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State Regulation and the New Taylorism

The Case of Australian Grocery Warehousing

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Studies of the diffusion of new workplace technologies and management practice often fail to account for differences in state labour regulation. This article examines the role of the state in seeking to regulate the introduction of an American system of computerized work monitoring in the Australian grocery warehouse industry. While the establishment of a government inquiry into the technology offered the potential for significant constraints upon management control, over time the state's role shifted to a more accommodating stance that endorsed management's right to use the new technology. The reasons underlying the state's ultimate support for the technology are explored, as are the broader implications for national variations in the global diffusion of new workplace technologies.

A key characteristic of recent globalization has been the increasing diffusion of new technologies and management practice. While some observers have viewed this as evidence of increasing convergence in international economies (Ohmae 1990), others have argued national institutional variations continue to have a significant impact in maintaining national diversity. Studies of industrial relations in particular have traditionally stressed the importance of the varying role of the state in shaping distinctive national patterns of industrial relations (Clegg 1976; Edwards 1986). It remains unclear however to what extent differing national systems

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of labour regulation continue to impinge upon the accelerated global diffusion of new technologies and management practice.

In this article, we examine the potential for different systems of state regulation to challenge the converging tendencies of new workplace technologies. We focus upon the example of the implementation of an American system of computerized work monitoring in the Australian grocery warehousing industry, and the role of state tribunals in potentially regulating the use of this technology. During the 1990s, Australian grocery retailers imported an American system of work monitoring, a form of computerized Taylorism called “engineered standards.” In Australia’s largest state, New South Wales (NSW), the implementation of the new technology resulted in significant industrial disputation and the establishment of a government inquiry into the health and safety and industrial relations implications of the new technology. The establishment of the Inquiry represented the first time anywhere in the world that this particular workplace technology had been subject to systematic and industry-wide investigation by state regulators, and provided an opportunity for state imposed limits upon management’s attempts to intensify work effort within the warehouse labour process. However, the ultimate outcome of the Inquiry and the role of state regulators following the Inquiry resulted in limited restrictions upon the employers’ use of the new technology. Indeed, as we note in the years following the Inquiry, arbitration tribunals and other regulatory bodies adopted an increasingly sympathetic view of the employer position and a growing hostility towards continued trade union opposition.

The article begins by briefly reviewing the debate concerning the role of the state in regulating the labour process. Next, we outline the background of the case study, particularly the establishment of the Inquiry into the engineered standards system and its specific findings. We then examine the impact of state intervention on workplace practice; initially, the Inquiry recommended increased consultation with the major union representing grocery warehouse workers, but the attitudes of the state regulators changed significantly in the face of continued trade union resistance. We conclude by addressing the broader implications of this case for the debate over the state’s role in workplace restructuring and the extent to which differing national systems of labour regulation impact upon the implementation of global industry technologies and management practice.

THE ROLE OF THE STATE AND THE REGULATION OF THE LABOUR PROCESS

A variety of writers have stressed the need to focus greater attention on the state’s role in regulating changes in work organization and

management control of the labour process. Burawoy (1985: 137-152), for instance, suggests that different political contexts result in varied workplace regimes and forms of management control. Similarly, Strinati (1990: 210) argues that there is a need to integrate analyses of the state's role instead of treating the state as an "appendage which is merely 'external' to the labour process."

Studies which have addressed the role of the state in managing industrial relations, have presented an ambiguous image of the state's role in capitalist economies, caught between the political imperative of protecting the interests of various constituencies (including unions and workers), and the need to maximize economic growth and profit formation. In contrast to earlier Marxist interpretations of the role of the state as solely supporting capitalist interests, Zeitlin (1985) suggests a more nuanced interpretation whereby state action is contingent upon a varying balance of political forces. According to this view, "states are potentially autonomous entities with their own interests and historically specific capacities for action" (Zeitlin 1985: 36). Hence, at particular points in time the state has promoted the interests of trade unions and weakened managerial prerogatives in the workplace. Indeed, other studies have highlighted how differences can develop between separate state institutions such as government, courts and police forces over specific industrial relations issues (Dabscheck 2000). The state's role in workplace relations is therefore seen as ambivalent and contradictory; state instrumentalities can exhibit significant autonomy and the precise location of the state's role in industrial relations is therefore difficult to predict and likely to be unstable over time.

Edwards (1994: 31) builds upon these complex views of the role of the state by stressing the way in which capitalist economies "generate pressures and impose constraints" upon the choices facing state actors. Edwards argues that these pressures at a broad level reflect the conditions necessary for the continued operation of the economic system. State actors are seen as "...trying to handle the contradictory needs of accumulation and legitimation and having to respond to specific demands, which may conflict with other demands, stemming from particular groups within the ranks of capital and labour" (Edwards 1986: 177). In contrast to Zeitlin's vision of state autonomy, Edwards suggests state actors have "relative autonomy"; they are constrained by the broader conditions of a capitalist economy, yet are not totally constrained and make choices within this broader context, which "can act against the wishes of capitalists, and can alter a pattern of production" (Edwards 1986: 153). This variability in the actions of state actors, Edwards argues, needs to be explained within the context of particular examples of state intervention in the system of labour regulation. Relevant factors here are likely to include the balance of class forces, as

well as the prevailing attitudes and ideologies of state regulators at a particular point in time.

