An Economic Analysis of the 1998 Patrick Dispute

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Abstract

This article considers some of the policy issues at stake in the waterfront dispute, including an analysis of the factors that led to the dispute and a discussion of the likely outcomes of the new negotiated agreements. It concludes that the introduction of another competitor into the Australian stevedoring industry is relatively unlikely. Without such competition and in the face of 100 percent unionisation, it is not clear whether the short-run gains in productivity from the latest round of enterprise agreements will necessarily be sustained.

Introduction

For several weeks straddling Easter of 1998, Patrick stevedores and the Maritime Union of Australia (MUA) became embroiled in an industrial campaign of seemingly epic proportions. The dispute, which received wide media coverage, was accompanied by widespread picketing of the Patrick operations which effectively paralyzed the stevedoring operations of the company. Precipitated by the decision of the company to terminate the services of all stevedoring workers at its container and break-bulk facilities, the dispute lasted a number of weeks and culminated in the re-instatement of the Patrick workers. Subsequently a new enterprise agreement was negotiated between Patrick and the MUA which was then certified by the Australian Industrial Relations Commission.

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The purpose of this article is to provide an economic analysis of the dispute. Narratives of the dispute are available elsewhere (see Dabscheck in this volume) and the industrial relations implications have and will continue to be discussed. Rather, this article takes up some of the public policy issues at stake, including an analysis of the factors which led to the dispute and discussion of the likely outcomes of the new negotiated arrangements. Some of the key questions raised are as follows:

- What are the key structural features of the industry?
- What has underpinned the strength of the NWA?
- What are the work arrangements which have characterised the Australian waterfront?
- What are the economic consequences of inefficiency, unreliability and high cost in the stevedoring industry?
- What is the appropriate role of the government in effecting change?
- What are the prospects for long-run efficiency gains at the Australian waterfront?

The stevedoring industry in Australia

The Australian stevedoring industry, certainly in relation to container traffic, is characterised by few players and relative capital intensity. With the introduction of containerisation and the associated need for expensive equipment to move the containers, the Australian stevedoring industry has over the past several decades rationalised to the point that two major companies dominate the container stevedoring industry, *viz.*, Patrick and P&O Ports (formerly known as Conaust). With the bulk of traffic moving across the Port of Melbourne and the Port Botany, these two companies dominate container stevedoring and account for some 95 percent of all container traffic in Australia, even though there are a number of smaller players. Backed by long-term lease arrangements over scarce land granted by the respective port authorities to the companies, it is accurate to describe the Australian container stevedoring industry as a duopoly.

A benchmarking study undertaken by the Productivity Commission (PC 1998a, 138) concluded in relation to the performance of container stevedoring in Australia in the following way.

> Container stevedoring charges, labour and capital productivity and timeliness and reliability ... indicate that, overall, Australian performance lags significantly behind that achieved in other ports.

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> ... [Container] stevedoring chargers were significantly higher at Australian container terminals than at any of the overseas terminals (except Nagoya).
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> The international comparisons of indicators of labour and capital productivity indicate scope to improve performance. Although average net crane rates have improved since 1989 at Australian terminals, they were significantly below those at most of the overseas ports examined in this study.
>
> The data relating to timeliness and reliability, although limited, indicated relatively poor performance at key Australian ports. Survey data for Australia suggest that about one-fifth of ships experience some sort of delay calling at Australian ports ...

Underpinning the stability of the duopolistic industry arrangement has been the restrictions to competition on the input side. Prior to the introduction of the Waterfront Industry Reform Authority (WIRA) changes (in the late 1980s/early 1990s), industry-wide employment had ensured essentially identical labour input conditions for stevedoring companies. The shift to enterprise -based employment and the subsequent move towards enterprise bargaining undermined the basis of these identical conditions and, over time, some disparity in wage rates and working arrangements has emerged both between ports and between companies. As the Productivity Commission (1998a, J3) noted, 'the move to enterprise employment (1989-1991) resulted in 108 agreements being implemented in the industry by mid-1992'. It should be noted, however. that these agreements were reached against the backdrop of the *Stevedoring Industry Award* which, inter alia, conferred the exclusive right on the Maritime Union of Australia (MUA) to represent operational employees in negotiations with the stevedoring companies (PC 1998a, J4).

The context of the 1998 dispute

Arguably, the shift to enterprise bargaining is the most important contextual explanation of the 1998 Patrick dispute. For reasons which are unclear, the key agreements covering Patrick employees negotiated several years before produced a less favourable outcome for the company compared with the key agreements covering P&O Ports employees. Faced with less competitive labour arrangements relative to its major competitor, Patrick began to 'feel the pinch' in relation to lower profitability and loss of market share. In turn, Patrick moved in early 1998 to sub-lease its loss-making Webb Dock in Melbourne to a newly formed stevedoring company. Producers'

and Consumers Stevedores' (P&CS), backed by the National Farmers' Federation. It was the declared intention of' P&CS to use non-unionised workers. Associated with this move was the short-lived and failed attempt to train Australian workers in Dubai to enable workers to gain some basic stevedoring skills. Given the relative shortage of specific stevedoring skills in Australia outside the workforces of existing stevedores, the attempt to train workers in stevedoring tasks was widely perceived as a necessary requirement to 'break' a prolonged dispute in the future involving MUA members.

