C O R R E C T E D V E R S I O N

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 23 August 2004

Members

Mr B. N. Atkinson
Mr R. H. Bowden
Mr H. F. Delahunty
Mr B. J. Jenkins
Ms M. V. Morand
Mr N. F. Pullen
Mr A. G. Robinson

Chair: Mr A. G. Robinson
Deputy Chair: Mr B. N. Atkinson

Staff

Research Officer: Ms K. Newitt

Witnesses

Mr M. Pakula, Secretary;

Mr A. Thow, Assistant Secretary; and

Ms D. Lloyd, Communications Officer, Victorian Branch, National Union of Workers.

The CHAIR — The Economic Development Committee's public hearing this afternoon welcomes representatives from the National Union of Workers. As you know, we are inquiring into labour hire. We have received a reference with overriding instructions to report back to the Parliament by 31 December. You would have seen the terms of reference. It is a public hearing, one of several public hearings we are having. We are giving an opportunity to a large number of groups to come along and talk to us about their thoughts on labour hire practices, and reforms if necessary. What you say today is covered by parliamentary privilege — not that we anticipate much of a need for that, but it needs to be said to you. It only extends as long as you are giving evidence; once that finishes it stops. What we will do is make some opening introductory remarks and then we will have some questions around the table. This is an all-party committee of the Parliament, with Labor, Liberal and National Party members from the upper and lower houses. Finally, I apologise that we were running a bit late. Over to you, Martin.

Mr PAKULA — Just at the outset, I look for the guidance of the committee. I have an oral submission to make, but I have written copies of it. I am relaxed about the way the committee wants to handle that. I can provide members of the committee with copies of that submission and just take the committee to the salient points, or I can read it all onto the record. I am relaxed about the way the committee wants to deal with it.

The CHAIR — I think it would probably help if you just took us to the salient points. We are finding that a lot of submissions, in a general sense, are covering the same material, so the salient points would be what we want to get at.

Mr PAKULA — I am aware that written submissions have actually closed. It does say 'written submission' on the front, but it should say 'written version of oral submission', I suppose.

The CHAIR — They could be just copious notes.

Mr PAKULA — Just copious notes, yes. I will endeavour to deal with it as quickly as I can.

The initial thing the National Union of Workers says is that the scope of labour hire and the scale of it is exceptionally high by international standards and it is growing at a rapid rate. I know that is not a point that the committee is unaware of. Paragraph 4 indicates that we now have the second highest level of casual employment in the OECD. In paragraph 6 we try to summarise what we say are the major characteristics of labour hire employment. There has been a massive increase in the number of labour hire providers both big and small. If you went back a decade or so you would have had companies like Adia, Forstaff, Drake Overload and one or two others who would have been providing the lion's share of labour hire employees in Victoria. There are now literally hundreds of labour hire employers both big and small. There has been increasing activity by major international body hire agencies which saw the introduction of Manpower in recent years, the massive amalgamation of Adia and Ecco into Adecco and a number of other international agencies which have started to play a role.

There is a growth in the incidence of labour hire both as a proportion of total enterprises and as a proportion of employees. The fact is that labour hire is double the general average in larger companies, larger enterprises. More and more we see labour hire being used to meet ongoing, permanent labour hire requirements. I can speak with authority about distribution centres more than any other type of workplace, but in a number of warehouses now there are no permanent employees any more. The entire work force is provided by labour hire companies, simply because the employer does not want to have a full-time work force of its own. On many occasions now they are asking the labour hire company to put the people on as permanents, but as permanents of the labour hire company rather than of the client. The problem with that is that there is still no job security because the client can just terminate the services of that labour hire company at any time and get another one.

The last few dot points are covered in the explanation I just gave. With engagement of employees for extended periods there are people who have been engaged at workplaces through labour hire companies for the best part of a decade. We refer to the labour hire industry as the $10 billion gorilla in the corner, not because we think it is an ugly gorilla but because it is a giant, monolithic economic unit that everybody knows about but nobody wants to acknowledge that it is a problem. There has been no effective regulation to deal with the issue of labour hire under any jurisdiction in the country. As a result it just continues to burgeon with all the problems that brings with it.

