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Anti-unionism, Employer Strategy, and the Australian State, 1996–2005

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One of the outstanding features of contemporary Australian industrial relations has been the dramatic growth in employer de-collectivization strategies. Four dimensions of employer strategies, sometimes interlinked and overlapping, are identified and analyzed in this article—employer lockouts, individualization of bargaining, counters to organizing campaigns, and the use of human resource initiatives in areas such as recruitment and selection. While some tactics have emerged organically through new management practices, the reconfiguration of employer strategies has been primarily state-led; legislative and non-legislative interventions have created opportunities, incentives and pressures for firms to adopt anti-union strategies.

Keywords: *anti-union legislation; collective bargaining; lockouts; organizing; HRM*

The growth of human resource management (HRM), growth of non-union firms, and hardening of employer strategies towards trade unions are common trends across the Organisation for Economic Co-operation and Development, but the proliferation of anti-union employer strategies in Australia still appears quite exceptional by international standards. The decline in union density has been among the largest in the Organisation for Economic Co-operation and Development (Visser 2006; Peetz 1998). Structural change is a major factor, but declining union density and power are also the products of a paradigm shift in employer strategies towards trade unions—illustrated by resurgence in employer lockouts, the use of individual contracts to de-collectivize bargaining, aggressive counter-tactics to union organizing campaigns, and sophisticated human resource policies to build and maintain non-union workplaces. This article examines the major types of employer

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strategies in relation to trade unions across blue-collar and white-collar, new and old economy, workplaces from the mid-1990s in Australia.

There are two key findings. Firstly, employer tactics which aim to de-unionize and to "substitute" for unions are not utilized in isolation from each other but are often part of a multilayered, overlapping employer strategy aimed at de-collectivizing employment relations and enhancing managerial prerogative and control. Secondly, our analysis highlights the pivotal role of the Australian state in constituting anti-union employer strategies. The Australian system of conciliation and arbitration removed many of the opportunities and incentives for anti-union employer strategies. The timeframe for our analysis, beginning with the election of a conservative federal government in 1996, is no accident. The Liberal-National Coalition Government has deliberately re-engineered the legislative framework to encourage and facilitate de-collectivization strategies and supplemented legislative reform with activist interventions which have shaped and driven employer approaches. It is not our intention to suggest that unions are simply the passive victims of employer and state strategies. Rather, in line with many major contributions in the international literature on union revitalization, we understand unions as strategic agents capable of responding to and, to a degree, shaping their environment. Indeed, this approach has underpinned the work of some of the authors of this paper (summarized in Cooper and Ellem 2006). However, our focus here is upon the important role of the state and employers, and the intersection between the strategies of these two important actors, in molding the terrain for collective bargaining and action.

Our analysis therefore begins with the changing environment for trade unionism, including the restructuring of the legislative framework. The second and main section examines four distinct but overlapping aspects of employer strategy in relation to trade unions. It begins with an examination of the re-emergence of the lockout as a force in Australian industrial relations. Secondly, we analyze employer strategies aimed at individualizing employment relations through the introduction of registered individual contracts at the expense of union bargained collective agreements and multiemployer "awards." Thirdly, we investigate employer responses to union attempts to organize work sites and finally the use of HRM strategies as a de-unionization tool. Our conclusion analyses the relationship between various employer strategies and the intersection of the industrial relations framework constructed by the Howard Government and the shape of employer strategy since 1996. While the focus here is upon the period to 2005, we conclude by commenting on the likely effects of Work Choices, the most draconian anti-union legislation ever passed by an Australian parliament, on employer behavior. We hope that our work provides insights for our international colleagues analyzing both the nature of and the relationship between employer strategy, unionism, and the state.[1]

Method

This article draws upon our individual and joint research projects examining employer strategy in employment relations in Australia over the past decade. The analysis of lockouts was informed by original empirical research including the first database of lockouts in Australia and interviews with solicitors, employer representatives and union officials who have been involved in lockouts. The database (LAD, Lockouts in Australia Database) was compiled through legal judgments and transcripts, surveys of industrial tribunal commissioners and union officials, media searches, and letters to firms identified as having engaged in a lockout (see Briggs 2004 for further detail). The empirical work on the iron ore industry in the Pilbara is based upon original, sole-authored work. In addition to manuscript sources, company papers, and union papers, the study drew on interviews, focus groups, and participant-observation undertaken between 2001 and 2005 (see Ellem 2006). The discussion of employer responses to organizing campaigns reports on both qualitative and quantitative research undertaken between 1996 and 2005. The *Union Campaign Survey* was a survey of union officials in one state of Australia, New South Wales (Cooper 2005b). Respondents were organizers, industrial officers, and elected leaders of seventeen major New South Wales unions as well as from the two peak union councils with officials based in that state. The survey collected data on over 220 campaigns to organize in a diverse range of workplaces. This section also draws upon over 130 in-depth interviews with union officials and elected union leaders and between 1996 and 2005 (Cooper 2003a). The analysis of recruitment and selection in the telecommunications industry draws upon sixty-three semi-structured interviews with middle- and lower-level managers, team leaders, and customer service representatives undertaken between 1994 and 2001 in two of Australia's major telcos, Optus and Telstra (see van den Broek 2003).

Employer Strategy, Legislative Change, and Union Power

After the conservative Liberal-National Party Coalition won power in 1996, the new prime minister John Howard made it clear winding back union power would be one of the government's central policy objectives: "the goals of meaningful reforms, more jobs and better higher wages, cannot be achieved unless the union monopoly over the bargaining processes in our industrial relations system is dismantled" (quoted in van Barneveld and Nassif 2003). The Coalition quickly introduced the *Workplace Relations Act*, 1996, which overturned a century of law and practice which assumed that collective regulation of workplaces was the norm. The *Workplace Relations Act* introduced scope for registered individual agreements (which were placed on an "equal footing" with collective agreements), wound back instruments of

collective labor regulation and eroded the bargaining and representation rights of trade unions.

