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Individual Contracts, Collective Bargaining, Wages and Power

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ABSTRACT

Over the past decade or more, employer use of individual contracts to determine pay and conditions for employees increased in Australia and elsewhere, in no small part due to encouragement by governments, including through legislation promoting Australian workplace Agreements (AWAs). This paper considers the evidence on the impact of individual contracts and collective bargaining on outcomes such as pay and conditions for employees and the implications for the distribution of power. Employees on AWAs receive higher pay on average than other employees, due to the overrepresentation of managerial and senior specialised skilled staff amongst AWA employees. For other employees, however, individual contracts appear to be more likely to be associated with lower wage increases and/or a reductions in other conditions of employment. This in turn reflects the impact that individual contracting, compared to collective bargaining, has on the power of employees. Collective bargaining increases the bargaining power of employees, is the mechanism by which unions achieve most gains for their members, and is strengthened when union density is high. However, not all employees receive lower wages if they shift from collective bargaining to AWAs: some receive a non-union premium, by which employers in effect purchase a transfer of power from employees. While the impact of individual contracting, by comparison with collective bargaining, on pay and conditions may vary, it is unambiguously associated with a transfer of power from employees to employers.

Over the past decade or more, employer use of individual contracts to determine pay and conditions for employees increased in Australia (Wooden 1999; Morehead et al 1997) and elsewhere (Brown et al 1999; Oxenbridge 1999), in no small part due to encouragement by governments through changes to legislation. A particular form of individual contracting in Australia is the making of Australian Workplace Agreements (AWAs). The growth of individual contracting has been controversial, but the proponents of individual contracts agree that they have enabled employees to achieve better outcomes for themselves than would otherwise have occurred. For example, a Minister argued that 'workers on individually negotiated AWAs are paid on average 25 per cent more than those whose pay rises are collectively negotiated – usually by a union' (Abbott 2001). These data, according to the Employment Advocate (a person whose role includes both the regulation and the promotion of AWAs), 'demolish the erroneous claim by the critics of AWAs that they are being used to exploit employees' (Hamberger 2001). Others are not so sanguine: for example, McCallum (1996:302) argued that a contractualist system would 'diminish the bargaining power, the dignity and the citizenship of individual workers', suggesting the importance of power in understanding the effects of contractualism and collectivism. This paper considers the evidence on the impact of individual contracts and collective bargaining on outcomes such as pay and conditions for employees and the implications for the distribution of power.

Definitions

The making of individual employment contracts is the antithesis of collective bargaining. However, individual contracts do not equate to 'individual employment arrangements'. Brown et al (1998:i) defined 'procedural individualisation' as referring to 'the removal of collective mechanisms for determining terms and conditions of employment'. By contrast, 'substantive individualism' occurs where there is differentiation in employees' pay and non-pay terms and conditions of employment. Procedural individualism, or individual contracting, corresponds to what Storey and Bacon (1993) describe as individualism in the area of 'industrial relations'.

AWAs are contracts lodged under the Commonwealth *Workplace Relations Act 1997*, for approval by the Employment Advocate or, in rare cases, the Australian Industrial Relations Commission. They have to satisfy a number of procedural requirements and a global 'no disadvantage' test, by which employees under AWAs should be no worse off overall under their AWA than they would be under the relevant award. At various times different state jurisdictions have also provided for formalised individual contracts. Western Australian 'Workplace Agreements', for example, do not have to meet the same 'no disadvantage' test as AWAs, but they do need to satisfy a state minimum wage. By contrast, individual contracts which are not formalised via statute should, in law at least, meet all the minimum conditions set out in the relevant award or agreement, if one exists.

Both formalised and non-formalised individual contracts can be distinguished from the contracts of employment that all employees have under common law, regardless of whether the underpinning framework is an award, collective agreement, formalised individual contract or merely the limited statute law that applies to the 20 per cent of employees who have no award or agreement coverage. Common law contracts can and do coexist with collective bargaining; individual contracting as discussed here, however, is *an alternative means of employment regulation to collective bargaining*.