Let us go down to paragraph 9. I say this as a person within the union movement who has dealt with the labour hire industry for more than 11 years, and as someone who has a very good relationship with a number of labour hire companies. We do not have a truck against labour hire companies per se. What we say is that on many occasions

labour hire arrangements have been adopted to get around the law in regard to the following areas: primarily industrial and employment law, and I will go into some detail about that later, OHS — companies that do not want to have to handle the occupational health and safety issues in their workplace — workers compensation, taxation and superannuation. We do not for a moment think this is simply a matter for the Victorian government. If this is going to be effectively dealt with, ultimately there will need to be amendments in federal law, but we say that we need to ensure that the spirit of workplace relations laws should not be subverted by the use of labour hire, otherwise the laws that are passed have no efficacy.

We make the point about enterprise bargaining at points 11 and 12. There are two major points that we make about enterprise bargaining. First of all, employees who are engaged through labour hire companies are effectively in no position to enterprise bargain at all. Firstly, they are normally casuals. Secondly, there is no security of employment for their employer, so their employer says to them, 'I cannot do an enterprise agreement with you because I could be given the boot by the client at any time'. Beyond that they say that their effective wage rates are determined by the client. So if a labour hire casual is on $14 an hour and the labour hire company is receiving $16 an hour from the client, the wage increase that a labour hire employee can ask for and can receive is limited by what the client is paying the labour hire company — and they are certainly not going to run at a loss. In any case there is no effective bargaining power that applies to insecure, casual employment.

We also say, importantly at point 12, that a system that allows enterprise agreements and awards to be subverted and got around is deeply flawed. There are numerous examples of times when unions, not just our union, and employees, reach agreement with their employers about wages and conditions to operate at their workplace, and the employer then sources labour through a labour hire company that is not bound to apply those terms and conditions. It effectively renders a joke the agreement which has been entered into. I can think of examples — I am not going to go into names of companies — where we have reached agreements with employers about wages and conditions to apply. They then get three or four labour hire companies — I will say there are only some labour hire companies that will do this, most will not — to provide labour at $4 or $5 per hour less than the agreed rate and throw up their hands and say, 'Sorry, nothing to do with us. Take it up with the labour hire provider'. That is great in theory, but is almost impossible to do in practice.

Referring to the industry itself, there are both good and bad employers in the industry. There are some labour hire companies which have very high standards. Frankly, they are not the ones who feel they have anything to lose, from my discussions with them anyway, through this process. However, those agencies are routinely underbid by those who treat their employees badly and observe no minimum standards. We are constantly being asked by the reputable providers when we are going to do something about these bottom feeders, these companies which have no OHS standards, no WorkCover standards, no employment practices that you could talk about, no systems for making sure payroll is done correctly and no observance of award and certified agreements. We are always asked by the larger agencies when we are going to do something effective about those companies.

Turning to page 5, it is not that nothing is being done about this elsewhere. This is a problem that does not just exist in Australia. We are one of the few places where there is effectively no regulation of it. In other economies we have things like minimum and maximum terms of engagement that can apply to labour hire employees, limitations on the category of work, a maximum number of successive contracts. Most importantly, in the USA they have the notion of joint employment. Without going through all of what is on the following two pages, what joint employment effectively does, means the client — the host employer — cannot use the labour hire company to avoid its obligations. The courts in America have found that as a matter of effective law the labour hire company and the client are treated as joint employers. The client, if you like, cannot simply say, 'WorkCover is not my problem, the wage rates are not my problem, health and safety is not my problem — it is all the problem of the labour hire company'. The courts have found that if the client effectively exercises control over the workers — which is the case in 95 per cent of the circumstances — then they are treated as joint employers and bear responsibility. Recognition of joint employment in a statutory sense is a federal responsibility so there is nothing we can ask this committee to do in regard to that. However, there are other things which we come to at the end that we think can be done.

The CHAIR — We just need to keep on eye on the clock.