The Australian context is particularly relevant in a study of the state's role in regulating industrial relations (Edwards 1986: 172-176). In contrast to more voluntarist labour law regimes, for much of the twentieth century, Australian industrial relations was overseen by a variety of state industrial tribunals charged with the responsibility to settle industrial disputes. Compulsory state industrial arbitration resulted in a significant degree of state intervention over both bargaining structures as well as the degree of management autonomy within the workplace. The establishment of compulsory arbitration also gave trade unions legal standing, established common minimum standards of wages and working conditions via a system of industrial awards, and forced employers to recognize trade unions as bargaining agents. In subsequent years, the decisions of arbitration tribunals were also instrumental in the ratification of significant improvements in wages and working conditions, often in the face of significant employer opposition (Patmore 1991: 101-130). However, highlighting the ambiguous nature of state regulation, arbitration also served to reinforce managerial prerogative in specific areas of the workplace (De Vyver 1959; Fisher 1983). In particular, the organization of work and the use of new technologies and management practices was traditionally viewed by the arbitration tribunals as an area of managerial discretion and intervened only on occasions where such innovations resulted in significant industrial dispute. Indeed, in specific historical periods, the arbitration tribunals acted as advocates for workplace rationalization and the promotion of more "modern" management practice (Shields 1984; Cockfield 1993; Wright 1995). In recent years, like other developed economies, the state's role within the Australian labour market has shifted. Despite legal decisions during the 1980s, which appeared to weaken the concept of management prerogative (Nolan 1988), the recent decentralization of bargaining from industry to enterprise level and a steady erosion of state-enforced minimum standards in wages and working conditions have increased employer discretion over the management of the workplace. Legislative changes introduced by both conservative and Labor governments at state and federal level during the 1990s increased managerial prerogative, through a diminution of trade union protections and encouraging greater "labour market flexibility" (Dabscheck 1995; Hampson and Morgan 1998).

In the case study that follows, we explore a somewhat atypical example of state involvement in the introduction of a new workplace technology. Within a political environment that favoured organized labour, there appeared to be a real potential for state regulators to significantly constrain the use of the engineered standards technology. However, over time, state

tribunals opted for an increasingly minimalist approach to workplace regulation and, indeed, ultimately acted to support employer use of the technology and rebuked the union for its continued militant resistance. The case therefore raises questions about the reasons underlying the particular form that state regulation took in this instance, as well as the potential for different systems of labour regulation to effect the implementation of global industry technologies.

GROCERY WAREHOUSING: NEW TECHNOLOGIES AND STATE INTERVENTION

The most significant recent changes in the grocery retailing sector have occurred in the less visible processes of transportation and storage. These include real-time electronic data interfaces between supplier, transporter, warehouse and retailer; the development of larger centralized distribution centres; and the introduction of a form of “computerized Taylorism” involving engineered work standards and computerized performance monitoring of warehouse workers. The development of on-line computerized inventories facilitated the development of engineered work standards, which determine the time allowed to fill an order or transport a pallet from one location to another. Warehouse workers “clock in” on each order and real-time computer monitoring software compares actual work time to allowed time. These data can then be linked to either an incentive pay scheme and/or disciplinary action. These systems have presented a powerful tool to intensify the work pace, reduce labour costs and significantly increase managerial control over the labour process. Computerized monitoring systems linked to engineered standards also have major implications for occupational health and safety, particularly manual handling injuries, as well as physiological and psychological stress (NIOSH 1993, 1995; Lund 1998; Lund and Mericle 2000).

Grocery warehouse engineered standards systems were developed by American consultants during the later 1970s and 1980s and have spread to supermarket chains throughout the world. During the early 1990s, Australian retail companies began the process of implementing these work monitoring systems into their warehouse operations. In the majority of Australian states, trade unions representing warehouse workers raised little resistance to the new technology based upon a largely quiescent approach to industry representation. A far more militant and confrontational stance was adopted in the country’s largest state, New South Wales (NSW), where the National Union of Workers (NUW) NSW Branch explicitly rejected employer attempts to introduce the engineered standards system. Following large and violent industrial confrontations at a number of the state’s largest grocery warehouses, the NSW Government intervened and in late 1994

established a special inquiry conducted by the NSW Industrial Commission. The Inquiry had wide ranging powers to investigate the engineered standards system and its implications for employee health and safety, productivity and industrial relations. The position of the employers, represented through the Retail Traders Association, was that engineered standards had been in use in the U.S. and Europe for some time, were reasonable and were necessary to improve efficiency. The union position was that engineered work standards were flawed in their development and underlying assumptions, failed to take into account recognized health and safety standards and therefore should not be used at all. Both sides relied heavily upon expert testimony and the proceedings lasted for nearly two years (Wright and Lund 1996). Union hopes of state-imposed restrictions on the use of engineered standards increased with the election of a state Labor Government half-way through the Inquiry in March 1995.

In March 1996 the Industrial Commission produced a report and recommendations for the Minister for Industrial Relations (IRCNSW 1996). What made this report particularly unique was that unlike the case of North America, where state regulation of engineered standards has been limited (Lund 1998), the Inquiry represented the first instance anywhere in the world where the engineered standards system had been subject to a comprehensive and systematic investigation.¹ Indeed, under the terms of reference, the Commission arguably had the power to prevent the introduction and use of engineered standards within the New South Wales grocery warehouse industry.

