THE BOEING DISPUTE AT WILLIAMTOWN: WHAT RIGHT TO BARGAIN COLLECTIVELY?

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ABSTRACT

The strike by Boeing maintenance workers at the Williamtown RAAF base during 2005-2006 was one of the longest in Australia's recent industrial history. At the core of the strike was the desire by maintenance workers to reach a collective agreement with a company that would only bargain on an individual basis. The dispute demonstrates the absence under the 1996 Workplace Relations Act of a legal mechanism to resolve disputes over union recognition and, more broadly, the lack of genuine choice available to workers who seek to bargain collectively with an employer whose preference lies with other forms of labour regulation. After briefly defining the key concepts and identifying some of the legal mechanisms designed to protect a right to bargain, the paper describes the dispute at Williamtown, including the background and the sequence of events as well as a detailed analysis of management's position in the dispute. The final section of the paper summarises the main points and explores their implications for the future of industrial relations in Australia.

1 INTRODUCTION

The right to bargain collectively lies at the heart of the pluralist industrial relations project of developed countries. Indeed, the International Labour Organisation (ILO) considers the freedom of employees to collectively associate and bargain with employers a fundamental human right. In Australia before the 1990s, the legal mechanism for union recognition, which underpinned the right to collective bargaining, came through the system of compulsory conciliation and arbitration. However, the end of compulsory arbitration delivered by the *Workplace Relations Act* of 1996 destroyed this legal mechanism and it has not been replaced. The result is that Australia is now distinctive amongst the developed countries in its failure to provide a right to collective bargaining.

These features of Australian industrial relations and their consequences are graphically illustrated by the industrial dispute between Boeing Australia and a group of its employees at Williamtown (near Newcastle, New South Wales) in 2005. These employees, who were dissatisfied with their wages and working conditions, joined a union (the Australian Workers Union) and sought to negotiate a collective agreement with Boeing. The company refused to recognise the union and insisted on the continuance of individual contracts. In the absence of any legal mechanism to resolve the issue, the employees went on strike. They were forced to return to work 256 days later, with no collective agreement. The dispute gained huge attention at a time of great public debate over the industrial relations policies of the Howard federal government. Ironically, eight months after the dispute ended, Boeing registered a non-union collective agreement which contained many of the substantive claims demanded by the striking employees.

This paper explores the issues raised by the dispute in four main steps. The first section of the paper defines the concepts of union recognition and the right to bargain collectively, and describes some of the legal mechanisms designed to protect a right to bargain collectively in Australia and in countries comparable to Australia. The second, and longest, section recounts the main events of the dispute at Williamtown, including the background and the sequence of events as well as a detailed analysis of management's position in the dispute. The last section summarises the main points and explores their implications for the future of industrial relations in Australia.

2 DEFINITIONS AND LEGAL MECHANISMS

The right to bargain collectively rests on two main concepts: the freedom of association and union recognition. The former is well articulated in Convention 87 of the ILO:

> Workers and employers, without distinction, shall have the right to establish and, subject to the rules of the organisation concerned, to join organisations of their choosing without previous authorisation. (ILO 1949a, article 2)

Under this convention, countries which are members of the ILO and which ratify the convention are obliged to 'take all necessary and appropriate measures to ensure that workers and employers may freely exercise the right to organise' (ILO 149a, article 11). In most cases, the collective organisations that workers join are unions.

Convention 98 of the ILO furthers the right to association by declaring that workers exercising this right should be protected from 'acts of anti-discrimination in respect of their employment', that 'workers' and employers' organisations shall enjoy protection against any acts of interference by each other', and in particular that workers' organisations should be independent and protected against domination by employers or employer associations (ILO 1949b, articles 1 and 2). This convention goes on to declare that member countries who ratify the convention should take action to implement its provisions:

> 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' associations and workers' organisations, with the view to the regulation of terms and conditions of employment by means of collective agreements.' (ILO 1949b, article 4)

The last declaration relates to union recognition. If workers are to exercise their right to bargain collectively, then their collective organisations (again, usually unions) must be 'recognised' by employers as the representatives of workers in negotiations over wages and working conditions. The President of the ACTU put the issues more colourfully by arguing that the right to join a union without the union being recognized for bargaining purposes was like 'being allowed to join a golf club, but not being able to play on the course' (Barnes 2006, p. 371).