Collective bargaining 'is the method of fixing the terms of employment and settling grievances arising from those terms by *negotiation* between union(s) and employer(s)' (Isaac 1958: 348). Definitions of collective bargaining commonly refer back to Flanders (1970:41), who described collective bargaining as also being 'a rule-making process'. Through collective bargaining, unions are 'interested in regulating wages as well as raising them; and, of course, in regulating a wide range of other issues pertaining to their members' jobs and working lives.' Collective bargaining arises, then, because of an imbalance in the power of employers (typically, collectively organised shareholders) and individual employees (eg Fox 1974:28).

What, then, is power? It is convenient, here, to think of three faces of power (Lukes 1974): a first face in which the expression of power can be observed in the outcome of decisions where the overtly conflicting interests of employees and employers are somehow resolved (Dahl 1954); a second face, where the interests of one side or the other are subverted because, through the 'mobilisation of bias', key issues of concern to them are absent from decision-making processes (Bachrach and Baratz 1970); and a third face, in which conflict is latent, because the interests of the stronger prevail over the weaker 'by shaping their perceptions...and preferences in such a way that they accept their role in the existing order of things, either because they see can see or imagine no alternative...or because they see it as natural...or...divinely ordained and beneficial' (Lukes 1974). We can gain some insights into the impact of individual contracting and collective bargaining on power by looking in various ways at the outcomes of agreements. The exercise of the first face of power might be most obvious in the negotiation of collective agreements, where demands are usually placed openly 'on the bargaining table' and, notwithstanding the role of ambit, participants and sometimes observers might be able to interpret the final outcomes in the context of the original claims and draw some conclusions about how power has been exercised during bargaining. However, the initial demands and their subsequent adventures might not be so apparent in the creation of individual contracts, because negotiation or bargaining might not take place in the creation of individual contracts (Dannin 1997:187). In such cases the second face of power may be at work, in keeping from the bargaining table the overt interests of one side - in this case, the employee, since the New Zealand experience 'suggests that the content of individual contracts is likely to be largely determined unilaterally by the employer' (Hamberger 1995:295). Referring to literature on developments in New Zealand, Oxenbridge (1999:240) observes 'a strong tendency towards non-negotiation'. This was particularly so in private sector service industries, where 'unionists have claimed it is common for...employers to present workers with non-negotiable (individual contracts) which they are obligated to sign, or face unemployment'; the results of several studies confirmed such claims (Oxenbridge 1999:241). Hence, the term 'individual contracting' is used in this paper, rather than 'individual bargaining'.

One other point about collective bargaining: the academic literature almost universally refers to collective bargaining as involving unions and employers (or employer associations), and Australian law formally recognises and gives legal effect to the outcomes of collective bargaining. However, Australian federal law also gives legal effect to instruments that have been agreed to by a majority of employees at a workplace or organisation and which thereby legally apply to all employees, including those who voted against it (section 170LK of the *Workplace Relations Act 1996* and Enterprise Flexibility Agreements introduced under the former *Industrial Relations Reform Act 1993*). These agreements might or might not be 'negotiated', or they may be simply proposed by the employer and voted upon by the employees. Where they are negotiated,

employees might be represented by a committee of employees or by a union (particularly in the federal public service). Where they are not 'negotiated' the employer may eschew use of the term 'bargaining' (eg the employer referred to by Van den Broek (1997)) and indeed the biennial federal government report that details outcomes under the federal system refers to 'agreement-making' rather than 'bargaining'. It is thus inappropriate to consider this form of agreement making as 'non-union collective bargaining'; a more appropriate term would be 'non-union group agreement-making'.

Outcomes

What can we tell about the outcomes for employees on individual contracts, or under collective bargaining? What does this in turn tell us about the power of employees in such circumstances?