Contrary to the union's hopes, the Commission chose not to recommend the prohibition of engineered standards but rather sought to initiate a consultative process to oversee the introduction of the new technology. In summary, the Inquiry concluded that "there is no unity between employers and employees in the bid to create greater efficiency and productivity", and the Commission recommended "a new start to commence with consultative processes and an audit of each system as applied in each warehouse" (IRCNSW 1996: 4). The Inquiry's recommendations included the following key points.

First, it recognized that employers had the right to measure the work performance of their employees and set targets through the use of engineered standards, *provided* that such standards were fair, equitable and safe to the individual and adequately accounted for human variability. Second,

1. We are unaware of any similar industry-wide inquiry into engineered standards in grocery warehousing elsewhere in the world. In the United States, regulation of engineered standards has been minimal, including two health hazard evaluations of individual warehouses using engineered standards by the National Institute for Occupational Safety and Health (NIOSH 1993, 1995), as well as the issuing of several federal and state occupational safety and health citations against specific employers for violations of ergonomic standards.

“constructive consultation” with the union should take *place prior to the decision to introduce engineered standards*. Third, the primary union representing grocery warehouse workers in NSW, the NUW, should bring forward “all the concerns it and its members have in respect to the operation of engineered standards in each warehouse” *before* the standards were introduced. Fourth, the standards should be subjected to regular audits by both employers and the union. Fifth, that consultative safety committees should monitor occupational health and safety matters related to engineered standards and if unable to resolve any disputes, these should be referred to the state occupational health and safety agency, WorkCover. Sixth, in developing production standards, management should take into account relevant national codes in relation to manual handling, as well as collaborate with unions and occupational health and safety agencies to supplement existing codes on manual handling in light of the demands of engineered standards systems. Seventh, “systematic and in-depth” training should be given to all managers, supervisors and employees, to enable them to understand the operation of engineered standards and safe manual handling methods. Finally, the Commission recommended the parties (employers, union and WorkCover) convene a conference to consider the findings and recommendations of its Report, which was “envisaged as a conciliation procedure whereby proper consultations could commence” (IRCNSW 1996: 6-11).

Although the Commission failed to proscribe the use of engineered standards, their recommendations constrained employer use of technology in at least two respects. First, consultation was required prior to implementing the standards, which included the union raising its concerns and the employer considering national codes of practice and safety in their implementation. Second, an ongoing monitoring system was proposed, which included regular standards audits and a safety and health monitoring system with recourse to a governmental agency. However, the Commission failed to set both a timetable for the implementation of its recommendations as well as a mandate for consultation. In addition, two of the four companies had *already implemented* engineered standards thus placing the onus on the union to challenge the standards. In the following section, we trace the response of both employers and union to the Inquiry recommendations and the factors underlying the limits of state regulation of new workplace technologies.

COMPETITIVE PRESSURES AND NEW STRATEGIES IN GROCERY WAREHOUSING

While the Inquiry’s report had the potential to significantly restrict employer prerogatives in the management of the engineered standards

system, the major employers in grocery retailing had already begun to invest in broader strategies aimed at further reducing operating costs and improving performance. In this sense, engineered standards and computerized monitoring represented only one facet of a larger process of technological and industry rationalization.

Four firms dominate New South Wales grocery retailing; Woolworths, which accounted for 36 per cent of market share in 1999, Coles Myer with 32 per cent, Franklins with 13 per cent, and Davids with 13 per cent (Mitchell 2000). Within the industry, competition for market share is intense and profit margins are tight. For example, Woolworths' sales to earnings ratio before interest and tax were just under 3 per cent in 1998-99 compared to 6.5 per cent for Safeway in the U.S. in 1998 and 5.6 per cent for Tesco in the U.K. in 1999 (Mitchell and Beeby 2000). Pressure for continued improvement in profitability and market share has been driven by the finance market and the constant scrutiny of investors for improved shareholder value.

In the last few years, the four major grocery companies adopted a range of strategies to improve corporate performance. Citing increasing competitive pressures, Woolworths invested heavily during the later 1990s in expanding its warehouse capacity, introducing new warehouse stock management systems, and acquiring a number of smaller independent grocers, adding at least \$1 billion to their sales figures (Burke 1997; Mitchell 1998). During the first half of 2000, Woolworths announced record profits as a result of significant cost cutting, warehouse rationalization and expansion of its fresh food market (Boyle 2000). In a similar manner, Coles Myer, Australia's largest retail company, undertook a major rationalization of its operations during the later 1990s under the leadership of a new American CEO. Despite being credited with "turning the company around" and doubling its share price in a three year period, Coles suffered a decline in value and continued to seek ways of cutting back Woolworths' lead in grocery retailing (Mitchell 1998; Schmidt 1999). Franklins also suffered from declining earnings due to higher capital costs and adopted a new strategy of locating stores in secondary properties and emphasizing fresh foods, which have a greater profit margin (White 1999b; Mitchell 2000). At the time of writing, declining profitability had placed the supermarket chain's future in question (Bartholomeusz 2001). The fourth major player in the grocery industry, Davids Holdings, was acquired by a South African company, Metro Cash and Carry, after several years of poor financial performance (Carr 1999). During late 1999, the company's new managing director announced that he hoped to meet the objective of raising pre-tax profit from 1 per cent of turnover to 2.5 per cent and focused on a strategy of cost reductions as a way of improving bottom-line performance (Beeby 1999).