The necessity of union recognition, if the right to bargain collectively is to be exercised, leads to the question of what happens when employers refuse to recognise and bargain with unions? Different countries have addressed this issue in different ways, but it is rare indeed amongst the developed countries for a legal mechanism not to be established to resolve disputes over union recognition. The United States, Canada and Britain all provide opportunities for a union to demonstrate the support it enjoys amongst workers (sometimes through proof of union membership, sometimes through secret ballots to prove support) and, if the union is successful, then there is a legal obligation on the employer to negotiate with the union (see, for example, Briggs 2006, McArthur 2004, Wood & Godard 1999). Other countries, like Japan, Korea, Luxembourg and Spain operate use similar 'good faith bargaining' systems (Naughton 1993, pp. 92-3), while in

some countries, like Germany, trade unionism and the right to collective bargaining is enshrined in the constitution.

In Australia, before 1993 and focusing mostly on the federal system, the legal mechanism for union recognition came (albeit indirectly) through the system of compulsory conciliation and arbitration. Once unions were registered under the relevant legislation, they gained the right to represent workers, according to the boundaries of union rules, within the system. Summarised very simply, if a registered union approached an employer seeking to negotiate wages and working conditions, and the employer refused, then the union could declare a 'dispute' and the arbitration tribunals would commence a process of compulsory conciliation of the dispute. If the employer still refused to recognise and negotiate with the union and therefore the parties could not reach agreement on substantive terms of the dispute, then the tribunal would arbitrate, thereby creating an award. In essence, there was a strong incentive for employers to recognise unions because refusal would lead to compulsory arbitration.

From 1993 onwards, as the focus of the federal system moved towards collective bargaining rather than conciliation and arbitration, the treatment of union recognition changed. Briefly between 1993 and 1996, the federal ALP government introduced the concept of 'bargaining in good faith' (Naughton 1995), but this solution was less than perfect:

> '…the Keating Government and the trade union movement did not squarely face the issue of anti-union employers refusing to bargain with trade unions. More importantly they did not appreciate that trade union bargaining at the level of the employing undertaking was of a different judicial nature from obtaining award coverage through an industry-wide arbitrated settlement by the Federal Commission.' (McCallum cited in Briggs, p. 12)

With the passing of the *Workplace Relations Act* (WRA) in 1996 and its implementation in 1997, the 'good faith bargaining' provisions were repealed and most other assistance for unions in pursuit of recognition from employers was eliminated. Not only was there no legal mechanism to directly resolve disputes over union recognition, but the new status given to statutory individual contracts (in the form of Australian Workplace Agreements) gave employers new opportunities to thwart workers seeking union representation and unions seeking to bargain collectively over wages and working conditions. In particular, by creating the new option of individual contracts and appearing to maintain neutrality over the choice between individual and collective agreements, the new laws actually allow an employer who prefers individual contracts to prevail over even a significant majority of employees who seek to bargain collectively (Briggs 2006, pp. 13-17). The ILO found several aspects of the WRA to be in breach of Conventions 87 and 98 (Briggs 2006, pp. 17-19).

3 THE BOEING DISPUTE AT WILLIAMTOWN

The account of the dispute that follows draws on a range of data sources. A full bench of the NSW Industrial Relations Commission handed down a comprehensive report on the dispute in February 2006 (IRC 2006), and this provides a key reference point, due to the wide ranging evidence given by witnesses under oath. However, other sources include contemporary media reports, the union's website on the dispute, the transcripts and decisions of other tribunal hearings, and a small number of interviews with participants.

