Picket Line

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***ALIA recently finalised Australia's first 'no-hitch' Enterprise Flexibility Agreement (EFA) under the controversial new Federal enterprise bargaining laws***

I am pleased to use this Picketline to announce that ALIA recently finalised Australia's first 'no-hitch' Enterprise Flexibility Agreement (EFA) under the controversial new Federal enterprise bargaining laws. It was formally approved by Australian Industrial Relations Commission (AIRC) Vice President Ian Ross on the basis of submissions I put to him in a public hearing on19 July 1994.

The Agreement covers ALIA's National Office staff and was only the sixth EFA to be approved by the Commission anywhere in Australia. It was the first to be endorsed in a single session of the Commission. All previous applications had initially been either rejected or referred back to the parties for further work to be done. I was particularly pleased to achieve this result on the approval of no less an authority than Vice President Ross who is the Head of the new Bargaining Division within the AIRC.

The ALIA Agreement provides salary increases for National Office staff which are offset by an increase in working hours and incorporation of a number of allowances. The Agreement complies with the legislation's requirement that, taken as a whole, conditions do not disadvantage staff.

It was especially pleasing to receive the Commission's approval at a time when there had been very wide press coverage of the difficulties being experienced by applicants for EFA's. In this respect, only a week before I appeared before Vice President Ross the Australian Chamber of Commerce and Industry (ACCI) released a report which was highly critical of the new industrial laws. ACCI Chief Executive Ian Spicer in releasing the report argued that ' the laws regarding agreements...are almost impossible to apply without specialist advice....particularly enterprise flexibility agreements'. ALIA is able to report with some satisfaction that no external 'experts', specialists or lawyers were involved in drafting, negotiation or advocacy of its Agreement.

Given the extent of controversy, however, it is worth reflecting on why ALIA was able to avoid most of the problems seemingly experienced by other employers. In particular, it may be useful if I point out what I learned by going through the process.

The crucial thing for employers and their workforces to accept is that strict tests are imposed by the legislation. This means that members of the AIRC have a statutory duty to ensure that proposed EFA's strictly comply with the requirements of the Industrial Relations Act. It is no good arguing that these are issues of pedantry. The fact is the tests exist in law and cannot be taken lightly.

A moment's contemplation quickly indicates why this is so. The major aim of most EFAs is to change basic employment conditions: arrangements which in many cases will have been in place for many years. On occasions, what have been generally accepted 'community standards' will be changed or even removed. When this is considered, few reasonable people will be surprised that scrutiny of such proposals is intense. This does not mean that change is impossible to achieve- merely that you must work hard for it.

Three major areas have created difficulties to date. They concern the *rights of trade unions*, provision of *genuine consultation with staff* and the *no-disadvantage* test.

Before an agreement can be attempted there must be an award which regulates the employment. When this is the case, an eligible trade union has a number of rights: to be advised of the intention to develop an agreement; to represent its members in negotiations if they wish; and to be heard before the Commission when the application is considered. Some employers have tried to circumvent these rights and have paid the penalty in delay and, sometimes, in changes to the terms of their agreements. In our own case, because we were at pains to recognise their rights from the start, the eligible union has caused us no difficulty at all and has agreed to be bound by the Agreement in its original form.

Before an agreement can be approved genuine staff consultation must be demonstrated—not *asserted,* but demonstrated. The best way to do this is to involve staff from the beginning, to provide the opportunity for them to make suggestions, to consider such suggestions genuinely and, most importantly, to document the process for later evidentiary purposes. This may involve a little more work through the development phase but will be seen to be well worth it when the matter is formally before the Commission.

While all the 'tests' are important, the most crucial is that concerning no-disadvantage. This allows employers to change award conditions in a variety of ways, provided that overall employment conditions taken as a whole do not disadvantage employees, when compared to the relevant award. And despite the protestations of some employer organisations, this *must* involve a detailed comparison of individual clauses in awards and agreements. I confess to some surprise that any experienced person should doubt this. It seems obvious really that members of the Commission simply cannot be expected to discharge a statutory duty to certify 'no disadvantage' unless it is thoroughly demonstrated by applicant organisations. In our own case, this involved a day or two's hard work to create a detailed and accessible exhibit but, given the seriousness of the issue, this seemed a small price to pay for achievement of the objectives we were seeking.

In coming weeks I intend to review the process which produced such a splendid result for the Association in largely uncharted waters. I hope we may be able to use it as a basis for some form of *'How to do it'* publication for members and their organisations. In the meantime, anyone wishing to discuss the matter in more detail is most welcome to call me at the National Office. ■