Added to this context of rationalization, the industry was further shaken by the entry of a new foreign grocery company to the Australian market. Aldi, a German-owned grocery chain, is the fifth largest retailer in the world and began Australian operations in late 2000. The company built a major new grocery distribution centre in the western Sydney suburbs at a cost of \$46 million, requiring an estimated thirty retail stores (Carr 2000). The competitive threat that this new operator poses to the established grocery companies is significant given that Aldi's formula is to operate relatively small stores and stock a limited line of popular house brands at heavily discounted prices (Ries 2000). This strategy placed significant pressure on the "Big Four" to match Aldi's pricing structure and threatened existing profit margins. While the established firms publicly dismissed the threat, one industry analyst argued that in order to successfully compete against foreign competitors such as Aldi, the major grocery retailers needed to further concentrate on "delivery at a better price and improving overall efficiency" (White 1999a).

Against this competitive context, the major grocery firms sought to radically reshape the nature of their warehousing operations. While much of the rationalization undertaken in the industry during the 1990s concentrated on micro-level changes to warehouse operations, through the introduction of computerized warehouse management systems and work monitoring technologies such as engineered standards (Wright and Lund 1998), in the last few years the focus of change has shifted to a broader macro strategy of "supply-chain management." These reforms have sought to integrate all elements of the grocery supply chain, starting with the producer, the wholesaler, retailer, shipper and ultimately the customer (Narayanan 1996).

One example of these broader changes was the increasing adoption by grocery warehouses of "cross-docking." In cross-docking, full and partial pallet loads of stock are received from supplying trucks and transported directly *across the dock* and loaded onto outgoing trucks and trailers *without* the need for temporary warehouse storage (Schaffer 1998). In addition to the use of cross-docking, there has also been an increase in the contracting out of warehousing and transportation functions to third-party logistics (3PL) companies (Milligan 2000). These practices allow grocery companies to transfer the administration of an existing warehouse and the supply and delivery trucks to a third party contractor, thus making the existing warehouse and trucking workers of that grocery employer redundant. The implications of 3PL and cross-docking for warehouse unions are potentially devastating in terms of potential job losses and downward pressure on negotiated wage levels and working conditions. For the employer, the availability of these technologies significantly reduces fixed assets as well as variable labour costs, thus improving profitability.

Taken together, this evidence suggests that in the aftermath of the Inquiry, the grocery warehousing industry has continued to undergo major restructuring requiring further cost cutting and improvements in operational efficiency. It is against this context that we review the implementation of the Industrial Commission's recommendations regarding the use of engineered standards.

THE VARIABILITY OF STATE REGULATION OF WAREHOUSE WORK

While the Industrial Commission's Inquiry into the engineered standards system represented a significant intervention by the state into the workplace operations of the major grocery warehousing companies, the actual impact of the Inquiry's recommendations upon employer practice in this industry is more difficult to discern. In an effort to track changes in workplace procedures, we analyzed recent New South Wales enterprise agreements and the state Storeman and Packers' Award for details relating to health and safety, consultative structures and engineered standards. In addition, arbitrated disputes in the grocery warehousing industry were reviewed as well as the activities of the government occupational health and safety authority WorkCover. This evidence suggests that in the years following the Inquiry, the attitude of state regulators towards the engineered standards system shifted, with growing impatience exhibited towards continued trade union resistance to the new technology.

Engineered Standards and Enterprise Agreements

In the aftermath of the March 1996 Commission report, it is striking to note how few of the recommendations appear in the enterprise agreements. For example, the 1998 Woolworths' agreements make no specific mention of occupational health and safety or engineered standards, except that in reviewing work methods, management will take into consideration occupational health and safety issues with the proviso that: "Employees shall not impose any restrictions or limitations on a reasonable review of work methods" (Woolworths 1998: 925). A more accommodating approach was evident in the most recent Coles Myer agreement (Coles 2000: 142-143), where the NUW and management agreed "in principle" to the introduction of team based bonuses linked in part to performance against standards. However, the NUW is entitled to a quarterly meeting to review "operational issues" and, after one year, the plan may be terminated by a majority vote of all members.

By contrast, Franklins' 1999 enterprise agreement was grounded in both the letter and the spirit of the Inquiry's recommendations, perhaps

because the company had yet to fully implement a comprehensive engineered standards system of work monitoring prior to the commencement of the Inquiry. A consistent theme in this agreement is a commitment by the employer to consultation with employees in the introduction of new workplace technologies in combination with employee acceptance of new work standards. Unlike the Woolworths and Coles agreements, the procedures for implementing engineered standards are more explicitly canvassed. Section 20 states that:

The employer shall in cooperation and in conjunction with the employees and the union actively pursue a new method by which the performance and the efficiency of work is measured in the warehouse operated by the employer. The new measure of efficiency and performance of work (hereinafter called work standards) shall become the benchmark by which the warehouse operated by the employer shall be deemed and be seen to be deemed to be operating at an accepted level of productivity. Each definable work task within the warehouse operated by the employer shall be subject to a work standards evaluation. Work standards shall be geared to improving the efficiency and productivity in the warehouse operated by the employer by eliminating unnecessary time wastage in the performance of work and by the adoption of established industrial engineering methodology as applied in warehousing and distribution. *No measurement of efficiency and performance of work shall be developed and implemented without regard to the obligation each of the parties have in respect to the Occupational Health and Safety requirements and the National Standard for Manual Handling and the National Code of Practice for Manual Handling. No employee shall be treated unfairly in his/her employment, nor shall an employee be dismissed, for mere fact of not achieving the work standards allocated to the work task performed by the employee* (emphasis added, Franklins Ltd. 1999).