Mr PAKULA — I will be no more than 5 minutes. There are three case studies laid out on pages 7 to 10 which I will allow the committee members to read at their leisure. Basically they are about three labour hire companies — this is probably where the privilege comes in — Poultry 99, Westpower Resources and Ready

Workforce. Without going into detail, Poultry 99 is an example of a place which has provided labour to most or all of the poultry processors in Victoria. They seem for some reason to have almost a monopoly on boners. None of the poultry companies could get their own boners — if they wanted to get a boner they had to go through Poultry 99. They employ people for between $8 and $12 an hour when the industry standard is between $15 and $20. They are paid under the table — they are paid cash. The poultry processors claim no knowledge of what is going on; they say it is not within their control. If you read the report, what eventually happened is Baiada at Laverton was raided by the Department of Immigration and Multicultural and Indigenous Affairs, the federal police, Centrelink and the Australian Tax Office. Most of the Poultry 99 employees were illegal immigrants being paid cash. Ten were sent to Maribyrnong detention centre and 95 had their Centrelink payments suspended — they were also receiving Centrelink payments at the behest of the company because it topped up their wage.

Westpower Resources, again without going into detail, is one company which actually puts itself out there as a company that is available if you want to avoid your obligations in a whole range of areas: 'Use us and you do not have to worry about health and safety, you do not have to worry about WorkCover. If you want to get rid of anyone, just tell us who you want to get rid of. You control all the people'. At one company in particular they are providing that labour at between $5 and $6 per hour less than the rate set out in the certified agreement.

The last example is a sad example. It was not the behaviour of the labour hire company which was bad, it was the behaviour of the client. George Weston Foods had a labour hire work force for up to 10 years at its place in Abbotsford. It shut last year and these people — there were only about a dozen of them, no, more than a dozen — said, 'We have been here for a decade, can we have some redundancy?'. These people had gone from labour hire company to labour hire company. Every time George Weston changed its labour hire provider these people moved to the new provider. They went from one agency to the next to the next to the next, but they had 10 years of continuous work at George Weston Foods. We actually ran a case along the joint employment line. We said surely in these circumstances the Commission must hold that George Weston Foods has some responsibility to these people. The answer was as a matter of law it does not, that that notion — the doctrine of joint employment — is not recognised in Australia, so they were left with nothing. We thought in the circumstances that that is an absolute example of how labour hire can be used to deny people their rights.

Going on to the recommendations on pages 11 and 12, we think there should be a licensing regime. It is too easy to set up a labour hire company — all you need is an Australian Business Number and you can hang up your shingle. There are no requirements at all. We think the sorts of things the committee should consider in terms of what should be in a licensing regime would be a good character requirement; demonstrated capacity to manage the employment and placement of staff; minimum capitalisation requirements — we do not want people dropping out on workers' pay, sometimes these people set up with no money in the bank and they struggle to pay people as early as the first week; some sort of registration by industry sector; payment of a fee to fund the operation of the licensing authority; and payment of a fee to fund employee entitlements. This is where I say there are other ways to skin a cat in terms of protection of conditions. The sorts of factors that could be included as grounds to revoke or suspend a licence would be: failure to pay wages or entitlements as and when they fall due; breach of OHS standards; non-compliance with awards and agreements; non-compliance with the Workplace Relations Act, particularly with respect to freedom of association; immigration and taxation offences. We understand that you would not be deregistered because you make one mistake, but if there are ongoing breaches and ongoing failures to observe minimum conditions we say these people should not be able to provide labour to enterprises in this state.

We simply go on to say that the annual report of the authority should address this so at least there is some record of the size of the industry, and perhaps there should be an advisory board set up with representatives of both the union movement and employer organisations to deal with the issue. I do not think anyone should underestimate the gravity of the labour hire industry, the size of it and the very real impact it is having on the way working relationships are occurring in this state. There is a much greater incidence of insecure employment now than ever there has been before. Unless some concrete steps are taken to deal with it, it will only get worse.

The CHAIR — Thank you, Martin. Can I ask you one question and then we will open it up to questions around the table. One of the things that has been presented to us — I do not think it is a leading feature of your submission today — relates to induction procedures as an OHS issue. I think it is fair to say that to this point in time we have not been able to gain a clear understanding of the typical induction procedure that applies in a labour hire situation. We spoke to the Victorian Automobile Chamber of Commerce.