For most of the twentieth century, Australian industrial relations was regulated through a distinctive system of compulsory conciliation and arbitration. The Australian Industrial Relations Commission (AIRC) was empowered by statute to settle labor disputes through legally binding judgments. Their adjudications were placed in legal documents called "awards." This multiemployer award system, regulating terms and conditions of employment for union and non-union employees alike across occupations and industries, encompassed between 90 percent and 95 percent of nonmanagerial employees throughout the 1970s and 1980s (Australian Bureau of Statistics 1990). A system of wage relativities between awards ("comparative wage justice") was maintained by the AIRC. Consequently, key institutional features of the arbitral model—compulsory union recognition, the dispute-settling powers of the AIRC and coordinated employment regulation—removed much of the incentive and opportunity for de-unionization strategies. As we shall establish, this system has been comprehensively destroyed by successive neo-liberal national governments.

The *Workplace Relations Act*, building on earlier legislative reforms by a Labor Government which facilitated the decentralization of bargaining, eroded the central institutional structures of the arbitral model. Awards were repositioned as a "safety net" to underpin enterprise bargaining and limited to only twenty "allowable matters." The AIRC could therefore not settle disputes on other matters, and even in relation to allowable matters arbitration could only be used as a "last resort" where the dispute threatened the national economy or health and safety. The *Workplace Relations Act*, 1996 introduced individual contracts, Australian Workplace Agreements (AWAs), for the first time in the national jurisdiction, ostensibly to enhance "choice" by placing individual and collective agreements on an equal footing. However, there was no mechanism established for union recognition in a bargaining system; good faith bargaining provisions were removed; and gaps in statutory protection against coercion and inducement allowed employers to pressure or compel employees into signing AWAs. Union rights were curtailed, including rights of entry, and paradoxically, while a right to strike was legislated for the first time, the practical impact was to limit the circumstances under which unions could take industrial action. Employers, by contrast, had for the first time a right to lock out employees including through "AWA lockouts" designed to "compel or induce" employees to sign individual agreements.

Employers were certainly given a freer hand in resisting collective workplace organization as a result of the Howard Government's *Workplace Relations Act.* However, legislative change alone cannot explain the shift in employer strategy after 1996. We must consider the dual impact of regulatory change *and* the more informal means by which the government vociferously promoted its anti-union policies. Throughout the late 1990s and early 2000s, successive workplace relations ministers incited employers to take a more militant approach to unions in their workplaces,

giving active encouragement and assistance to employers seeking to resist union bargaining demands and encouraging them to take industrial action against their workers and to pursue de-collectivized employment relations. This often led to a significant hardening in employer strategy, most notably in the waterfront, construction and manufacturing industries but also in white-collar workplaces, notably in the banks, telcos, and the civil service (Ellem 1999; Cooper 2003b, 2004; Howe 2005).

While the popularity of HRM and rhetoric of corporate culture appears unending, there is growing disquiet about the many embedded and often suppressive anti-union aspects of these human resources initiatives (Royle 1999; Dundon 2002; van den Broek 1997, 2002; Peetz 2002). In tandem with the regulatory changes ushered in by the *Workplace Relations Act*, these activist approaches have acted to undermine unions' ability to represent existing members, organize new ones, access workplaces, defend employee rights and, overall, be able to present themselves as visible and effective counters to employer hegemony (Cooper 2005a; Cooper and Ellem 2006).

The changes to the framework in which unions operated have had precisely the impact intended: the substantial reduction of union power. Union membership and density have declined substantially (see Table 1). The scale of this decline is spectacular by international standards; for example, Visser's (2006) analysis of union statistics internationally shows that, of the market economies, only New Zealand's membership density declined faster than Australia's in the period 1990–2003. In addition to declining membership, industrial action in Australia has tapered, and union bargaining reach has contracted substantially. This is at once cause and effect of the rise of managerial prerogative which, in the guise of a "deregulated" labor market, is more marked than at any time since the introduction of national labor laws over 100 years ago (Barry and Waring 1999; Ostenfeld and Lewer 2003; Bray and Waring 2005). It is also testament to the close relationship between leading business lobby groups, anti-union law firms and government policy-makers (see for example O'Brien 1994; Sheldon and Thornthwaite 1999; for mining in particular see Hearn Mackinnon 2003).

Employer Anti-union Strategy, 1996–2005

This section of the article analyzes four distinct but overlapping dimensions of employer activity in relation to trade unionism in Australia: increasing employer militancy and industrial action, pursuing individualized methods of regulating work, employer responses to organizing campaigns, and the use of sophisticated HRM strategies as a de-unionization tool.

In presenting this material, we draw together data collected in industries ranging from banking to manufacturing and in workplaces from mines to telecommunications in the period from 1996 to 2005 in order to provide some insights into managerial strategy under the Howard Government. Across these sites, there are "bundles"

Table 1
Australian Union Membership and Density, 1976–2006

Year	Members (in Millions)	Density (in Percentages)
1976	2.51	51.0
1982	2.57	49.5
1986	2.59	45.6
1988	2.54	41.6
1990	2.66	40.5
1992	2.51	39.6
1993	2.38	37.6
1994	2.28	35.0
1995	2.25	32.7
1996	2.19	31.1
1997	2.11	30.3
1998	2.04	28.1
1999	1.88	25.7
2000	1.90	24.7
2001	1.90	24.5
2002	1.83	23.1
2003	1.86	23.0
2004	1.84	22.4
2005	1.91	22.0
2006	1.79	20.0

Source: Australian Bureau of Statistics (1977–1996, 1997–2007).

of employer tactics in different settings and with differing nuances. Many of these strategies, most notably lockouts and individualization of the employment relationship, have been made possible by changes to national labor law. Others have been shaped by union strategies and still others by particular forms of HRM. We argue that what is most striking, though, is that these de-collectivist strategies are marked by a common goal: securing unilateral control of the workplace and all but unbridled managerial prerogative.

Return of the Lockout

Lockouts were once regarded as historical curios of an era long-gone in Australia, virtually unheard of since the 1930s Great Depression. However, lockouts returned in Australia in the 1990s. First, the Labor Government legislated for a right to strike and lock out when constructing the legal infrastructure for a decentralized bargaining system in 1993. Then the Liberal-National Government elected in 1996 liberalized lockout law by allowing employers to use lockouts to coerce employees into signing individual and non-union agreements. Since 1996, lockouts can also be applied offensively or defensively. Lockouts subsequently grew

Table 2
Strikes and Lockouts Compared, 1994–2003 (in Percentages)

	1994–1998	1999–2003
Working days lost to lockouts as a proportion of all disputes	1.6	9.3
Lockouts as a proportion of all disputes	0.3	2.0
"Long" disputes (i.e. greater than twenty days) comprised by lockouts	7.7	57.5
Proportion of working days lost to lockouts, manufacturing	3.0	26.6

Source: Australian Bureau of Statistics (1994–2003), Briggs (2004).

significantly. As strikes have fallen to historical lows, this means that lockouts now account for a growing proportion of disputes and working days lost to disputes, as illustrated in Table 2.