The most specific, and from the union's perspective, the most onerous, industrial provisions occur at Davids' warehouses, which resulted from an arbitrated award of the Industrial Relations Commission of NSW. In this arbitrated award, promotion to higher pay grades was explicitly linked to the workers' ability to meet performance expectations based on engineered standards. As the agreement states: "it is clearly recognised and accepted that continued work in the grade is based on competence and the ability to meet the performance standards set by management," which are based on "absenteeism, punctuality, time wasting, accuracy and performance as measured by Engineered Standards" (IRCNSW 1998b: 6). Those employees who fail to meet the performance standards, can, under section 31 of this agreement, be made subject to the "Counselling Procedure," in which employees are entitled to counselling and two separate warnings, which may be attended by the union delegate. If, following the two counselling sessions, there continues to be a breach of performance standards, the award specifies that the employee may be terminated. While the Davids' award

sets out the parameters for the establishment of a consultative committee, there is no mention of what role the union might play within such a committee, nor the scope and ambit of the committee's business (IRCNSW 1998b: 19). It is highly significant that the David's arbitrated award was the first opportunity the Commission had to revisit the warehouse engineered standards issue since its March 1996 ruling. Even though engineered standards were only one of many issues in dispute, as highlighted in the next section, the language of the Commission clearly demonstrates a growing impatience with the union's intransigence on this issue.

Engineered Standards Reconsidered: Subsequent Arbitration Decisions

In addition to the failure of industrial agreements to incorporate the Commission's recommendations regarding the engineered standards system, in recent years there has also been a notable hardening in the attitude of state regulators towards the major warehouse union in New South Wales, the NUW. This increasing impatience has been due in part to the union's continued confrontational style and steadfast opposition to engineered standards.

The David's Arbitrated Award

In December 1998, following a period of protracted negotiation for a new enterprise agreement culminating in a bitter eight-week strike, an arbitrated award hearing was initiated by the NSW Industrial Commission. Davids argued that a new award was required because of the company's financial uncertainty and the need for greater flexibility in its operations given increased industry competition. The union, on the other hand, sought to maintain their members existing conditions and prevent the company from increasing minimum hours, employing more casual employees, and expanding the use of engineered standards. However the union's steadfast resistance clearly alienated it from the presiding judge.²

In handing down the arbitrated award, Justice Schmidt accepted the company's contention that the pre-existing limits posed an "inappropriate impediment to both the efficient operation of Davids' warehouses" and granted the company's claim by increasing the standard working week from 36 to 38 hours and loosened restrictions on the employment of casual and

2. The union was faulted by the presiding judge for not being properly prepared and failing to present evidence in support of its claims. It seems likely however that the union had difficulty maintaining a battle on two fronts—maintaining picket lines and, at the same time, conducting the case in the courtroom.

part-time staff (IRCNSW 1998c: 24). In terms of the engineered standards system, the Commission accepted the company's claim seeking to link promotion to the achievement of performance standards. Citing the company's evidence, the Commission noted that prior to the industrial action the workforce had on average performed at 95 to 98 per cent of standard following the introduction of an incentive wage scheme, and that only two or three employees had been dismissed for failing to meet production standards (IRCNSW 1998c: 26-27).

The Toll Demarcation Dispute

Later in 1998, another Industrial Commission case added to the NUW's troubles. In *NUW/NSW Branch and Toll*, the Commission ruled that the rival Transport Workers Union (TWU) had sole jurisdiction of workers at a third-party warehouse associated with Franklins but run by Toll Transport (IRCNSW 1998a). Traditionally, the NUW had represented workers at Franklins' warehouses, but in July 1997 Franklins announced the closure of its Chullora facility, making about two hundred NUW members redundant. Franklins transferred much of the work to other facilities including a new warehouse at Moorebank operated by a third party, TNT Pty Ltd. TNT advised the NUW that Moorebank employees would be TWU members, which prompted an industrial dispute. In December 1997, TNT assigned its interest in the Moorebank facility to another transportation company, Toll, which also asserted its preference for a collective bargaining relationship with the TWU. In the demarcation dispute that followed, the TWU argued before the Commission that Toll was a transport employer, not a warehouse employer, and that it had a long-standing collective bargaining relationship with the TWU. Indeed, 95 per cent of Toll's employees were members of the TWU. Additionally, they claimed that the Moorebank facility was not a traditional warehouse.

Evidence in the record revealed that employees at the Moorebank warehouse were cross-trained to load and unload trucks, to assemble pallets and load trucks, and that even drivers were trained to do this work. Justice Hungerford also noted the significantly higher productivity of the TWU workforce at Moorebank compared with NUW workers at older warehouses. In concluding Justice Hungerford stated, "[I]n my view, it is both appropriate and practical that TWU continue to represent employees at the Moorebank site," commenting specifically in relation to the NUW:

Of all the facts, my conclusion is that the industrial conduct of the NUW is such as to disqualify it from the benefit of an order to represent the industrial interests of the employees concerned at the Moorebank facility in the absence of any counterbalancing by the other relevant elements; all those elements clearly favour the TWU and not the NUW. The NUW's application must be refused (IRCNSW 1998a: 41).