They seemed to have a fairly formalised, rigorous program that all their members sign up to. When we had the Recruitment and Consulting Services Association I think one of their members gave an example of what happens in his company and that was a different procedure. It seems to me that is one of the essential elements here — that if you have labour hire companies putting their staff and employees out into different settings and there is no clear standard as to what an induction procedure should be, it is a recipe for a higher injury rate.

Mr PAKULA — Absolutely. I have to say that the variation in the examples is vast. There are some companies, without naming them, which have very rigorous procedures and testing that they apply before anybody even gets on their books, and if you do not pass certain tests they will not farm you out to anywhere. There are other labour hire companies that do absolutely zero — you come into their office, you sign up, they will send you out to a site and they will not really pay much attention as to what sort it is. They would be just as likely to send you to a warehouse as to a heavy metal manufacturing facility or to a food manufacturing or pharmaceutical company. Basically if they can provide the labour and get a quid out of it, they will provide the labour.

Ms MORAND — I wonder whether you want to comment on the impact of labour hire on skills training and apprenticeships.

Mr PAKULA — I do not want to comment on apprenticeships because it is not our industry — we do not have apprentices in our industries and I would not suggest that I am full bottle on the issue of apprenticeships because I am not. In regard to skills training certainly there is no doubt that companies that have a high level of casualisation do not put the same effort into training, particularly in skilling up their work force simply because there is no long term. When they are your own workers it is a long-term investment: you employ them, you train them up, you give them skill development, you know that in the long term most of them you will keep and they will remain your employees and you will get some return for the investment. When you have a large casual work force, they are here today, gone tomorrow. There is simply nothing in it for employers to invest money in training those people because at the end of the day the skills just walk out the door.

Ms MORAND — Have you got any evidence that shows a disparity between someone employed for labour hire and someone [inaudible] training them might get? Do you have any research on that?

Mr PAKULA — I do not have any evidence that I could present to the committee today, but sometimes — I know this might sound trite — the evidence that is brought up is from discussions with employers over many years. We have not formally researched that — no, I would not want to suggest that we have — but I have been dealing with large employers in this state since 1993 and I have dealt with companies like Nestlé and Kraft and Bristol-Myers Squibb, the whole pharmaceutical industry, most of the dairy industry, a lot of the food industry as well as the big retailers and you meet with employers from the highest level of management to mid-management and they all tell you the same thing — that one of the reasons they choose not to use a large number of casuals is because of the skill deficiencies. They do not get highly skilled workers and there is nothing in it for them to train them because they simply do not get any return on the training.

Mr PULLEN — Martin, you have about 90 000 members in Australia. What about labour hire firms — have you got many members from labour hire firms?

Mr PAKULA — Yes, we do. I would say that Adecco and Forstaff would be 2 of our 10 biggest companies in terms of membership. We would have probably 700 to 800 members with Adecco and maybe 500 with Forstaff. I do not find that union membership is the big problem. In some cases it is, but I would not expect that would be a matter this committee would feel it needs to take into account. Generally it is like any other site. If the labour hire employees are at a strongly unionised site, the likelihood is they will probably become members of the union as well. If they go to a site that is non-unionised, they probably will not be members of the union. That is the general sense we get of it.

Mr PULLEN — If I can follow on from that then, of your membership how many are casuals or part-timers?

Mr PAKULA — I would say probably one-quarter would be casual and that is an enormous increase on what it was 10 years ago. We would have had somewhere between 5 and 10 per cent casual when I started with the NUW in 1993 and I would say that now if you look at our books we would have through the labour hire companies and directly engaged casuals somewhere between 25 and 30 per cent of our membership. If you look at the

membership of the industry superannuation funds and who the major employers in those funds are, it is the same sorts of figures. It is enormous.

Mr PULLEN — My greatest concern with casual employment — and I have made this point before with most people who have appeared before the committee — is the ability of casual employees to get home loans in particular. Has that come back to you?