Wage levels

The first thing to note is that many employees on individual contracts are senior managerial and other senior staff, and in the public sector in particular senior managerial staff are paid under formalised individual contracts; consequently many employees on individual contracts have high earnings because of their occupational position, and this distorts any comparison between workers on individual contracts and other workers. Thus, the ABS *Employment, Earnings and Hours* survey estimates that, in the public sector, earnings of employees on registered individual contracts are 35.7 per cent higher than those on collective agreements, reflecting the heavy concentration of individual contracts amongst senior public servants. Yet in the private sector, earnings of employees on registered individual contracts were 97.8 per cent of those on collective agreements for males, and 90.0 per cent of those on collective agreements for females. Overall, earnings of employees on formalised individual contracts are higher simply because of this overrepresentation of highly paid senior public servants in the data. It is these data that Hamburger (2000) was drawing on to make the claim mentioned above, but the suggestion that employees on AWAs earn more than those on collective agreements can only be made because like is not being compared with like. A much better idea of the differences between an employee being on an individual contracts and being on a collective agreement would be had by comparing the pay employees with the same industry, occupational and other characteristics, something that is very difficult to do. However, we can also derive a view of the different impacts by comparing *changes* in wages conditions of employment under individual contracts and collective agreements, rather than their *levels*. Even this comparison is not free from bias: there is considerable evidence that wage inequality is increasing, and if AWAs and other formalised individual contracts are disproportionately concentrated amongst high income earners, whose pay and benefits are rising faster than middle and lower income earners, then there would also be an upward bias to the estimated movements in AWA remuneration.

Wage increases and changes in conditions of employment

As it is, detailed information on registered individual agreements is limited. Nonetheless, there is sufficient data for some clear trends to be observed. Evidence from research into the Australian Federal system indicates that during the 1990s employees covered by union-negotiated collective agreements have received higher wage increases than those provided for in non-union group agreements and formalised individual contracts. Through the period of enterprise bargaining, agreements have on average delivered wage increase

in the order of 3 ½ to 5 percent per annum (DEWRSB 2000), significantly above the level of increases available through safety net adjustments to award rates of pay, which were in the order of 1½ per cent per annum for much of the 1990s. The federal Government's Workplace Agreements Database showed s170LK (non-union group) agreements had wage increases an average of 0.8 per cent lower than s170LJ (union collective) agreements during the 1997-2000 period, though the gap narrowed in the last two years (White, Steele & Haddrick 2001:25), perhaps due to the need for non-union firms to maintain some wage competitiveness in attracting employees.¹ ACIRRT's ADAM database reveals that union collective agreements in NSW and elsewhere were consistently generating wage increases on average close to 1 per cent higher than non-union agreements and AWAs (ACIRRT 1998; Buchanan et al 2000:116; ACIRRT 2001:9), the only exception having been in June quarter 2000. For example, the March quarter 2001 ADAM report indicated average wage increases under currently operating union collective agreements (3.9%) above non-union group agreements (3.1%) and AWAs (2.4%) (ACIRRT 2001). AWAs appear less likely than collective agreements to provide for wage increases during the course of the agreement, even though AWAs are much more likely to have a duration of three or more years (ACIRRT 2000b:10), and when wage increases do occur in AWAs that are usually based on individual performance (ACIRRT 2000b:11, 2001). The gap between wage increases under AWAs and collective agreements is noticeably higher in the private sector (1.8 percentage points for agreements current in March quarter 2001) than in the public sector (0.3 percentage points) (ACIRRT 2001:9). This might reflect small sample size effects but more likely reflects the inclusion in the public sector data of AWAs encompassing senior employees who receive relatively high wage increases.

Reductions in hours-related benefits were common in individual agreements in the Queensland jurisdiction, which for much of the period mirrored the federal jurisdiction in its agreement structure. An early study of QWAs (prior to changes to the legislation) by DETIR found that 69 per cent cut penalty rates, 53 per cent increased the span of hours, 43 per cent removed overtime and 39 per cent increased ordinary weekly hours. By contrast, just 2 per cent of Queensland collective agreements over the same period increased hours of work. (DETIR 1998 cited in Workforce, 28 August 1998). A later study, made after legislative changes affecting QWAs, found that fewer QWAs dealt with hours issues than did other types of agreements, but that most provided no significant improvements in conditions of employment for workers covered by them (ACIRRT 2000). Likewise, AWAs provide for longer working hours than other agreements, but these are usually paid at the single ordinary-time rate (ACIRRT 2001).