Perhaps the greatest impact of the Toll case is the apparent judicial notice and perhaps even sanction of 3PL as a legitimate employer strategy to avoid dealing with a militant trade union vehemently opposed to engineered standards. In this case, an employer can simply threaten to contract out the warehouse operation. It should be noted here that in awarding the disputed work assignment to the TWU, the Moorebank facility came under the terms of the Transport Workers state award, which mandates considerably lower hourly wage rates.

Unfair Dismissal for Failing to Meet Production Standards

In 2000, the Commission issued yet another ruling that further endorsed employer use of engineered standards, as well as providing state sanction for employers to discipline workers who failed to meet the standards (IRCNSW 2000). In this case, the union charged that Davids had unfairly dismissed two union delegates for failure to achieve the production standards. Here the onus was on the union to prove that the dismissals were “harsh, unjust or unreasonable”. In construing the “harsh, unjust and unreasonable” standard, Justice Sams argued: “I would expect a reasonable employer to act with tolerance, compassion and a sense of decency in respect to employees who may be suffering from some long term medical or domestic difficulty.” However, he continued, “there is a point at which such tolerance is unable to be sustained,” such as where “there may be simply a poor attitudinal disposition or stubbornness to accept change,” in which case, “it would seem dismissal would be the inevitable outcome” (IRCNSW 2000: 9).

The first applicant had been employed at Davids for nearly twenty years and was terminated in May 1999. During performance reviews, he was able to achieve only 70 to 80 per cent of standard, and received two warnings. Repeated reference was made to the applicant’s opposition to engineered standards and the fact that he had given testimony in the Inquiry sharply critical of engineered standards; the applicant repeatedly told company officials “I do not recognise standards and I am not going to adhere to them.” The second applicant was employed for approximately eight years and was dismissed for poor work performance in April 1999, after receiving two formal warnings. He had also received numerous counselling sessions and had been one of the worst performers against standard in the warehouse. While not as outspoken as the first applicant, he said he would continue working as always and “if the company does not like it they can terminate me.” He had also testified in the Engineered Standards Inquiry.

The union’s contentions in both cases were similar, in that (a) the engineered standards operating at Davids did not comply with the recommendations of the earlier Inquiry and, as a result, any targets set or

disciplinary action taken as a result should be invalid; and (b) the applicant was working to his capacity in a safe manner, following the preferred method required by the employer, thus making the dismissal for poor performance unfair, unjust and unreasonable. The employer arguments rejected the attack on engineered standards saying the matter had already been considered by the Inquiry and by Justice Schmidt in the Davids award hearing; that the applicants performance was less than satisfactory; and that there was no evidence of procedural unfairness or other mitigating factors.

Justice Sams reasoned it was impossible to view this case “in isolation from the God-awful history of industrial relations which has plagued this site over recent years” (IRCNSW 2000: 47). He noted that engineered standards had “existed since 1993” and the employer’s ability to dismiss the applicant could have been done at any time; “frankly stated, it was rarely invoked because of management’s fear of an industrial reprisal.” This would appear to be no idle threat, given that the union had been successful in limiting the use of engineered standards to two of the four major employers prior to the Inquiry. Siding with the employer argument that the issue of engineered standards was settled, Justice Sams emphasized the oppositional attitude of the union and its delegates. As he stated of one of the dismissed workers:

The evidence has also demonstrated that the applicant has one significant, but unfortunate, trait. Let me put it bluntly, he has failed to appreciate that the battle over the introduction of engineered standards has long since been fought, and lost. I am convinced the applicant has continued to conduct his own bitter and unremitting campaign of protest which is both personal and unshakeable...I am left in no doubt that the applicant has persisted with an obdurate and inflexible opposition to engineered standards (IRCNSW 2000: 49).

In concluding, Justice Sams found for the employer and upheld the dismissals.

Taken together, these three cases indicated a strong shift in the tenor of state regulation in this industry. In contrast to the Inquiry’s report, which emphasized the need for union and worker involvement in the implementation of engineered standards, these more recent decisions highlighted the Commission’s growing impatience with union opposition and appeared to endorse the employer’s rationalization of the work process. The one remaining avenue for union resistance to engineered standards was the state regulation of occupational health and safety.

Engineered Standards and the Regulation of Warehouse Health and Safety

The occupational health and safety implications of engineered standards were one of the key terms of reference of the original Industrial

Commission Inquiry and featured prominently in the Inquiry's report and recommendations. However, despite well-documented concerns regarding increased risk of manual handling injuries and physiological and psychological stress under engineered standards (Lund and Mericle 2000), the intervention of occupational health and safety authorities on this issue has been varied.

Initially, state intervention in regard to the health and safety issues appeared to offer the potential for significant limitations upon the employers' use of the new technology. In October 1993, the NUW filed a petition with the WorkCover authority signed by 115 employees of Woolworth's Yennora warehouse requesting an immediate safety audit to investigate the introduction of engineered standards. In the union's view, these standards failed to adequately consider manual handling standards and the individual differences of workers. In February 1994, a safety audit was conducted at the Yennora warehouse by WorkCover, which was followed up by further site visits. WorkCover's report found that engineered standards did "fail to have regard for the individual characteristics and capabilities of employees" and that warehouse management "have not demonstrated that they have complied with" the National Standard and Code of Practice on Manual Handling. Specifically WorkCover noted that the company had failed to undertake a health and safety risk assessment in consultation with employees and union representatives, which took into account the skill and experience, age, and special needs of employees. This report was forwarded to Woolworths and was submitted by WorkCover as evidence in the Inquiry (WorkCover 1994).