3.1 Background

Boeing is a very large American multinational corporation that produces aeroplanes and engages in a range of design, manufacturing and service activities in the aero-space industry. It has a world-wide workforce of over 150,000 employees (Boeing 2006) and

has been associated with the Australian aero-space industry for over 75 years (Boeing Australia 2006). In Australia the Boeing group of companies employs approximately 3,300 people across 20 locations, primarily in the provision of aerospace and communications services (Boeing Australia 2006; IRC 2006, para 16-17), while one of its divisions, Military Aerospace Support (MAS), employed almost 1000 people across six sites in Australia (IRC 2006, para 16-17).

In November 1999, one of Boeing's Australian subsidiaries within MAS, Boeing Australia, won a contract (worth a reported $500 million) from the Department of Defence to modify and maintain the RAAF's 70-plus fleet of F/A18 Hornet jet fighters. Its trade workforce totalled around 400 full-time employees who performed maintenance, modification and upgrade on a range of military aircraft across three work sites: Williamtown in New South Wales, Amberley and Oakley in Queensland (Boeing Australia 2005b). According to Boeing management, workers regularly moved between these sites according to demand (AIRC 2005; ABC 2005). Work on the Hornet contract began in Williamtown in 2000.

The number of employees involved at Williamtown was a matter of some contention in the dispute (ABC 2005; AIRC 2005), but it seems there were about 90 highly skilled aviation trade employees (70 excluding apprentices) who worked on the Hornet contract, representing three trade areas: avionics, structures and mechanical maintenance engineers (AIRC 2006, para 3; Boeing Australia 2005b). Until late 2004, the engineers either had no experience of unions or, despite any previous union membership, they had not sought active union involvement on the site. In the words of one of the employees engaged in the dispute:

> 'We started a bit of a match with the management, probably a year before we got the union in…. it took us a year to really realise we were absolutely getting nowhere on our own…I don't think a single one of us wanted to get the union in there, but at the time they were just completely necessary…' (Reeves cited in ABC 2005)

Within the Boeing group of companies in Australia there is variation in industrial relations arrangements at different sites, including both federal awards and federal certified collective agreements negotiated with various unions (IRC 2006, para 24-27). However, within the MAS division of Boeing Australia, the IRC Inquiry identified a historical policy of '…dealing with employees on an individual basis…' (IRC 2006, para 29, Boeing Australia 2005b; ABC 2005). Certainly, from the beginning of the Hornet contract in 2000, all engineers at Boeing Williamtown were employed on individual contracts, initially Australian Workplace Agreements under the *Workplace Relations Act 1996 (Cwth)*. Evidence presented to the IRC Inquiry suggested a degree of dissatisfaction with these arrangements as early as October 2001, dissatisfaction based on individualised performance reviews and pay increases, concerns about payment of above award wages, inadequate maintenance of classification relativities and lack of management response to employee concerns (IRC 2006, paras 40-43). Indeed, documents from Boeing from this period were cited in the IRC Inquiry report as explicitly recognizing, '…that "a number of employees are unhappy" and that "there is an issue of how the company responds to such issues and it does not always do this well' (IRC 2006, para 40).

In response to some of these concerns, it appears Boeing proposed a new individualised arrangement for employees (IRC 2006, para 42). Around 2002, most accepted a management-initiated change to common law individual contracts, which gave workers what was called the 'Total Remuneration Package' (TRP); that is, their wages were paid as an annual package, with no penalty rates for overtime, public holidays, weekends or shift work (AWU 2005). A small number of workers declined the common law contracts and stayed on AWAs, believing that the wages plus penalty rates formula would be better for them in the long run (IRC 2006, para 46-48).