Lockouts are still relatively rare (only 2 percent of disputes involved a lockout), but the number of working days lost in disputes involving a lockout increased over fivefold during the second half-decade of enterprise bargaining to just under 10 percent.[2] Additionally, just over half of "long" industrial disputes (defined by the Australian Bureau of Statistics as longer than a month) in the past five years were lockouts. Lockouts still comprise a small proportion of disputes, but they are significantly more likely to evolve into drawn-out industrial disputes with high economic, social and personal costs. The take-up in lockouts has been led by manufacturing employers where lockouts have increased from just 3 percent of working days lost to labor disputes to a remarkable 26 percent (Briggs 2004).

Some lockouts are unclassifiable, the product of anomalous circumstances or disputes, but there are two primary types of lockouts: "big bang lockouts" and "bargaining lockouts."

Big Bang lockouts are long lockouts, disputes which run for months and months, in which the firm is using a lockout to coerce a unionized workforce into signing individual agreements and/or acquiescing to cuts in its wages and conditions. Typically, unionized production workers are locked out indefinitely with an ultimatum that they cannot return to work until they sign an AWA. After a few months, part of the workforce breaks ranks and returns to work, and the lockout is renewed for the remainder of the workforce. In one extraordinary case, a single worker was locked out for a further ten weeks after the rest of the 600 workers had finally signed AWAs following a nine-month lockout (AIRC 2003).[3]

The best-known lockout of this type occurred at G & K O'Connors Abattoir, which locked out its 334 employees for eight months. It had been one of the leading abattoirs in the State of Victoria, but amid a major downturn in the export beef market which had led to the closure of beef processing lines at other abattoirs across the country, G & K O'Connors claimed that the business was not viable without radical changes to labor costs and work practices. O'Connors opened negotiations for a new enterprise agreement with a demand for wage cuts of between 10 and 17 percent,

changes to work practices and reductions to a wide range of other employment conditions which would have the effect of reducing take-home pay by as much as 25 to 30 percent for some of the workforce. After a stand-off, O'Connors initiated an offensive lockout. After five months, O'Connors switched from a "collective" to an "individual" lockout, mailing offers of AWAs to its employees on identical terms to those of the collective agreement. Eight months after the lockout had commenced, the AIRC ruled that "enough is enough" and ordered that the lockout finish (AIRC 1999). Many of its employees had by now resigned; some employees returned to work on the AWAs. Others, who still wished to negotiate a collective agreement through the Australasian Meat Industry Employees Union, returned to work on the minimum award rates which meant even larger wage cuts of up to 50 percent.[4]

Big bang lockouts are typically undertaken by firms with competitive difficulties, located in markets where business is slow and whose managers decide to embark upon a long dispute as a means to remove the union from the workplace. The work sites are also usually in regional locations with few alternative employment options for mature-aged production workers in declining sectors with excess capacity and third-world wage competition.

The second, more common, type is a bargaining lockout—usually a shorter lockout which aims to achieve a quicker, better agreement outcome for the employer by pressuring a union to compromise its bargaining goals. Bargaining lockouts are often used by firms as a counter to well-organized unionized workforces using rolling campaigns of selective work bans, go-slows, and/or quick stoppages. Rolling campaigns are particularly effective at building pressure on firms by lowering production volumes and disrupting schedules and continuity of supply without losing (much) pay. Firms regain an element of control over the dispute by simply locking their employees out, exerting pressure for a quick(er) resolution by also inflicting losses on their employees. One such company's solicitor argued in an anonymous interview that "in that situation, if the union does that, the best way of dealing with it . . . is a lockout in response and bring it to a head. If you are going to suffer the damage you might as well ensure that those who are causing it are also suffering some damage so that they have an interest in resolution . . . it is a means of evening up the situation in response to a union-led workforce with organisers using industrial action quite cleverly to that they cause damage to the employer without damage to themselves."

Such lockouts are especially common in global market contexts where employers are acutely vulnerable to extended stoppages.

Individualizing Employment Relations

Under the *Workplace Relations Act,* the government constructed a formal legal instrument for de-unionizing workplaces, AWAs. Although take-up across the

Australian labor market has been slow—just under 2.5 percent of employees were covered by an AWA by 2004 (Australian Bureau of Statistics 2004)—AWAs have been used extensively by employers in unionized sectors, especially in telecommunications and hard-rock mining.

This section shows how individual contracts have been used effectively by employers in these two vital but seemingly different sectors of the economy—one archetypically "new," one "old economy." It is, though, the similarities in strategy which are striking and which go to the core of the argument in this paper. Firstly, it is rare that any strategy is used in isolation by employers. Whether seeking to de-unionize or to maintain control over sites that are already non-union, employers typically deploy hard and soft, immediate and longer term, tactics as they introduce or defend individual contract regimes. Secondly, in these cases we see not carrot *or* stick but both. Thirdly, the importance of the relationship between state-led anti-unionism and employer de-unionization is revealed very clearly. This is not confined to government itself; judicial interventions have often been as important as the legislative.

The site of this individualization of telecommunications was Telstra, once a publicly-owned entity with a social partnership approach to trade unions. However, following partial privatization and against a backdrop of increased competition, a new Telstra management developed a systematic and broad de-collectivization strategy. Telstra combined the use of AWAs, targeted redundancies, corporate restructuring and outsourcing to substantially de-unionize its operations (Barton 2002).