Following the Inquiry in October 1996, WorkCover issued a proposed "implementation plan" based on the Inquiry recommendations, which was sent to the Retail Traders Association of New South Wales. WorkCover indicated that it had created a group of specialist inspectors and would appoint a liaison officer to assist in implementing the National Standard for Manual Handling and then outlined a three part plan including training, risk identification and risk control in relation to the operation of engineered standards. In the month following receipt of the proposed implementation plan, the employer association responded, rejecting the proposal, arguing that the NUW and the Labor Council were strongly opposed to the introduction of engineered standards despite the findings of the Commission, and that appropriate training and information had already been implemented by the warehouse employers.

No further action was taken by WorkCover until early 2000; the reasons given included lack of trained staff and other workload demands. However, the occupational health and safety concerns did not disappear through neglect. The NUW and the Labour Council continued to apply pressure

on WorkCover to pursue the health and safety issues. In early 2000, WorkCover issued Davids with several improvement notices citing sections of the Manual Handling regulation and, despite several extensions, no action was taken. In May 2000, WorkCover issued monetary penalties against Davids, but David's quickly appealed and WorkCover has decided not to pursue the case due to procedural problems. Ultimately state regulation of the occupational health and safety implications of engineered standards has proven to be weak and failed to significantly constrain employer use of the new technology.

CONCLUSION

In an era in which governments worldwide have progressively retreated from the regulation of the employment relationship, the establishment by the NSW Government of an inquiry into the use of engineered standards in grocery warehousing appeared to present a countervailing example of specific state regulation of new workplace technologies. The combination of militant trade union resistance and a centralized arbitration system resulted in the first thorough industry review of the engineered standards system anywhere in the world, and had the potential to significantly constrain employer use of the new technology. The Industrial Relations Commission's Inquiry opened the door for union and worker involvement over the ways in which the engineered standards system would operate; a potentially significant departure from management's unilateral use of the technology in other jurisdictions.

However, as has been demonstrated, the actual degree to which the state constrained management's use of the new technology has been minimal. While the Inquiry's recommendations acknowledged many of the union's concerns, the Inquiry's report merely provided recommendations for future action with no binding commitment required from the employers and no effective oversight mechanism to monitor the implementation of its recommendations. Moreover, in the years following the Inquiry, the ambivalence of the state's position was further highlighted by the reticence of government and health and safety authorities to enforce the Inquiry's recommendations, as well as a growing impatience within the arbitration tribunal towards the continued militancy of union resistance. Increasingly, state regulators moved from a position of potentially restricting the operation of engineered standards, to one of ratifying the technology, overseeing the entry of rival trade unions within the industry, and disciplining union militancy.

Returning to Edwards' (1986: 154) argument that particular instances of state regulation need to be situated within the specific circumstances of

each case, how then can the contradictory role of state regulators be explained in this example? Several reasons are suggested for the state's ultimately limited regulation of the engineered standards system. First, the prime goal of industrial arbitration in the Australian context has been the settlement of industrial disputes, rather than the protection of worker interests. Despite being charged with the responsibility to investigate the implications of the engineered standards system on a range of criteria, the prime goal of the Commission ultimately appeared to focus on achieving industrial peace, rather than adopting a position of arbiter of the merits or otherwise of the technology. Second, despite strong competition within grocery warehousing, the major employers in the industry presented a largely united front in their desire to introduce engineered standards and provided an appealing argument regarding the efficiency gains that would flow from the new technology. Added to this, two of the four companies had already implemented engineered standards, presenting the government and Commission with a *fait accompli*. However, third and perhaps most importantly, subsequent decisions of the Commission in this industry revealed a prevailing disposition towards the merits of improving industry efficiency and productivity as a primary goal of industrial relations regulation. Productivity enhancement has been a core goal of industrial relations "reform" in Australia over the last two decades, and has dominated government and arbitration tribunal thinking in preference to more traditional concerns such as distributive justice (Bramble 1989; Buchanan and Callus 1993). In an era in which productivity and efficiency have become the dominant concerns of government, significant limitations upon employers' rights to use particular technologies were always unlikely.

Ultimately this case provides support for those theorists who have stressed the often contradictory and ambivalent role of state actors in regulating the labour process. Moreover, in an era of neo-liberal economic reform, the accelerated global diffusion of new workplace technologies may be less constrained by national differences in labour regulation than has been commonly assumed.

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RÉSUMÉ

Réglementation étatique et le nouveau taylorisme : le cas des entrepôts du secteur de l'alimentation en Australie

Les études traitant des nouvelles technologies sur les lieux de travail et des pratiques managériales en contexte de mondialisation ne tiennent pas toujours compte des différences nationales en matière de législation du travail. Pourtant, il existe une littérature abondante mettant en lumière l'importance des différents systèmes nationaux de législation du travail et du rôle de l'État dans la réglementation du travail. Il existe, par exemple, en Australie, un système d'arbitrage obligatoire, dont la Commission a rendu des décisions réglementant les conditions de travail de toute une industrie. Cet article analyse la possibilité pour des systèmes de réglementation étatique de défier les tendances convergentes des nouvelles technologies sur les lieux de travail. Pour ce faire, nous étudions un cas d'intervention du gouvernement suite à l'introduction d'un système américain informatisé de contrôle du travail au sein de l'industrie australienne d'entreposage des aliments.