Discontent among some of the maintenance engineers continued and then began to intensify in the second half of 2004, initially around an increase in and uneven distribution of difficult work inside aircraft fuel tanks and the lack of an allowance to compensate those undertaking this (Cadzow 2006, p.23; IRC 2006, paras 50-57). From this base, further dissatisfaction grew about the lack of transparency in the payment system, perceptions of unfairness in the performance appraisal system, anomalies in the pay rates, and unhappiness over some aspects of working hours and lunchroom facilities (see IRC 2006, paras 58-63).

The engineers raised their grievances with management, without success. Indeed, the IRC found that:

> 'it is difficult to identify any action taken by Boeing to address or ameliorate these grievances and problems during this period. Boeing's attitude at this time was simply that the grievances lacked validity' (IRC, 2006, para 64).

In late 2004, a number of the aggrieved maintenance workers turned to the union. In the words of one of the Hornet maintenance engineers:

> 'we wanted someone to help us talk to our employer…we thought, "how can we get together as a group and get them to listen"' (cited in Cadzow 2006, p.24).

The union in question was the Australian Workers Union, which is one Australia's oldest unions, and could be best described as a 'conglomerate' union in that it recruits members from a wide range of occupations and industries, including aviation. Within manufacturing, its membership includes employees from industries as diverse as textiles, air-conditioning and engineering (AWU 2006). The AWU has a Sub-Branch based in Newcastle and officials from this branch began to target the local aviation industry, and specifically the Boeing's Williamtown site, in October 2004, requesting permission to hold meetings with employees about the benefits of union membership (IRC 2006, para 66). These were initially facilitated by the company. The union recruited subsequently a large number of the engineers at Williamtown: 17 at the first out-of-hours meeting in December 2004, rising to a peak in April 2005 of 45-48 engineers working on the Hornet contract.

3.2 An Overview of the Dispute

The solution proposed by the union to the engineers' problem was to negotiate a collective agreement. This suggestion was immediately and vehemently opposed by Boeing when first raised by the union just before Christmas 2004. Indeed, there was evidence from within management's ranks of Boeing's position a month or so earlier than the union's demand, when a senior Boeing manager:

> 'expressed hostility to the notion of any union becoming involved in the operations at Williamtown, and told us [ie. other managers] that we were not to do anything to encourage a union presence at the site' (IRC, 2006, para 76).

After some further meetings between the union and Boeing management in January and February 2005, and some initial hearings before both state and federal arbitration tribunals, the respective positions of the employer and the unionised employees hardened. The union gave notice on 15 April that its members would commence industrial action, initially in the form of a ban. On 11 May, 42 workers refused to complete time sheets. Boeing responded by refusing to pay these workers and, after some further procedural sparing, an indefinite strike by 35 AWU members began on 22 June.

There is little point in recounting the many tactical cuts and thrusts in the dispute between June and the return to work on 20 February 2006, save to acknowledge that

they included many appearances before courts and arbitration tribunals, including a major inquiry by the NSW Industrial Relations Commission; a picket site that became a focus for the broader union campaign against the (at that time) proposed changes to federal workplace laws; and many attempts at resolution of increasingly intractable positions. For the purposes of this paper, the main point is that the dispute was unambiguously about the issue of the right to bargaining collectively; as the federal commission put it, the 'heart' of the dispute was the 'question of union recognition and bargaining rights' (AIRC 2006, para 2).

3.3 The Position of Boeing's Management

The management position from the beginning of the dispute was not to oppose their employees' right to join the union, but rather absolutely to deny the union the opportunity to negotiate on behalf of its members. This position was summarised in a letter to the union from the Managing Director, dated 22 March 2005, which included:

> 'Discussions about remuneration issues, including salary reviews, are addressed on an individual basis. Boeing does not favour a collective approach to wage negotiation, because that approach does not fit with our business objectives.
>
> I recognise that there are different approaches to these issues, and I also take on face value your union's advice that some of our employees are dissatisfied with this approach to our relationship with them…. [But] I am not convinced that there is any advantage to Boeing or to its workforce in moving away from the current arrangements. (cited in IRC, 2006, para 90)

Similarly, as late as November 2005 came the statement:

> 'Boeing does not believe it should be forced to change employment arrangements which have been in place successfully for many years simply because the AWU is demanding a collective rather than an individual arrangement' (Boeing Australia 2005b).