Mr PAKULA — It is probably the single greatest issue that we have had to contend with in terms of casual employees. The biggest problem when you talk to casual employees in regard to why they do not like being casual is the lack of permanence of job security, and the biggest consequential impact of lack of job security is the inability to get home loans.

Mr DELAHUNTY — Can you tell me why there are so many people who do like it? Have you surveyed your own members to see why they want to be casuals?

Mr PAKULA — Two points. If the premise of the question is that everybody who is a casual is a casual because they want to be, I do not accept that premise. A lot of the people who are casuals are casuals because they are the only jobs they can get. Those that do like it like the fact that generally if we are not talking about labour hire the hourly rate tends to be somewhat better because of the casual loading. They like the fact that they can accept or knock back work on certain occasions, although even that is not all it is cracked up to be because with a number of employers if a casual keeps knocking back work they just will not get called back. They like flexibility of hours and they like the fact that what they are able to do is probably work for two or three or four different companies and get a bit of work with each and improve their income that way. They are some of the benefits, and we are not opposed to casual employment per se. What we are opposed to is the whole stream of employees and employers that tend to operate totally outside general workplace relations laws or at least have the ability to operate outside the stream of workplace relations laws. We simply say that, to use an example of a large company, if you are an employee of Nestlé Corporation and you are working in a factory, then the employee of Adecco working next to you, doing the same job, ought not be treated worse in regard to wages and conditions simply because they are employed by a labour hire company and not by the client. That is our major concern.

Mr DELAHUNTY — I appreciate your honesty there. We had the issue with nurses a couple of years ago and we probably have it with teachers — some of them like that two or three days a week, particularly I would say a fair few of the females do in that regard. When you talk about your recommendations here, have you any overseas examples where these types of recommendations are in force and are working?

Mr PAKULA — I do not, but I should indicate that the reason that is not the case is that there are those other legislative frameworks in place that render it unnecessary. You do not have in other jurisdictions this incentive to use labour hire to avoid obligations. It is simply not possible under their workplace laws to do that. You engage people through labour hire companies in other jurisdictions because you need supplementary labour at short notice and they are all the good reasons why people use labour hire. What they do not have in those jurisdictions is people using labour hire because they do not want to be responsible for health and safety or paying appropriate wages and conditions. If we had something similar in Australia, we do not think this would be necessary. But we do not so we think we need to do it some other way.

Mr DELAHUNTY — So this is a compilation of the best advice you have picked up?

Mr PAKULA — It is.

Mr ATKINSON — But notwithstanding that — and I am alarmed at a couple of the examples you have given in your submission — a bad employer is a bad employer. Why do we need a whole new licensing regime and a whole new system of trying to chase up these employers when in fact what those guys have done already offends a number of laws and are already shy of obligations on occupational health and safety and WorkCover and so forth? Why do we not just pursue them under existing corporate arrangements and regulatory authorities?

Mr PAKULA — I will answer that in two ways. Firstly, in some respects they are not actually in breach of any laws. With regard to not — —

Mr ATKINSON — Somebody who is paying cash, say, $12 an hour, that is illegal.

Mr PAKULA — The difficulty in a lot of these circumstances is the gathering of evidence. The Poultry 99 example is a very good example, and there is some detail there, but the detail in here does not come close to some of the detail we have gathered through talking to people. These people are primarily migrants with no English skills, they are primarily young women, and they are nearly all Vietnamese. The owners of the company are Vietnamese. A lot of them are illegal immigrants and they are frightened out of their minds. To get these people to come forward and give evidence against their employer with regard to underpayment of wages or the paying of cash, et cetera, whilst great in theory is just not going to happen in reality.

With regard to the example I used about Westpower at A. B. Oxford Cold Storage, they are not in breach of any laws in relation to the fact that they are paying $5 or $6 an hour less than the certified agreement. The reality is that under our current laws they are not obliged to pay to the certified agreement. They are simply obliged to pay to whatever the federal award figure is, and anyone who has familiarity with workplace relations laws knows that federal awards have long since stopped being the primary method of setting wages in Australian workplaces. They are simply an award safety net minimum. What also happens with a lot of these companies is that because there are so few requirements with regard to the way they are set up, they can be folded up and reformed under another corporate entity with amazing speed, so they just basically close the company down and start up another one the following week. So we have run into — do not get me wrong, we have tried all these things — —

Mr ATKINSON — But I do not understand how under a licensing scheme that improves. That situation is still there now.