Des consultants américains ont élaboré des systèmes de normes de contrôle de travail mises au point par des ingénieurs à la fin des années 1970 et 1980 et ces systèmes se sont répandus dans les chaînes de supermarchés à travers le monde. Au début de la décennie suivante, les détaillants en Australie ont décidé d'implanter ces systèmes de contrôle du travail au sein de leurs activités dans les entrepôts. Dans la majorité des États australiens, les syndicats représentant les travailleurs de l'alimentation ont fait montre de peu de résistance face à cette nouvelle technologie. Cependant, une position beaucoup plus militante et conflictuelle fut adoptée dans la province la plus vaste du pays, le New South Wales (NSW), où la National Union of Workers contra les essais de diffusion de ces systèmes de normes. À la suite de violentes manifestations aux entrepôts d'alimentation les plus importants, le gouvernement du NSW mit sur pied, vers la fin de 1994, une enquête spéciale conduite par la Commission industrielle du NSW.

La Commission d'enquête a alors recommandé la participation du syndicat et des travailleurs sur les façons d'appliquer le système de normes conçu par les ingénieurs. Cette approche se distinguait de façon significative de l'utilisation unilatérale de la technologie par les employeurs dans les autres juridictions. Le mandat de l'enquête donnait aussi à la Commission le pouvoir de restreindre l'introduction de cette nouvelle technologie. Cependant, après deux ans d'audition et de délibérations, elle s'est abstenue d'intervenir et, au lieu, elle a recommandé aux employeurs et au syndicat de s'engager dans une consultation plus vaste sur l'introduction et la mise en œuvre de la technologie.

De plus, au cours des années qui ont suivi cette enquête, une série de décisions arbitrales vinrent signaler que le rôle de l'État se modifiait en adoptant une position plus accommodante envers les employeurs. Parmi ces décisions, une sentence arbitrale confirmait le droit d'un employeur d'associer la non-atteinte des normes de performance à une intervention disciplinaire de sa part. Une deuxième décision accordait à un syndicat rival, non opposé aux nouvelles normes, l'accréditation chez un sous-traitant. Enfin, une troisième décision maintenait le droit de l'employeur de discipliner et même de congédier les travailleurs qui ne réussissaient pas à respecter les standards imposés par le système de gestion.

En outre, l'Administration de la santé et de la sécurité au travail du New South Wales, qui était chargée de faire respecter les recommandations de la Commission d'enquête dans ce domaine, a aussi échoué dans son intervention. Suite à une longue période d'inactivité, l'Administration émit des sanctions contre un des employeurs mais décida par la suite de ne pas entreprendre de procédures judiciaires. L'État modifia donc sa position et en vint à approuver l'usage de la nouvelle technologie, surveillant l'entrée de syndicats rivaux dans le secteur et disciplinant le militantisme syndical.

Comment expliquer ces interventions apparemment contradictoires des acteurs étatiques ? Sur ce point, nous suggérons plusieurs raisons ayant pu conduire à la réglementation étatique en définitive plutôt timide eu égard à ces normes conçues par des ingénieurs. Premièrement, l'objectif de l'arbitrage en contexte australien est le règlement des conflits du travail et non la protection des intérêts des travailleurs. Ainsi, bien que chargée d'enquêter sur les implications du système de normes sur un éventail de critères, la Commission a pour but premier d'assurer la paix industrielle plutôt que d'adopter une position d'arbitre face aux mérites ou aux désavantages de la technologie. Deuxièmement, en dépit d'une concurrence féroce à l'intérieur même de l'industrie de l'entreposage, les principaux employeurs présentèrent un front uni dans leur désir d'introduire les nouvelles normes et ils possédaient des arguments convaincants au sujet de la rentabilité qui découlerait de cette nouvelle technologie. Troisièmement, et c'est peut-être là la raison la plus importante, les décisions ultérieures de la Commission dans ce secteur révélèrent une disposition marquée à l'endroit des mérites d'une efficacité et d'une productivité améliorées comme étant les principaux objectifs d'une réglementation des relations du travail. La promotion d'une plus grande productivité est devenue l'objectif central d'une réforme des relations du travail en Australie au cours des deux dernières décennies, à un point tel qu'il a dominé la réflexion du gouvernement et des tribunaux d'arbitrage en négligeant des préoccupations aussi traditionnelles que la justice distributive, pour citer un exemple. Dans un tel contexte, l'imposition de limites importantes aux employeurs face à l'utilisation de technologies particulières devint problématique.

Finalement, ce cas fournit un support aux théoriciens qui ont signalé le rôle ambivalent et contradictoire du législateur en matière de réglementation du travail. De plus, dans une ère de réforme économique néolibérale, la diffusion mondiale et accélérée des nouvelles technologies sur les lieux de travail est peut-être moins gênée par des différences nationales en matière de réglementation du travail qu'on l'avait couramment pensé au départ.