Telstra began by rolling out AWAs to senior managers down to first-level supervisors—the upper reaches of union coverage and a strategically important grouping—before extending them to the rest of the workforce. Supervisors and other staff were enticed and pushed onto AWAs through a "carrot-and-stick" approach. Senior managers were converted from common law employment contracts to AWAs with more generous salary arrangements, and some employees were induced to sign AWAs with promises of reclassification to higher grades. Promotions and transfers were tied to AWAs as new positions were advertised as contract positions only available for someone willing to sign an AWA. When existing employees signed AWAs, they were routinely told it was no longer appropriate for them to be in the union, and according to the Community and Public Sector Union, around 70 percent duly resigned from the union. Union members can remain on the collective agreement only if they stay in the same job, effectively forcing them to choose between loyalty to the union and opportunities for career progression. New employees were simply offered AWAs on a take-it-or-leave-it basis as a condition of employment.

As has been the case in other workplaces and industries, including mining, the rolling out of AWAs occurred in the context of widespread redundancies. Telstra was an acute example, shedding just over 30,000 jobs from 1997 to 2002. This meant that, in this case, managers had to be careful with their carrots and sticks. Non-unionists should not be protected. The Employee Relations Group managing director told them that in selecting individuals for redundancy they would be penalized if

they did *not* discriminate between AWA and non-AWA employees: "Staff members who have transferred to individual contract have placed their trust in their managers and the Company to create a work environment that reinforces respect and dignity for the individual, and which places primary emphasis on productive relationships in which individual accountability encourages each person to contribute to his/her full potential. Managers must not under any circumstances compromise these important values in the way they implement cost-reduction initiatives which lead to staff reductions. Managers will be held accountable to support the values of the Company's preferred model of individual employment" (Federal Court of Australia 2001b).

In this case, judicial intervention came to the aid of unions when Telstra was fined $75,000 for breaching freedom of association provisions of the *Workplace Relations Act.* Nonetheless, this episode encapsulated the company's approach to legal requirements: "tactical compliance, strategic defiance." By 2002, the Community and Public Sector Union estimated between 15 and 20 percent of Telstra employees were on AWAs.

Telstra's use of outsourcing also helped it to de-collectivize. In this instance the strategy was more about cost than control: AWAs delivered lower wages and conditions in what are known as "related" and "unrelated entities." In the former case, Telstra outsourced to notionally independent organizations which in practice were highly dependent on contracts from Telstra for survival. In call centers such as the Stellar Call Centre, union jobs were refilled by AWA jobs on lower rates. Although the jobs are identical, related entities employ only staff on AWAs and pay around $10,000 less per annum. When outsourcing to unrelated entities such as IBM, collective bargaining was at first maintained, but over time management refused to negotiate collective agreements. The Community and Public Sector Union estimates around 10,000 unionized jobs were outsourced to subsidiaries and refilled with AWA employees.[5]

Although mining companies employ far fewer workers than telcos, this wealthy sector, driven largely by multinational resource companies, has long been central to the wider politics of anti-unionism in Australia. It remains of crucial strategic significance. The most recent set of disputes over unionism has unfolded across the iron ore industry in Western Australia since 1999, but its antecedents lie in the late 1980s when unions at Robe River Associates were stripped of much of their traditional powers by new, anti-union owners. In 1993 the new conservative government in Western Australia introduced individual contracts which gradually became the norm at the previously union-solid Robe. This change of government and law coincided with a major dispute at another Pilbara operator, Hamersley Iron. This company took on its unionized workforce in the courts and onsite, quickly replacing a collective agreement for its unionized workforce with these new contracts, Western Australia Workplace Agreements (WPAs).

By the late 1990s, there were only two mining companies operating in the Pilbara, BHP-Billiton and Rio Tinto. Only one, BHP, was unionized. Robe River and

Hamersley Iron—non-union sites—were now part of the Rio Tinto conglomerate. Early in 1999, BHP managers decided that their program of "cultural change" had to be driven more quickly to compete with Hamersley; at the very least they needed to reduce union influence. In the words of one senior manager, "if you could exclude third parties, ie the unions, there was the prospect of getting better flexibilities and therefore greater productivity." At Rio Tinto, the problem took a different form. In 2002, a new State Labor Government introduced legislation which abolished the WPAs the company had used to de-unionize. Indirectly this gave unions a foot in the door. So, in this case, the employer was trying to sustain, not introduce, a non-union regime. Both companies then shifted to national labor law, to try to regulate their workplaces with AWAs (Ellem 2005).

That there were, at least on the face of it, generous pay increases in both companies is central to the argument that control, not cost-cutting, is a key shaper of de-unionization; that de-unionization may come in a velvet glove. The Pilbara contracts in and after 1999 offered huge payouts of accrued sick leave and wage increases of around 20 percent. The agreements themselves were thin. For example, the BHP's individual contracts contained just six clauses, mostly procedural, the bare minimum at law. Mineworkers were effectively classified as "all staff," which meant that the "Staff Contract of Employment" was the document that really mattered. This set out a worker's duties, hours of work, remuneration and leave entitlements, and other details.

These new arrangements enhanced managerial prerogative in all ways. There was temporal flexibility ("circumstances may require you to work outside your normal hours to ensure that the full requirements of your role are met"), cost flexibility (salaries were to be reviewed annually and "adjusted at the company's discretion"), spatial flexibility (employees could be required to move between work sites 300 kilometers apart) and task flexibility (no consultation about workplace change). The "Issue Resolution Process" took care of unresolved grievances, with a hierarchy from immediate supervisors to a superintendent, a manager, a vice-president, and if necessary the "President of the Company." Only after exhausting all these steps could the problem be referred to an external body, the Western Australian Industrial Relations Commission—"a process designed to fail" said one union lawyer (for a full account, see Ellem 2002).

Individual contracts were, plainly, about control. As elsewhere, contracts were not the only component to the strategy. Both BHP and Hamersley ran complex campaigns in which contract offers meshed with how they organized wage negotiations and dealt with activists; in both cases union sectionalism and, more decisively, the state shaped the processes and outcomes of individualization.

At BHP, negotiations over wage increases were delayed through 1999 to set the stage for offering individual contracts. Voluntary redundancies followed, with significant reductions in the number of employees, which also saw large numbers of union activists, not right for what was called the "new BHP," disappear. Similarly, at

Hamersley, the company used the bargaining process to drive individualization. Here, things were complicated for the company by the re-emergence of unions. When state individual contracts, the WPAs, were abolished, Rio Tinto decided to use the non-union collective agreements available under the *Workplace Relations Act*, known as LK agreements. When the Hamersley workforce voted against such an offer and unions began to campaign for re-organization and new, collective state agreement, the company began to offer AWAs with wages increases—and managers pushed for an early acceptance date to try to keep workers away from the unions and the planned collective agreement. Forced to negotiate with the emerging unions, they stalled, just as BHP had done when trying to introduce new individual contracts. For its part, BHP was now forced to shift to national law, and it too offered AWAs to its workforce, hoping at least to keep those they had won from the unions back in 1999. In this respect, the courts would aid them (Ellem 2002, 2004).