In Western Australia individual contracts have been available through Workplace Agreements since the early 1990s. The Commissioner of Workplace Agreements' regular publication of official statistics on WA workplace agreements (WAs) included, in volumes 2 and 8, analyses of agreements (*CWA 1996, 1999*). The first analysis, published in Vol 2, was a sample of early agreements between August 1994 and March 1996, covering 577 employers with 14511 employees. The second analysis, of all agreements lodged in November 1998, covered an unstated number of employers and 5171 employees. Data in 1998 were obtained during and after the registration process from the agreements, the relevant awards and, where necessary for clarification purposes, employers. In 1994-96 some 83 per cent of employees had agreements that provided

¹ The gap between union and non-union bargaining power is probably understated by these figures, as agreements

for an ordinary rate of pay that was above the award rate. This subsequently fell by a significant amount, so that by 1998 just over half of agreements had an ordinary rate of pay that was better than the award. Between 1994-6 and 1998 the proportion that had an ordinary rate of pay that was inferior to the award rose from 5 per cent to 25 per cent. Amongst those on agreements, two in ten male employees, but three in ten female employees, had ordinary time wages below the award rate. In both periods the majority of agreements provided for inferior penalty rates and overtime rates than in the award. Indeed, in most cases with reduced overtime or penalty rates, such payments had actually been abolished. Between 1994-6 and 1998, a reduction in the number that provided for inferior penalty rates was offset by an increase in the proportion that provided for inferior overtime rates (CWA 1996, 1999).

In Victoria individual contracts were available under the state jurisdiction from late 1992, and later under the 'Schedule 1A' provisions in the federal Act to which the state jurisdiction was transferred. A survey of 835 Victorian workplaces in June 2000 indicated that employees under this jurisdiction had double the probability had by employees under the federal jurisdiction of being low paid. Only 41 per cent of Schedule 1A workplaces paid a higher rate of pay for overtime than ordinary-time hours, less than a quarter paid penalty rates for working on weekends; yet Schedule 1A workers without these entitlements, rather than being compensated through higher wages, were more likely to be in low wage workplaces (Watson 2001:143-4).

Reviewing data on the New Zealand experience with individual contracts, Oxenbridge (1999:243) referred to studies showing employers obtaining concessions from employees negotiating contracts and/or hiring new employees on individual contracts containing lower pay and conditions than collective agreements covering existing staff, while the review by Rasmussen and Deeks (1997:283-4) referred to evidence on cuts in penalty rates and overtime rates being particularly likely amongst those in low-wage areas (see also Dannin 1997:240). Based on multivariate analysis of a mail survey of 655 New Zealand employers in 1995 as part of their trans-Tasman research project, Gilson and Wagar (1997:228) found that unionised employers who pursued individual contracts 'were more likely to place their focus on cutting costs, as opposed to introducing new products or services, to remain competitive'.

Managerial prerogative and power

One of the largest differences between collective agreements and individual contracts is in the greater scope for managerial discretion arising from individual contracts – that is, the narrowing of the agenda of issues that employees have some role in determining. This narrowing of the agreement-making agenda, and widening of managerial prerogative, shows the exercise of Bachrach and Baratz's second face of power, as the absence of an issue from an agreement generally leaves it to management to be unilaterally decided. Unions and their members use the rules arising from collective bargaining 'to limit the power and authority of employers and to lessen the dependence of employees on market fluctuations and the arbitrary will of management' (Flanders 1970:42). For members, these rules 'protect not only their material standards of living, but equally, their security, status and self-respect; in short, their dignity as human beings' (Flanders 1970:42). A central impact of collective bargaining is to reduce the discretion of management and increase

covering 32 per cent of 170LK employees have a union party to the agreement.

