involvement of direct employees. The ACTU will co-ordinate national and site workplace negotiations.

The Company reaffirms its commitment to continue to apply the following over-award conditions: the 25% over-award payments; the shorter working week; APPM/ACUT Superannuation Fund; and Redundancy payments. It is understood that the Company will be raising the application of these conditions in site negotiations.

The parties jointly recognise the requirement to respect the Award; the right of the company to a demarcation free work-place; a need for employees to perform work within the skill, competence and training of the employees, including staff operating equipment. There is no plan to replace non-staff employees with staff employees.

The processes of grievance and disputes settlement procedures and of the new Consultative/Communications Committee will be available to assist in achieving adjustments.

Safety on site should never be compromised. The Company and Unions will meet with the Department of Employment, Industrial Relations and Training to remove any doubts about the DEIRT Statutory obligations regarding Safety & Training.

The Company recognises the right of employees to be represented by unions and the fact that unions have a legitimate role to play in representing their membership.

The Company will not issue disciplinary warnings to employees as a result of the dispute or present evidence in support of trespass charges. The Company will defer actions relative to writs issued against individual unions and union officials for a period of 6 months and will constantly review the appropriateness of the actions preceding in the light of progress with matters covered by this "commitment to workplace reforms".

The matter of log haulage is acknowledged by the parties as being a restructuring issue and in this context the parties note the statement by the Tasmanian Government on 29 May, 1992 which represents a solution to that matter.

On the basis of this document the ACTU will recommend a return to work at the Burnie site. There will be no recrimination on both sides at all sites.

### *Appendix: Return to Work Criteria*

Employees who fail to report for duty on their first shift after 6 a.m., June 11th will be deemed to have abandoned their employment.

There is to be a commitment to a peaceful and recrimination-free orderly return to work.

All employees will participate in a session relating to conflict resolution conducted by professional counsellors.

All Company procedures will be applied in accordance with the Award.

Employees will not be paid for the period of cessation of work.

All aspects of employment shall be deemed to be unbroken and continuous save for accrual of Annual Leave and Long Service Leave entitlements.

## **6. The Enterprise: Restructuring or Managerial Prerogative**

As pointed out above, each side - management and the unions - declared victory and there was a return to work. The return to work, in fact, was an uneasy truce, with the participants going back to the workplace with attitudes which they described as suspicious, bitter and frustrated. Union representatives emphasised the company's commitment to union representation and restructuring, whereas management emphasised their solidification of managerial prerogative in the enterprise.

Since 1986, there has been a renewed focus on the enterprise as the unit of bargaining, whether this is reflected in two-tier Accord III where the AIRC accented the "enterprise" as the proper place for the "efficiency and restructuring" principle to be negotiated; the RRIA dispute where the company recaptured "the right to manage"; or ACTU acceptance of the enterprise as the proper unit for "restructuring" under the guidance of national union officials, the ACTU and the AIRC. It is suggested here that the "Burnie dispute" is simply another act in an on-going drama set up to construct a new edifice of industrial relations in Australia within the framework of Enterprise Bargaining and the Structural Efficiency Principle. The fact is, irrespective of the latest game, irresolvable and irremediable

antagonism remains within any capitalist firm.

At the centre of major disputes since 1986/87, including Mudginberri, Dollar Sweets, Robe River, the Plumbers and Gasfitters Employee's Building Site dispute, APPM, and the Hamersley Dispute of June, 1992, one increasingly finds litigious activity. Court action, writs, injunctions, and criminal action have halted the ability of unions to picket, strike, go slow or even refuse to work with non-union labour. The political power which gives unions their economic monopoly power has been progressively withdrawn or circumscribed. In this sense, APPM, like RRIA and others, have snatched control over the direction of industrial relations in front of a judicially impotent union officialdom. The piteous irony of this was demonstrated in a recent Hamersley Iron dispute, when the Assistant Secretary of the Metal and Engineering Union in W.A. declared, after being served with a writ for damages by Hamersley Iron, that "the unions were going to capture the dispute back from the company by returning to work!"<sup>6</sup>

It was pointed out, in context, five years ago that "a new era had begun", and that the complexity of the legal process was transforming the capital-labour relationship at the company and enterprise level (Smith and Thompson, 1987). How far that 'new era' has proceeded is reflected in the words of David Ulverstone, a Turbine-Driver at APPM in Burnie: "It's a poor thing when a company has its most loyal workers arrested for doing what they were trained to do" (Ulverstone, 1992).