This brings us, then, to the role of the state in shaping, if not driving, this particular set of de-unionization strategies. As the paper has already shown, the impact of anti-union governments in Australia is plain enough. Not only did the *Workplace Relations Act* launch the regulatory means to deliver "all staff" arrangements with the introduction of AWAs; it constrained unions by putting obstacles around effective union-based agreement making and set up new forms of non-union collective agreements. In addition, the strategies of some mining employers in the Pilbara were underwritten, from 1993 to 2002, by a state government whose legislation was, if anything, more antagonistic to union bargaining. Throughout this period, Hamersley had used those WPAs to regulate its labor; from 1999 BHP attempted to follow suit.

The courts were no less important to employer strategy. The nation's Federal Court had given unions at BHP some breathing space in 2000 by issuing an injunction to stop individual contracts. For twelve months, as the full case went on, the unions regrouped, retaining about half the workforce. However, in all other respects its rulings facilitated the development of employers' union-busting strategy by deciding that employers could insist upon "new starts" signing an AWA as a precondition of employment. Furthermore, its rulings about the intent of those strategies have confounded unions—and sympathetic lawyers. The final judgment in the BHP case, clearing the way for new contract offers, was typical of the new norm. Although the company had been quite clear that it was seeking to remove unions from having a say in the running of the organization and although the WPAs were intended as a tool for achieving this, managers were careful to avoid actually saying that they did not want their workforce to belong to a union. When the unions challenged the legality of the company's strategy on precisely those grounds—that unionists were being "injured"—the court proceedings became almost surreal. One of the architects of the company plan told the Court: "All I can say is I don't know what individuals are going to do with their union membership, and I was interested in efficient structures for doing business," and the bench accepted the distinction being made (quoted in Ellem 2004, 36).

The Court ruled that employees were not being attacked on the basis of union membership because they were not "singled out" (the offer was to all employees) and there was no inducement to leave the union because individual employees could still remain a member of a union after signing an individual agreement (see Federal Court of Australia 2001a; Ellem 2002). In other words, the decision separated membership of a union from the purpose and activities of a union: workers could still belong to a union, but it was not clear of what benefit that would be (Ellem 2004).

Nor was this all. As has been the case in other countries, in their attempts to control workplaces, employers at times used one union against another. The effectiveness of this strategy also relied on judicial bodies. The outcome of the unions' attempt to re-unionize Hamersley demonstrated these intersections at work. The Australian Council of Trade Unions and the local unions had been working towards a state-based collective agreement with the company after the failure of the LK ballot, but as these negotiations developed it was quite clear that the company was stalling. The reason soon emerged: the company had worked behind the scenes with the Australian Workers Union to make a deal which would cut the local unions out. A Rio Tinto spokesperson said that they wanted a federal agreement, not a state one, because under a national deal there would be less external regulation. He said that "the company will be able to largely run their own affairs without being hassled by the unions and the WA Industrial Relations Commission" (quoted in Ellem 2004, 67). The company's representative went on to say that "to do that we had to get close to a union," in this case the Australian Workers Union, one of the unions that had, publicly, been cooperating with the others. But they also had to secure a ruling from the national Industrial Relations Commission that that body had the power to override the state laws and regulate the employment relationship at Hamersley. And so that is what happened, in this case bringing to an end a particular form of unionism while favoring another. As it turns out, this has effectively halted re-unionization at Hamersley (Ellem 2005).

Employer Responses to Organizing Campaigns

An increasingly aggressive, de-collectivist employer strategy has been identified in the discussion of lockouts and individual contracting in the late 1990s and early 2000s. Can this approach also be discerned in the responses of Australian employers to union campaigns to build membership and workplace organization during the same period? Research on union organizing strategy in Australia suggests that the answer to this question is quite complex. The evidence suggests that employers apply both a "fist" and a "glove" when responding to union organizing drives in their efforts to avoid unionization and undermine union efforts to establish stronger collective organization.

Detailed qualitative research suggests that during the 1990s, employers in many industries became increasingly obstructive to union attempts to build membership

and workplace organization (Cooper 2003a). Union officials across industries reported in interviews that, combined, the post-1996 legislative and policy changes lead to a palpable change in employer strategy (Cooper 2005a). An elected office bearer of the Australian Manufacturing Workers Union encapsulated the feelings of many in similar positions when he described the impact the Howard Government's agenda had had upon employers since 1996: "I think John Howard gave the green light to those people to tell us to [f&*%] off . . . and they have" (Australian Manufacturing Workers Union Official, Queensland Branch, research interview, August 2005). In other words, Australian employers have been given both the capacity and the confidence to resist union organization as a result of the agency of the Australian state. This more aggressive response to union organizing campaigns has involved the development and utilization of a variety of tactics to stymie union organizing efforts and undermine the effectiveness of union campaigns. These tactics are multifaceted and sophisticated. An elected official from the Finance Sector Union described the strategies of employers in banking and insurance thus:

> The more clever employers actually try to get ahead of the game. They try working out what the issues are that we're organizing around, and they fix them in order to deny us a foothold in the workplace. In the process of fixing them, they'll try to shut us out of the solution to a greater or lesser success. Other employers will use their available technology and their available legal means to shut us out from making effective contact with the workers and try and drive the issue underground or disperse the key workplace leaders who are organizing around issues. . . . They put a lot of effort into using their network of management to run captive audience meetings of workers, excluding union activists and certainly excluding union officials from onsite meetings, and drive a local agenda which is quite narrow, quite well defined and deliberately containing dissent. (Finance Sector Union official, interview, 2005)

However it would be wrong to suggest that these strategies are driven *exclusively* by government policy or legislation. Indeed, as has been recognized in other international contexts (see for example Logan 2002), there is considerable evidence that many other players and forces "external" to individual firms such as employment lawyers, major employer organizations, and consultants exert a critical influence upon employer strategy. As discussed later, internal, cultural, and less formal structures and practices in organizations also play a critical role in determining both the nature and the shape of de-collectivization strategies. This holds true for employer responses to organizing campaigns.