the control employees have over their working lives; conversely with individual contracting, a 'key feature...is clearly an increase in management discretion' (Hamberger 1995:294). Hence data indicate that enterprise agreements are typically associated with a widening range of issues while AWAs disproportionately exhibit a narrowing range of issues (Hall & Barneveld 2000). In the British case studies, 'individualised contracts rarely contained detailed terms on pay; appraisal procedures tended to be expressed in such a way as to give employers broad discretion' (Brown et al 1998:ii). Thus a common feature of individual contracts is greater dispersion of pay between employees and procedural individualisation is frequently, but not always, associated with the introduction of performance-based pay (Brown et al 1998:i,ii). Wooden (1999:435) interprets the NLS data on motivations for individual agreements as being consistent with the view (also expressed by Deery and Walsh (1999)) that preference for procedural individualism 'is a function of unilateralist management styles'. Evidence from Victoria pointed to increases in complaints regarding unfair work conditions, illegal deductions from pay, harassment, and termination of employment arising from the abuse of managerial prerogative following legislation promoting individual contracts (Underhill & Fernando 1997:57).

One of the best indications of the difference in the exercise of managerial prerogative between workplaces with procedural collectivism and individualism can be found in data on downsizing. AWIRS revealed that management reduced the size of the workforce in the preceding year in 35 per cent of workplaces where collective agreements dominate, and 32 per cent of workplaces where individual agreements dominate.² However, amongst workplaces where workforce reductions occurred, compulsory retrenchments were used in only 34 per cent of workplaces where enterprise agreements dominate but in 66 per cent of workplaces where individual contracts dominate. Conversely, voluntary redundancies were used in 38 per cent of workplaces where collective agreements dominate, but only 22 per cent of those where individual contracts dominate. Similarly, in Britain workforce reductions 'were no more common in non-union than in union workplaces, but were much more likely to be achieved by compulsory redundancies' (Sisson 1993:206). The power to constrain managerial prerogative when job losses occur is perhaps one of the most important advantages that collective bargaining may give to employees.

Wage effects and union density

While unions can achieve goals through political lobbying, arbitration and the provision of individual services, collective bargaining is the most important method unions can use to achieve and maintain benefits for their members. Unions' ability to secure gains through political action and arbitration has always been dependent upon the strength that they are able to demonstrate through collective bargaining and recently, of course, arbitration has largely lost its relevance as a means of improving unionists' pay and conditions. A wide number of studies in collective-bargaining frameworks have shown unions obtain higher wages for union members than non-members receive (Freeman & Medoff 1984; Mellow 1981) - we return to this issue in the next section. International research indicates the gains unions make for their members through collective bargaining are not restricted to wages: in a Canadian study Jackson and Schellenberg (1999:1)

² Workplaces where 'collective agreements dominate' are those where 60 per cent or more of employees are covered by enterprise agreements. Workplaces where 'individual contracts dominate' are those where 60 per cent or more of employees are covered by individual contracts. Source: AWIRS ER manager survey and derived dataset. These small differences in the incidence of downsizing may reflect differences in industry structure.

found that ‘collective bargaining coverage, controlling for other factors, has significant positive impacts in terms of raising pay and access to benefits, and in terms of reducing the incidence of low pay among women workers’. To what extent, though, are gains to union members a reflection of the gains from collective bargaining – or does union membership bestow gains to members regardless of collective bargaining?

Through much of the last century, Australian unions’ ability to secure and improve terms and conditions of employment was influenced by the level of union density, but unions could also achieve their goals through the arbitration system. If a union was successful in arguing a case for improved terms and conditions, the gains were spread to all relevant employees in workplaces covered by the relevant awards, as determined by industrial tribunals. Thus employees in some workplaces with little or no union membership were able to obtain the benefit of gains achieved by unions through arbitration. In the 1990s, however, wage fixing arrangements and the underpinning legislation were changed, to diminish the role of arbitration and awards and to place the emphasis on single-employer collective bargaining (‘enterprise bargaining’) as the prime means of wage determination. With the shift to enterprise bargaining in the 1990s, these mechanisms for delivering benefits to employees in weakly unionised workplaces no longer operate. Improvements in award conditions are restricted to safety net adjustments, which have led to annual wage increases of eight to fifteen dollars per week since 1994, well below growth in pay for employees under federal collective enterprise agreements (Peetz 1998). More recently, awards have been restricted to twenty ‘allowable matters’, leading to the removal of many provisions from awards, and improvements in non-wage terms and conditions through awards are rare.

