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GO  **Boldly.**

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The Impact of 'Good Faith' Obligations on Collective Bargaining Practices & Outcomes in Australia, Canada and the USA

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Collective Bargaining in the Era of PM John Howard (1996-2007)





Labor's *Fair Work Act 2009* (Part 2-4)

- **CB = centrepiece of the legislation**
- **Good faith bargaining (GFB) obligations**
→ enforced by bargaining orders, & (if extreme bad faith) arbitration
- **Majority support determinations (MSDs)**
- **Low-paid bargaining stream**
- **Fair Work Australia (FWA) oversees the CB system**



Research Project

- **(1) Is the new legislation meeting Govt's aim of promoting CB?**
 - what impact on 'employer resistance' strategies?
 - what mechanisms are proving effective?
- **(2) How is the Australian law working in comparison with regulation of CB in Canada & USA?**



Good Faith Bargaining (*FW Act, s 228*)

- **Process obligations (duty to meet, respond to proposals, exchange information, etc) ...**
- **& duty to refrain from ‘capricious or unfair conduct that undermines CB or freedom of association’**
 - ie limits on ‘unfair labour practices’?



FWA case law: a cautious (conservative?) approach to GFB

- **Employers have latitude to communicate directly, eg:**
 - staff-management meetings without union: *LHMU v Mingara Recreation Club*
 - emotive language & bargaining ‘spin’ OK: *LHMU v Hall & Prior Aged Care*
 - employers can send info packages on ‘last offer’ to employees’ homes: *CFMEU v Tahmoor Coal*



FWA case law: a cautious (conservative?) approach to GFB

- **Employers can also:**
 - submit agreements to ballot after ‘impasse’:
CFMEU v Tahmoor Coal
 - implement restructure during bargaining:
LHMU v Coca-Cola Amatil
 - but unilateral wage increase = bad faith
(query remedies?): *FSU v Commonwealth Bank*



Use of MSDs to counter employer resistance to CB

- **Do a majority of employees want CB? (*FW Act, ss 236-237*)**
- **FWA can determine on basis of:**
 - employee petitions (most common method)
 - union membership lists
 - signatures on ‘pledge cards’
 - workplace ballots



Use of MSDs to counter employer resistance to CB

- **Employer tactics in response to MSDs, eg:**
 - disputing the employee constituency
 - challenging integrity of employee petitions
 - sending employees resignation letters (from union)
 - (misleading) employer surveys
- **But these tactics have been unsuccessful**



Use of MSDs to counter employer resistance to CB

- **Effectiveness of MSDs**
 - IBM: *the first time that IBM employees have been able to exercise CB rights anywhere in the world!*
- **Employers voluntarily agreeing to CB**
 - eg Telstra, major banks, Rio Tinto



Preliminary conclusion & further research

- **Early signs that Part 2-4 is encouraging take-up of CB**
 - need to measure whether increase in CB coverage → esp in non-union sector ...
 - [why not greater use of low-paid stream?]
 - analysis of FWA data & case files
 - comparison with Canada, US, UK & NZ
 - what are key ingredients of effective statutory support for CB?