The Australian system of union membership makes collecting data on the outcomes of organizing campaigns—let alone the practices of the parties during organizing drives—very difficult. It should be noted that in Australia, unlike the situation in North America, union membership is on an individual basis and is not governed by an election certification process. Nor is it directly related to union bargaining

agreements. A union might negotiate an agreement, and all of the workers in a workplace may be covered irrespective of union membership. Australian unions are disallowed from collecting bargaining agent fees from non-members (see Cooper 2004) and, as outlined in an earlier section of the article, are not afforded "recognition" to the extent or in the same circumstances as are their counterparts in other contexts.

The *Union Campaigns Survey* (Cooper 2005b) was the first attempt to investigate employer behavior during union campaigns and to assess these practices against campaign outcomes. As such the data collected sharpen our knowledge of the range of tactics used by Australian employers in response to union organizing campaigns in 2005, but they are unable to give us a longer-run view of the tactics and strategies of employers or to make judgments about changes in the approach of employers in the post-1996 environment.

The questionnaire was distributed to the officials of unions in one Australian state, New South Wales, in late 2004 and early 2005, and responses were received from 76 percent of those approached to participate in the project.[6] Respondents were organizers, industrial officers and elected leaders from seventeen major New South Wales unions as well as from the two relevant peak union councils in the state, Unions NSW and the Australian Council of Trade Unions. In total, the survey collected data on 228 campaigns to organize workplaces as diverse as mines and nursing homes and to unionize workers including cleaners, bus drivers, construction workers, and bank tellers. The *Union Campaigns Survey* asked union officials to reflect upon the most recent organizing campaign they had personally worked on. They answered questions in relation to the characteristics of the target workplace and workforce, the tactics employed by the union in the organizing campaign, the response of employers, as well as, among other things, the outcomes of the campaign. What follows is a brief overview of just one aspect of this survey: employer tactics in response to these organizing campaigns and, briefly, the impact of these tactics on the outcomes of campaigns.

When asked to identify the key aims of the campaign, most officials identified one of three categories. These were to build membership (81.4 percent), to increase the number of workplace union delegates (78.7 percent) or to establish a collective union agreement (77.7 percent). The majority of campaigns represented in the *Union Campaigns Survey* targeted medium-sized and small employers. Just over half of the campaigns (51.6 percent) were run in sites with less than 200 employees, and just over a third (35 percent) were in sites with less than 100 employees. Most campaigns targeted workplaces where the union had less than 50 percent density (58.9 percent). While over a third (35.2 percent) of campaigns targeted sites where union density was low or negligible (0 to 25 percent), many of the campaigns could be characterized as "in-fill" organizing; that is, nearly 18 percent sought to organize sites with very high (75 to 100 percent) membership.

Officials were asked to rate the overall approach of the employer in the campaign. The great majority (61.5 percent) suggested that the employer in the work site/s they

Table 3
"Top Ten" Employer Tactics by Frequency: *Union Campaigns Survey*

Employer Tactic	Frequency
1. Allowed access	156
2. Allowed meetings during work	109
3. Allowed time of for recruitment	85
4. Managers harassed or disciplined activists in other ways	78
5. Managers instructed to push anti-union message	76
6. Allowed union training	74
7. Managers held one-to-one meetings	70
8. Discouraged employees from joining	66
9. Provided facilities	55
10. Managers held compulsory meetings with workers about campaign	52

Source: Cooper (2005a).

had targeted had acted in an "anti-union" fashion, with just under half of these suggesting that the employer ran an "extremely" anti-union campaign. By comparison, only 16.5 percent of respondents suggested that the employer had acted in a "supportive" fashion during the organizing campaign, and less than 2 percent of these characterized the employer as "extremely supportive." One-fifth (20.6 percent) of respondents suggested that the employer acted in a "neutral" fashion in reaction to the campaign.

Officials were asked to identify the tactics used by employers in response to their campaign. They were asked to identify both the facilitative tactics as well as more oppositional approaches. Some interesting, and seemingly contradictory, results were uncovered. As Table 3, which lists the "top 10 tactics" used by employers, shows, half of the most commonly employed tactics were "negative" in nature. Each of these tactics fitted with a particular overarching employer strategy, which might be characterized as "one-on-one anti-union pressure on employees." This included managers' harassing union activists, holding one-on-one meetings with employees about the organizing campaign, discouraging employees from joining the union, holding compulsory group meetings to discuss the organizing campaign, as well as managers' having been instructed to push an "anti-union message" among the workforce.

However, alongside the "negative" tactics were employer behaviors which might more readily be identified as being "supportive" of a union organizing drive. Allowing access to the work site during the campaign was by far the most frequently used employer tactic and was, according to respondents, facilitated in nearly 70 percent of organizing campaigns. Other common "supportive" tactics included managers' allowing meetings of workers during working hours ($n = 109$, 47 percent of cases), and allowing the union time to recruit members ($n = 85$, 32 percent of cases) appeared in the "top 5" tactics utilized by employers in response to organizing campaigns. The co-existence and interaction of positive and negative employer tactics

raises as many questions as it answers. For instance, are employers genuinely merging inconsistent tactics when they respond to unions? Or is the use of facilitative tactics designed as a smokescreen for what in essence is an obstructive de-collectivist agenda? For example, the nature of the "access" provided by employers is not clear. It is possible that the access granted is limited or to an extent "disingenuous" and simply designed to give the impression of a non-obstructive approach. Are meetings of workers and time for recruitment "allowed" by employers because they wish to facilitate employees' informing themselves of the benefits of union membership and collective agreement making, or are managers seeking to monitor the union's activities in the workplace? Are there other explanations for the seeming contradictions identified here? These questions clearly need to be investigated in future case-based research; however the data nevertheless confirm our earlier arguments about the multilayered and complicated nature of employer strategy.