Central to this position was an argument that the individual contracts that had operated since 2000 had served the interests of Boeing well and had been accepted by the vast majority of Boeing employees (ABC 2005). On the former, the IRC (2006, para 155) categorised the arguments put forward by management into four:

(1) a collective agreement did not fit with Boeing's 'business objectives';
(2) Boeing did not wish to take the risk of adopting a new, untried model;
(3) individual contracts best delivered the 'seamless' mode of employment required to manage labour across Boeing's three sites; and
(4) management preferred to deal with its employees on an individual basis.

Having so categorised management's arguments, the IRC subsequently reviewed the validity of each against the evidence and found them seriously wanting. To paraphrase the IRC's conclusions:

(1) management was extremely vague in defining its 'business objectives' and, despite repeated questioning, was unable to explain why these objectives could only be met with individual contracts (IRC 2006, paras 157-8);
(2) given the effective operation of collective agreements in other Boeing subsidiaries in Australia and the evident problems encountered with the system of individual contracts at Williamtown, it was not obvious why collective agreements were so risky (IRC 2006, para 159);

(3) it was not at all clear why the movement of employees across sites (which was the main features of the company's desired 'seamless' mode of employment) could not be achieved successfully with a collective agreement (IRC 2006, paras 160-1); and
(4) despite the company's rhetoric about individual treatment of employees, the evidence was that the company actually did not negotiate with individual employees and it offered uniform, 'stock standard' contracts to all its employees. Consequently, its opposition to collective bargaining appeared to be based more on a desire to maintain managerial prerogative rather than genuine individual bargaining with employees (IRC 2006, paras 162-70). It is worth quoting at length the IRC's assessment of the last of management's arguments:

> 'Therefore, we consider the fourth reason advanced by Boeing to justify its position is properly characterised as one whereby it wishes to avoid, as far as possible, any context in which it is required to engage in negotiations about the terms and conditions of employment of its employees, and to limit the capacity of its employees to be represented in such negotiations by a union. We accept that this approach, from the point of view of Boeing's self-interest, provides a rational basis for Boeing's refusal to enter negotiations for a collective agreement. The system of individual contracts which it has established is one, however, which entrenches an inequality in economic and workplace power between Boeing and each of its employees at Williamtown, and thereby maximises Boeing's discretionary capacity to set and change terms and conditions of employment to suit its own interests. A departure from that system to one of collective bargaining with a union would, for Boeing, carry the risk of diminishing this inequality of power or limiting or removing Boeing's discretionary capacity….' (IRC 2006, para 168)

Some of management's actions, rather their words, also demonstrate how the system of individual contracts operated at Williamtown and, correspondingly, why management might oppose collective bargaining. In February and March 2005, in the period immediately after the union aired the grievances of its members and made its demands for a collective agreement, management conceded that communication with employees over their concerns had been less than adequate and needed to be improved (IRC 2006, para90-94). Consultation with its employees, ostensibly to gain feedback on how the payment system under the individual contracts should be improved, was initiated at the same time as the AWU and its members began to engage in protected industrial action (IRC 2006, para 90-94). This consultation was through a 'focus group' of employees, brought together by management (rather than elected by employees). AWU delegates did attend the focus group, but AWU Officials were not permitted to participate in the process (IRC 2006, para101-112; AIRC 2006).