A face-to-face survey of managers in 1060 workplaces and self-administered survey of over 11,000 employees in those workplaces, undertaken in December 1994 for the Commonwealth Department of Industrial Relations, found that employees in workplaces with collective agreements were more likely than those in other workplaces to be compensated through wage rises for working harder or for longer hours (DIR 1995:214-5; see also DIR 1996:149-50). In AWIRS, employees were asked whether they had received an increase in pay over the preceding twelve months. While union members were more likely than non-members to report receiving a wage increase, this was almost solely because they were more likely to be covered by collective agreements. Some 65 per cent of employees in workplaces where three fifths or more of employees were covered by enterprise bargaining agreements, but just 55 per cent of those in other workplaces, reported receiving a wage increase. In workplaces where three fifths or more of employees were covered by enterprise bargaining agreements (EBAs), 66 per cent of union members, and 65 per cent of non-members, reported a wage increase. Amongst employees in ‘other’ workplaces, 55 percent of union members, and 55 per cent of non-members, reported a wage increase.³ That is, without collective agreements, union members were no more likely to report receiving a wage increase than non-members. And in workplaces with agreements, members and non-members reported wage increases with equal likelihood. Union membership increased the likelihood of a wage increase because it increased the likelihood of a collective agreement.

³ Source: AWIRS employee survey and derived datasets. In reality, we would expect that the proportions of employees receiving wage increases would be higher than reported here, as employees covered by awards were entitled to safety net adjustments and most EBAs provide for wage increases each year. Non-reporting of wage increases thus may indicate either that an employee did not receive a wage increase, or it was too long ago or too small to be memorable.

Moreover, in this environment, the bargaining power of employees is critical in determining whether, and to what extent, wages and conditions can be improved and this bargaining power is heavily influenced by, amongst other things, the level of union density in a workplace. Wooden (2000) showed the importance of union density and workplace union organisation in securing wage increases for members through bargaining. Across workplaces with collective agreements, the union wage effect is 5 to 6 per cent where workplaces have 60 per cent union density and ‘inactive’⁴ unions, 9 to 10 per cent where workplaces have 60 per cent union density and an active union, but 15 to 17 per cent in workplaces where union density is 100 per cent and the union is active (Wooden 2000:29).

As mentioned, because of the impact of collective bargaining, many studies have shown union members have higher wages than non-members (the ‘union wage effect’). It appears that there was some Australian ‘union wage effect’ even under arbitration (Christie 1992, Kornfeld 1993, Miller & Rummery 1989) and it is certainly the case under enterprise bargaining. Wooden (2000) has shown that wages are higher for union members than non-members but this is due entirely to collective bargaining. ‘At those workplaces where the majority of workers are covered by collective agreements, a strong union presence confers a wage advantage in the order of 15 to 17 per cent (to members and non-members alike)’ (Wooden 2000:2). In contrast, ‘union wage effects are small and insignificant at workplaces where collective agreements have not been negotiated’ (Wooden 2000:2).

Similarly, Norwegian research has found that workplace union density has a positive effect on the level of individuals’ pay, but that the individual’s union membership loses its significance as a predictor of pay once workplace-level density is controlled (Barth, Raaum & Naylor 1998). That is, union density in a workplace is critical in determining the bargaining power of a union and the magnitude of the wages and benefits that it can secure for its members (and indirectly for non-members in that workplace). This is the classic free-rider problem for unions, one which they resolve by being able to offer certain protections (eg against arbitrary dismissal) for members that are not available to non-members even in unionised workplaces.

Non-union premium and the transfer of power

There is thus a wide body of evidence that many employees under individual contracts are worse off than they would be under union-negotiated collective agreements or even, in some cases, under the low standards set by awards. It does not follow, however, that employees on individual contracts will inherently have inferior terms and conditions of employment. As mentioned, many recipients of individual contracts will be more senior or skilled staff in relatively high paid positions. Consistent with this, Schedule 1A workplaces in Victoria, were also more likely than workplaces under federal coverage to have high rates of pay (Watson 2001:142) – in addition to being (as mentioned) more likely to have low pay than workplaces under federal coverage. Contractualist arrangements were more likely to apply both to employees with substandard pay and to employees in occupations with strong labour market position.