Why does this matter for unions? The survey results suggest that what employers "do" in response to organizing campaigns matters a great deal. Over 60 percent of respondents to the *Union Campaigns Survey* suggested that they had met the aims they had set for themselves as a result of the campaign; conversely nearly 40 percent had failed. While there was no strong association between the use of a particular tactic, such as allowing access, and the outcome of a campaign, it was demonstrated that the use of "bundles" of tactics exerted a critical influence upon the success or otherwise of the organizing. Put simply, the more negative tactics put to use by employers the less likely that the union will meet the aims of its campaign, and the more positive tactics employers exhibit in a campaign the more likely it is that a union will meet the aims it sets for itself in the campaign (see Tables 4 and 5).

Employer behavior is just as critical in determining the outcome of organizing campaigns as it is in relation to bargaining, industrial action, and individual contracting. While Australian union officials believe that employers behave in an "anti-union" fashion in this context, this does not mean that employers utilize tactics which are purely anti-union in nature. Instead their response to organizing campaigns puts together both facilitative (allowing access) and oppositional (pressuring individual employees) tactics at the one time. Employer strategy in response to organizing campaigns might best be described as being equivocal and contradictory in nature and thus seems to differ from the approach in relation to lockouts and individual contracting, which were shown to be more deliberate and militant in nature. These themes are developed in our discussion of human resources strategies below.

Recruitment and Selection

At first glance, HRM initiatives might also appear more toward the "facilitative," rather than the seemingly "oppositional" spectrum of employment relations. However, this analysis of HRM initiatives suggests that recruitment and other employment relations policies and practices were not merely the innocuous matching of suitable

Table 4
***Union Campaigns Survey:* Employer (Positive) Tactics and Campaign Outcomes**

	Percentage (Number)			
Outcome	0 Tactics	1–2 Tactics	3–5 Tactics	6–9 Tactics
Failed	54.17 (13)	46.84 (37)	31.63 (31)	8.33 (1)
Succeeded	45.83 (11)	53.16 (42)	68.37 (67)	91.67 (11)
Total	100 (24)	100 (79)	100 (98)	100 (12)

Source: Cooper (2005a).

Table 5
Employer (Negative) Tactics and Campaign Outcomes

	Percentage (Number)					
Outcome	0 Tactics	1–2 Tactics	3–5 Tactics	6–10 Tactics	11–19 Tactics	20+ Tactics
Failed	22.22 (8)	31.11 (14)	41.30 (19)	46.67 (21)	47.22 (17)	60.00 (3)
Succeeded	77.78 (28)	68.98 (31)	58.70 (27)	53.33 (24)	52.78 (19)	40.00 (2)
Total	100 (36)	100 (45)	100 (46)	100 (45)	100 (36)	100 (5)

Source: Cooper (2005a).

candidates with the demands of service work, but rather a means by which a major telecommunications employer, Optus Communications, reinforced managerial prerogative. As was the case with Telstra, Optus was able to pursue this type of strategy only because national labor law and court decisions had provided the framework. Ironically, then, the micro-policies embedded in the "deregulationist," individualized ethos of Optus could flourish only because of the state initiatives recorded earlier in the paper.

As indicated above, Telstra faced competition for the first time in 1994. A shining example of the new (some would say American) corporate agenda of culture and commitment, Telstra's competitor Optus forcefully marketed its brand name with positive campaigns emphasizing youth, choice, and innovation. While it was considerably smaller than Telstra, employing just under 6,000 staff by 1996 (Paul Budde Communications Pty Ltd 1996–1997, 54), it was in a strong position to influence employment relations within Telstra and the sector more broadly as it opened more fully to competition in 1997. Highlighting how firms sideline union sympathizers early at the recruitment and selection stage of the employment relationship, this case suggests that human resource initiatives focusing on strong corporate culture may often be embedded in an equally strong corporate agenda of anti-unionism (Royle 1999; Ogbonna 1992; Ray 1986; van den Broek 1997)

During recruitment and selection processes, Optus marketed its image as an innovative and entrepreneurial organization intent on developing "a direct and open relationship" with staff. While this corporate philosophy permeated all aspects of the employment relationship, it was at the recruitment and induction stage that corporate philosophy was most prominent (Lewis and Davis 1994). The director of human resources stated that Optus had "specific selection criteria to make sure we get staff that are culturally 'a good fit.'" Part of that "fit" reflected in management's need to identify those who "come with the right mindset to start with." Wishing to avoid employees with "cultural baggage," Optus explicitly stated that it would exclude the employment of staff from the strongly unionized Telstra, preferring those from (non-union) organizations like IBM and American Express (van den Broek 2001, 110; Plunkett 1993, 23).

Optus's corporate values reflected heavily in a lengthy recruitment and induction process designed to identify employees best suited to the organization. The interview process emphasized values-based exercises that were designed to assess whether recruits could "demonstrate . . . that they can *live* the Optus values." As one manager stated, technical ability can always be taught, but "it's very hard to teach people set behaviours, or attitudes" (van den Broek 2001, 109). While many employees were "in no doubt at the time that attitude was the most important thing they were looking for," unpacking the "attitude" and the "mindset" was also unambiguous for management. For instance during an unfair dismissal case when one employee sought union representation, an Optus manager stated that he encouraged staff to be different and forthright in their opinions. However when questioned further on this point in the AIRC, he clarified that Optus didn't encourage people to express opinions in conflict with their supervisors, stating that "we don't encourage them to express opinions in conflict, but we do encourage them to express opinions."[7]

Exhibiting and living (in harmony with) the Optus values was prescribed from the top of the organization. After a protest of around thirty to forty union representatives in the Optus headquarters' reception in 1994, the CEO broadcast to staff that "if you feel the need to join a union then you should take a good look at your job at Optus because probably you don't need to be here and you're not happy" (van den Broek 2001, 164). Such sentiments transmitted to and reflected in recruitment and selection policies and practices. For instance one Optus recruitment officer undertaking a round of interviews subsequently dispatched a letter of offer to a male applicant who had previously worked within the highly unionized postal division of public service. After she informed her superior of the confirmed appointments, the recruitment officer was asked by her supervisor whether she had "read that he had been a union member for many years" because "you know that it is our policy not to employ union members." The supervisor requested the recruitment officer write a letter of withdrawal; however when she refused to comply, the supervisor wrote the withdrawal letter himself. According to the officer, recruitment meetings with team leaders,

human resource consultants, and customer service managers discussed the successful and unsuccessful applicants and "it came up time and time again. This person worked for such and such which was a heavily unionised company. 'Do you really think they would make a good team fit?' These meetings would sometimes go on for ages. The companies they most despised were the public service, Telstra. If you worked for a union you were definitely 'no go'" (van den Broek 2003, 528).