In one sense, with reference to the capitalist firm, Alphonse Karr had greater insight than did Bertrand Russell when he said "The more things change, the more they remain the same" (Karr, 1849). The struggle for power and position on the hierarchical ladder of control within the capitalist firm is ever-present. There is nothing new in this, as is recognised by Marxists and more belatedly, neoclassical economists alike (For citations and argument see Thompson, 1989, p. 78-86). What changes is the tactics, strategies, manoeuvres, learning curves and sophistication of both management and the unions. However, the crucial change during the past six years is the ability of companies to re-establish managerial prerogative through litigation. This has provided management with the power to confront the secondary issues of change such as the Accord, the AIRC, Structural Efficiency, Enterprise Bargaining and Restructuring with a new vigour, toughness and effectuality. Increasingly docile, debilitated and legally disabled union officials and workers seem to have come to the view that a union victory occurs when the company agrees to abide by the law in directing its workforce, and recognises the workers' right to be represented by a "third party". Four weeks after the Burnie dispute had concluded, it was reported that the secretary of the CFMEU in Tasmania said "APPM

management was misinterpreting some of the agreements between unions and APPM which had paved the way for a return to work. There are still some ridiculous things going on" (*The Australian*, 6-7-92). The secretary might be referred to both Bertrand Russell and Alphonse Karr for their succinct one-liner insights in order to underline his own misinterpretation of management's *raison d'être* when it comes to the bottom line.

The most serious question for the people of Burnie, one that many are frightened to ask, is what happens even if workers do everything they are told by managers with the prerogative. Given the state of the international economy, the competitive advances made in the paper and pulp industry overseas, the marginal profitability of APPM pulp and paper exports, the dilapidated condition of the Burnie plant, the prevention of APPM investment in a new pulp and paper mill at Wesley Vale, and the loss of resource security legislation, when will the management hierarchy of NBH-Peko decide that Burnie is no longer a viable option?

## Notes

1. North Broken Hill later merged with Peko-Wallsend, the major shareholder and management arm of Robe River Iron Associates. This created the new company now known as North Broken Hill-Peko (NBH-Peko).
2. Information gathered during informal interviews with picketers, Burnie, Tasmania, June 4-5, 1992.
3. Appreciation is extended, in particular, to Mr. Simon Inkson, APPM machine operator, for his patience in the provision of details.
4. Information based on interviews with union delegates. See *The Australian*, May 28, 1992, p. 3, and May 29, 1992, p. 5 for general information regarding the failure of the agreement to resolve the dispute.
5. The following is taken, in paraphrased form, from the Agreement dated June 7, 1992, between APPM and the ACTU. It was signed by P.H. Wade and W.D. Paisley for North Broken Hill Peko Ltd.; J.E. Morgan for APPM - Paper Division; and Martin Ferguson and 16 union officials for the ACTU and eight unions involved. The unions include the Federation of Industrial, Manufacturing & Engineering Employees, Transport Workers' Union, Construction, Forestry & Mining Employees Union, Printing & Kindred Industries Union, Metals & Engineering Workers Union, Electrical Trades Union, The Australian Workers' Union and the Federated Engine Drivers & Firemen's Association.
6. ABC radio broadcast, June 29, 1992. Other union officials said they had no clear strategy to combat a WA Supreme court injunction against further industrial action or to protect the closed-shop concept. "The system came down on us like a ton of bricks and we have to find our way from underneath the rubble," said Mr. Jim Murie, Organiser for the Australian Electronics, Electrical, Foundry and Engineering Union.



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