The focus groups generated not only a shift in management's position on wages and conditions for its employees (with a proposed package of improvements to the remuneration system for all employees across the three sites in the form of revised offers to individual contract) but also appeared to entrench Boeings refusal to negotiate a collective agreement with or without union involvement (IRC 2006, para 114). It also appears that management was conscious of employee retention in a tightening labour market, with significant skill shortages and evidence that remuneration levels at Boeing were significantly lower than at a number of its competitors (IRC 2006, para 108; 107). Interestingly, Boeing management was also aware of the risk that unions could claim the credit for the improved remuneration; in management's words: 'other disaffected groups of employees may see joining a Union has resulted in resolution of issues for Trades employees and consider the same course of action' (IRC 2006, para 107).

Finally, Boeing's management also argued that collective bargaining with the union was unnecessary because individual contracts had been overwhelmingly accepted by the vast majority of Boeing employees. The senior manager on the Williamtown site told the ABC:

> ‘I think it’s important to understand that 90% of the workforce are aircraft maintenance engineers across our three sites. That’s Williamtown, Amberley and Oakey. They’ve made a choice, and that choice has been to remain on their current individual contracts, or individual arrangements. At Williamtown we have 25 of our own maintenance engineers at Williamtown, and that represents less than a third of our aircraft maintenance engineers at Williamtown, and less than 7% across Boeing Australia, who are pursuing a collective agreement, a collective arrangement through the AWU…. And when put into context with the fact that 92% of our workforce have chosen to stay on the current arrangements, that makes a very compelling argument.’ (ABC 2005)

This statement reveals at least two key points about Boeing’s position. The first concerns the competing definitions of the ‘bargaining unit’: management considered all employees across its three sites as the main issue, while the union sought a collective agreement to cover only the maintenance engineers at Williamtown. In this way, management was able to marginalise the number and importance of the striking workers who were seeking a collective agreement, while the union’s narrower definition of the group (ie. the 70-80 maintenance engineers at Williamtown) involved maximised their importance.

Second, management considered that by signing individual contracts, rather than joining the strikers, other employees at Williamtown and at the other sites were ‘choosing’ individual contracts over a collective agreement and thereby supporting management’s position. This is a highly idiosyncratic definition of ‘choice’ and very different to the test of choice embedded in the legal systems of other countries, where employees are given the opportunity to vote in a secret ballot over whether they support a union and collective bargaining. The peculiarities of this position were reinforced later in the dispute, when the AWU approached the AIRC seeking a ballot of Boeing employees to determine their preferred bargaining forms – Boeing management rejected the idea.

3.4 The Non-Union Collective Agreement

In late October 2006, Boeing announced that it had consummated a non-union collective agreement covering more than 500 employees across its three air force sites (namely, Amberley, Oakley and Williamtown). Apparently, after the return of the striking workers, the company had again consulted with its workforce through focus groups, without union involvement. The resulting collective agreement had been accepted in a ballot by 94 per cent of employees (Newcastle Herald, 27 October 2006).

Boeing management were reported as ‘pleased with the outcome’, saying that ‘[T]his is a great result and shows what can be achieved when employers and employees sit down and are prepared to negotiate fairly and without any pre-conditions’ (Newcastle Herald, 27 October 2006). No explanation was offered for the collective (as opposed to individual) nature of the agreement, although media sources speculated that high turnover and dwindling workforce were a contributing concern (Workplace Info 2006). In a curious twist a spokesperson for Boeing is reported as saying the company had always been willing to negotiate collectively but could not agree to the terms put forward by the workers and the AWU (Workplace Info 2006). Their initial ‘unworkable’ collective agreement had instead been replaced by employees negotiating a ‘sensible’ contract (Workplace Info 2006).

The AWU released a press statement welcoming the improved employment conditions contained in the collective agreement, claiming that they proved the previously poor conditions at Boeing compared to the rest of the industry and that 8 of the 11 claims made by the striking employees had been included in the new agreement (AWU, 27 October 2006). The union also argued that its interests had actually been represented in the focus groups by the participation of one of its striking members and that the

collective nature of the agreement demonstrated the inappropriateness of individual contracts.