While the increase of non-union firms and the popularity of HRM might suggest the durability of HRM systems, there is also considerable evidence indicating the often hidden and suppressive aspects of HRM. As indicated elsewhere, de-unionization strategies often involve overt refusal to deal with collective representation and bargaining; however more inclusive or informal strategies of union substitution and exclusion are never very far away (Royle 1999; Smith and Morton 1993; Dundon 2002). This section and the article more generally indicate that inclusive concepts such as "values," "respect," "dignity," and "trust" became crucial flashpoints for quite calculated and organized de-unionization initiatives. As such we suggest that these varied and multilayered de-unionization tactics were not mutually exclusive, as the "soft" and informal human resource policies merely concealed the more explicit and formal agenda by employers to break collective representation at the workplace level.

Conclusions

The growth of the non-union sector and a hardening of employer strategies towards trade unions are pervasive trends across the Organisation for Economic Co-operation and Development and particularly in Australia, a country once regarded as a progressive, union-friendly "social laboratory." The prolonged and marked decline in Australia's union density marks a fundamental shift in the nature of employment relations. It has been driven by specific employer tactics identified in this paper: the resurgence in employer lockouts, the use of individual contracts to de-collectivize bargaining, aggressive counter-tactics to union organizing campaigns, and anti-union human resource initiatives. These de-unionizing strategies take various forms, simultaneously including and combining strategies of exclusion and substitution. This detailed empirical research is the first attempt to identify the precise ways in which such overlapping and mutually reinforcing employer strategies de-collective employment relations in Australia. We find that commonplace dichotomies between "good" and "bad" employers are unhelpful and that the distinctions between inclusive and exclusivist strategies may not in fact be at all clear-cut.

Employer lobby groups have been calling for de-collectivized employment relations for many years. The federal government has not only heeded these calls since 1996 but has itself played a critical role in facilitating and encouraging anti-union employer strategies. Other state instruments, notably non-industrial courts, have

been extremely influential in circumscribing union effectiveness. As the system of conciliation and arbitration is now being dismembered, it is becoming very clear how important its role had been for over a century in reducing the opportunities and incentives for employers to de-unionize.

As this traditional, union-tolerant framework is now being erased, any analysis of employment relations today must begin by examining how the legislative framework has been remade. The paper suggested that the agency of the state has allowed Australian employers to utilize a range of strategies and tools, many of which are entirely new, when pursuing their aim of reducing union influence. On some occasions these initiatives may be well publicized and overt in nature, such as during lockouts and through the negotiation of AWAs in strongly unionized sites. In other situations, initiatives may be more embedded in notions of corporate culture and practices of direct communication. Similarly, some initiatives may be state facilitated and driven, while others rely more on managerial agency and policy. We believe that much more research is needed to understand the complexity and heterogeneity of these initiatives, including the links between formal and informal, long- and short-term initiatives and the incongruities, contradictions, and symbols that they represent for workers and trade unions.

Notes

1. At the time of the final drafting of this article a new (Australian Labor Party) government had been elected and had begun redrafting a new national framework for industrial relations. We hope that our work is used by policy makers as they embark on the process of reshaping Australia's national labor law regime.

2. These figures represent a conservative estimate because the definition of a "lockout" by the Australian Bureau of Statistics is quite narrow. The Australian Bureau of Statistics (2002) defines a lockout as a "total or partial temporary closure of one or more places of employment . . . with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances." Excluded from the Australian Bureau of Statistics' definition are stand-downs (or "layoffs"), common law actions refusing to pay employees not working as directed (due, for example, to selective work bans), "lockouts" which terminate rather than suspend contracts (for example, it excludes the 1998 waterfront lockout by Patrick Stevedores which attempted unsuccessfully to replace its unionized workforce) or "de-facto lockouts" where the employer does not formally lock out its employees but triggers a strike with an unconditional demand their unionized employees sign individual contracts. Without systematically searching for these other types of withdrawal of work by employers, around 30 percent of the disputes investigated in the course of fieldwork were excluded on the basis that they fell into one of these four other categories. Lockouts as more commonly understood (i.e. the refusal to furnish work as a bargaining tactic) are significantly more common.

3. The lockout was ultimately terminated by the Australian Industrial Relations Commission's Senior Deputy President O'Callaghan because it appeared likely to terminate his employment and was therefore not a lockout within the meaning of the Act. However, Senior Deputy President O'Callaghan framed his decision in such a way as to deliberately avoid creating a precedent against the lockout of an individual: "The only conclusion the AMIEU [Australasian Meat Industry Employees Union] could logically draw from such a decision is that when the last employee who refuses to endorse an AWA is locked out with absolutely no prospect of agreement with that employee being reached, the Commission may take action to resolve the matter."

4. G & K O'Connors succeeded in dramatically slashing its labor costs, but the dispute had other ramifications. The company continued to find itself embroiled in expensive legal proceedings for over two years; there was continuing strife in the workplace and chronic labor turnover. Legal proceedings continued in the aftermath of the dispute, mostly as a consequence of a series of unfair dismissal hearings, including one case in which a former employee confessed he had been hired to spy on fellow employees, goad them into stealing and start fights with key individuals such as the union delegate (Bachelard 2001a). As a consequence of the workplace environment and what were now very low wage rates by industry standards, G & K O'Connors experienced difficulties attracting and retaining labor. As Managing Director Kevin O'Connor acknowledged on television, "long-term employees really no longer exist in this company (Bachelard 2001a). According to newspaper reports, O'Connors responded to its labor supply difficulties by engaging 180 low-wage trainees and between 50 and 90 Afghan refugees recently released from a mandatory detention center on temporary work visas (Bachelard 2001b).

5. This case study is summarized from a lengthier case study in a report prepared for the Australian Council of Trade Unions (Briggs 2002).

6. The *Union Campaigns Survey* was designed as a pilot of a larger national survey to be undertaken in 2007–2008. The analysis presented here is a preliminary analysis of the descriptive statistics.

7. Transcript of Unfair Dismissal Proceedings (details withheld to ensure confidentiality).

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