Mr PAKULA — The way that it would improve is simply this: that there would need to be certain demonstrable and demonstrated minimums that the country would need to adhere to before they got a licence, and, quite frankly, with some of the labour hire companies we are talking about, provided the licensing requirements were reasonably stringent, they would not have a hope in hell of getting up to those standards. As for the suggestion that some of the large companies would use it as a de facto barrier to entry, it all depends on whether you think that is a bad thing or not, because at the moment there is literally no barrier to entry whatsoever. Some minor barrier that says there are some minimum standards you need to adhere to before you can start employing people, sending them off to companies, perhaps getting them injured, and paying their wages. You should at least be able to demonstrate that you know how to do those things. Quite frankly, all of them could not demonstrate it if they started trying now. It is not like we are talking about establishing an entire bureaucracy. Far be it for me to tell Parliament how to do its job, but I would have thought a reasonably small group of people could oversee this. It is not something that does not already exist in relation to a whole range of other things. We have inspectors on health and safety, and on breaches of workers compensation acts. We used to have an entire department of labour where inspectors used to go around and inspect premises all the time. We are talking about a $10 billion industry around which there is no regulation whatsoever.

The CHAIR — Can I ask you, Martin, as we wrap up, with the example of Poultry 99, are you able to comment on what you understood may have happened to the directors of the labour hire firm in that case?

Mr PAKULA — Thus far, nothing. As I understand it, there are matters that the Australian Federal Police are still investigating. As I understand it, the company itself does not operate as such at the moment, but there is another company with suspiciously similar directors which has emerged instead and is providing a similar work force. Our union has a very good relationship with the Victorian Chicken Meat Council and we spoke to some of the significant people in that organisation two years ago, and said: 'Why do you persist in using this mob, because it is clearly dodgy?' and the answer from the Chicken Meat Council, the major poultry processors, was that Poultry 99 had them over a barrel. If they did not use them they would not get any boners, and you cannot run a poultry processing facility without boners. They seemed to have a lock on the work force.

The CHAIR — And with regard to the host company, I think you said that in this instance they denied it and claimed ignorance of the activities of Poultry 99. I understand, under OHS law in Victoria, if there was an injury on that site the host company would not be able to claim ignorance, but would be held jointly — —

Mr PAKULA — That is correct.

The CHAIR — Respectively it would be held jointly responsible. But in the absence of an actual injury, it can say, 'Well, we did not know that was the arrangement in place'.

Mr PAKULA — That is correct, and in addition to that, but specifically what they claimed ignorance of, was the method of payment and the rate of payment. As was said, what emerged was that people were being paid $8 or $9 per hour, cash, and were then being instructed by the employer to go to Centrelink to get extra money. That is what happened when the raid occurred. But it should be said that whilst Baiada gets the bad rap in there, the same organisation, Poultry 99, was also being used by Ingham and Barrter and Eatmore when it was still Eatmore, and Marvin Poultry when it was still Marvin Poultry — it is all Baiada now.

The CHAIR — All right. We kept you waiting, but we have made up a bit of ground there. Thank you very much for your submission. The examples are useful to us. It is an interesting reflection on the submissions we have had. I think I am right in saying that most submissions have acknowledged that there are substandard operators at work in the industry, but there have not been a great number of examples. We know that something is out there, but your examples actually help us gain a better understanding of what the activities are, so we do appreciate that. I need to say to you that we may seek to follow up with those companies, though, and give them the opportunity of responding. Whether they do or not remains to be seen, but we may do that in the course of our inquiries.

Mr PAKULA — If we get a call from them, I will know why!

The CHAIR — We will make sure you get a copy of our report which, as I said, is due by the end of the year. Thank you for your attendance today. We will make the transcripts available to you in about a week to 10 days, and Kirsten, our researcher, may be in touch with you about follow-up matters as we have a lot to discuss.

Witnesses withdrew.