⁴ As defined by the AWIRS team: workplaces were classified as actively unionised if, in 1989-90, the senior delegate from the union with most members at the workplace spent one hour or more per week on union activities and carried out tasks beyond recruiting members, and one other condition was satisfied: either there was a general meeting of members held at least once every six months; or a union committee regularly met with management; or delegates met with management above first-line supervisor level at least once a month (Morehead et al 1997:326).

Moreover, individual contracts may have a non-union premium attached to them. That is, because of the increased profitability that might apply through the greater exercise of managerial prerogative that is available through procedural individualism – that is, because individual contracts give management greater power to demand of labour as it sees fit - employers may offer employees a higher wage through individual contracts than is available through collective bargaining, in order to induce employees to forego union coverage. CRA/Rio Tinto, for example, offered employees several thousand dollars per year – at Bell Bay, for example, equivalent to increases in wages of between 11 and 13 per cent - to move from award coverage to individual contracts (AIRC 1994; Hearn Mackinnon 1996:289; Waring 2000:47). As the AIRC (1994) observed, the individual contracts at Bell Bay 'contained extensive contractual arrangements of a substantive nature in which the right to alter any or all of them was at the complete discretion of the company. The power to alter the terms and conditions of employment under the contract was a power which could be exercised without the need for consultation or agreement of the individual employee and without any interference from the unions'. It represented a comprehensive exercise of the second face of power.

Conclusion

Individual contracts are an alternative means of employment regulation to collective bargaining and indeed are antithetical to collective bargaining. Employees on individual contracts often experience inferior terms and conditions to employees on collective agreements. Collective bargaining is the mechanism by which unions achieve most of the gains for their members, particularly (in Australia) since the shift away from arbitration, and is the mechanism by which unions demonstrate the power of their members. In voluntarist regimes collective bargaining is strengthened when union density is higher; but while it is possible in many regimes to have union members who are not covered by collective bargaining, in such circumstances unions are largely ineffective in achieving gains for their members. Employees on individual contracts do not always fare badly, however, because some employees in individual contracts are in particular labour market situations where they are able to wield considerable power. For them, causality runs in the opposite direction: they have individual contracts because with their particular mix of skills, or because they are managers, they do not need, or could not risk damaging their career through embracing, collectivism.

The relatively weak performance of individual contracts in providing increases in pay and maintenance of hours for employees should not be taken as an indication that lower wages are consistently offered through individual contracts. This is clearly not the case. Rather, it is an indication that employees on individual contracts have an inherently weaker bargaining position, and inherently weaker power, than employees under collective bargaining. Often this lower power will be manifested in inferior outcomes for employees on individual contracts; but sometimes it will require that employers provide, in the short term at least, superior conditions in order to purchase the transfer of power – and to exercise the second face of power - that accompanies a shift from collective to contractualist arrangements. Many employers with contractualist regimes also seek to ensure employees have a particular 'mindset' through programs of 'cultural' change (eg Van den Broek 1997) – to exercise Lukes' (1974) third face of power, by shaping their perceptions and preferences. To interpret a non-union premium in salary as showing that employees have enhanced power under a contractualist arrangement or comparable power to the employer would, of course, be naive in the extreme.

One final comment: the divergence between the growth rates of pay and benefits in collective bargaining and individual contracting situations need not continue indefinitely. There might come a point, once a new power equilibrium is established in contractualist workplaces, at which contractualist employers find that the costs in turns of labour turnover and absenteeism are too high to allow the gap with collective bargaining workplaces to grow ever wider. On the other hand, unionised employers may find that the cost disadvantage with contractualist competitors is so great that they in turn seek to decollectivise their employment relations. Which of these scenarios plays out will depend very much on the state of the labour market and the level of unemployment, which will shape the bargaining power of unions and the availability of non-union labour.

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