4 DISCUSSION AND CONCLUSIONS

The Boeing dispute raises a number of issues about current and future practices in Australian industrial relations, including the role of individual contracts, the way that the definition of 'bargaining units' will affect the resolution of disputes over union recognition and the organization of ballots that are run under new industrial action laws, and the future of unionism itself. However, this paper has focused on the way that the Boeing dispute vividly demonstrates the lack under federal law in Australia, even before WorkChoices, of a legal mechanism for peacefully resolving disputes over union recognition. A group of employees, who were working under individual contracts, with grievances over substantive terms of employment and frustrated by their employer's refusal to address their grievances were forced to strike in pursuit of a collective agreement because there was no legal alternative. In this dispute, the employees held out for many months and endured significant deprivation, but they were eventually defeated by a determined and powerful employer – in this case, a large American multinational corporation. As Prime Minister Howard commented on the dispute in parliament it:

> 'And so far as the entitlements are concerned to negotiating a collective agreement, the existing law means that the company is within its rights taking the position it [ie. Boeing] is. It is fair and proper under the existing law, Mr Speaker. I understand that the 31 employees can go back to work on their old terms or accept new terms that would see every one of them get a pay rise Mr Speaker. It is their choice.' (cited in ABC 2005)

This reveals the true nature of 'choice' under the Howard federal government's labour law regime – an 'agreement', whether individual or collective, is voluntary for both sides. As Minister Andrews put it, again referring to the Boeing dispute:

> 'Well the nature of agreement is what the word suggests, it's an agreement. It's an agreement by both the employers and the employees. And in this case, if the employer doesn't wish to have a collective agreement, wants to continue essentially what are individual common law arrangements, then the employer's entitled to do that, there's no change in what we're proposing from what the current situation is.' (Minister Kevin Andrews on ABC Background Briefing)

As the NSW IR Commission pointed out, however, support for the 'voluntary' nature of agreement making ignores the significant inequalities in the labour market and in the workplace between employers and workers. The choices available to workers in situations like those at Boeing Williamtown are threefold: go on strike until the employer concedes, although the ever increasing restrictions imposed on union industrial action make success in such a venture increasingly unlikely; accept the employer's bargaining preference; or leave and find another job. The following exchange between a journalist and Minister Andrews (ABC 2005) confirms this analysis:

> ANDREWS: 'Look I understand what they're [ie. workers at Boeing] saying, but the reality is in their words, their words, which are used: "There are other jobs we can go to if we don't like working on this job", but they're making a choice that they want to work on this particular job; the company is saying "Well, working on this particular job involves this particular instrument of employment. We're happy to have you." But the choice ultimately is theirs…'

JOURNALIST: 'So effectively what you're saying is if workers want a collective agreement with an employer, the employer says "No, we don't want to negotiate with them", they should get on their bikes.'

ANDREWS: 'What I'm saying is an agreement is an agreement, which means both parties have to agree to it.'

The dispute reinforces the severely emasculated role of the AIRC under the Workplace Relations Act to resolve industrial disputes either by the notification from of one of the parties or by the Commission itself on its own motion. Ironically, a Full Bench of the AIRC headed by the President Justice Giudice found on an application by Boeing under section 128 of the Workplace Relations Act that the NSW Industrial Relations Commission be restrained from dealing with the dispute. Essentially, the Commission rejected the submissions of the AWU and the NSW government that the inability of the AIRC to arbitrate, inferentially, gave jurisdiction to the state tribunal and relied on Boeing being a respondent to the federal Metal Industry Award. The full bench noted that '. . . there is no statutory or other machinery for according recognition to unions at the enterprise level, nor any duty on employers to bargain collectively, but that is the system which the Australian parliament has decided should apply' (AIRC 2006, para 47).

Given the current state of federal labour law, as demonstrated by the Boeing dispute, it is understandable that one of the key planks of the ACTU's Industrial Relations Legislation Policy is the right to collective bargaining through a system of 'good faith' bargaining.

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