Leaving aside the details of these important developments, what is their main explanation? On the face of it, it is curious why Patrick would willingly open up one of its sites to a potential competitor, notwithstanding the fact that Patrick was making losses at Webb Dock. Arguably, the explanation lies in the desperation of the company to effect more favourable work arrangements and the conclusion drawn by the management that this would be only possible if the monopoly position of the MUA were, in some way, undermined. The fact that Patrick subsequently admitted to an involvement in the Dubai training exercise supports this proposition.

The key features of the work arrangements which were generating high costs and unreliability are listed in PC (1998b). They cover five areas, Oz: rostering; manning; recruitment, redundancy and contracting; remuneration; and paid non-working time. In general terms, a critical aspect of working arrangements in Australian stevedoring operations has been the control of the MUA over many aspects of working arrangements. Of particular significance has been the MUA's influence over the 'order of engagement' (sometimes called 'order of pick') and the consequent scope for highly remunerated 'double headers' being allocated to permanent workers. In combination with prescribed manning arrangements, strict restrictions on contracting out and extremely high redundancy payments (as set out in the *Early Retirement and Redundancy Agreement*) the scope for managers; to achieve more efficient work arrangements was extremely limited. The result was extremely generous remuneration and conditions for workers in Australian stevedoring compared with workers in similar industries and with workers with similar qualifications and characteristics (Sloan and Robertson 1997).

The 1998 dispute

The key precipitating factor in the 1998 dispute affecting Patrick workers was the decision by the Patrick company to liquidate the service companies

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which technically employed the workers, thereby terminating the services of the workers. While a number of companies are structured in a similar fashion, the move by Patrick was seen as a manipulation of a corporate artifice in order to dismiss an entire unionised workforce and replace it with a non-unionised one. The MCS was contracted to provide stevedoring services in order to fulfill Patrick stevedoring orders. As events panned out, this latter attempt was largely thwarted as a result of picketing of the major Patrick operations and notwithstanding the injunctions ordered by the Victorian Supreme Court preventing the continuation of picketing. By the same token, stevedoring activity continued to be undertaken by P&O Ports throughout the dispute (with this company picking up much of the Patrick work) and some trade was diverted to the unaffected Port of Adelaide.

The fact that the Australian waterfront was not completely inactive during the dispute is very important. Not only did the partial continuation of services dilute the potential insistence of users (both importers and exporters) of stevedoring services that the government bring the dispute to an end but the partial continuation of stevedoring activity also underscored the efficacy of legislative changes implemented by the federal government in 1996. On this latter point, sympathy industrial action affecting other industries was also largely absent. Had the dispute affected all stevedoring activity and spread to other industries, arguably the ultimate outcome would have been quite different.

The key development of the dispute was the legal proceedings, principally before the Federal Court of Australia, Findings of possible discrimination against workers on the basis of union membership and possible conspiracy on the part of the company and the federal government culminated in the re-instatement of all the Patrick workers and the cessation of the contractual arrangement with P&CS. The re-instatement of the Patrick workers was undertaken on the basis of a clear undertaking by the MUA to enter into negotiations with the company to reach a new enterprise agreement.

The new Patrick enterprise agreement

After several months of negotiations, a new enterprise agreement covering all Patrick workers was speedily finalised and certified by the Australian Industrial Relations Commission in August 1998. Replacing a number of agreements for the different sites, the new enterprise agreement contains some very significant changes. The key changes in the agreement, which

frequently refers to 'the discretion of the Company', can be summarised in the following way:

- Removal of the order of engagement (pick) in large measure. For instance, supplementaries (casuals) can be engaged before permanence can work overtime on weekday shifts and irregular rostered weekend shifts.
- Removal of equalisation schemes which produced more or less equivalent earnings for permanents. Selection and allocation of shifts to be determined by management.
- Premiums and penalties rolled into an aggregate wage scheme.
- Significantly lower opportunities to work overtime and 'double headers'
- Significantly lower manning and less prescription in relation to manning apart from one man/one machine for continuous operation. Minimum manning for lashing duties removed. Some 600 permanent workers made redundant.
- Early Retirement and Redundancy Agreement to be terminated on 1 November 1999.
- Introduction of a productivity scheme with minimum payable threshold lift increased to 20 gross lifts per hour.
- Scope for greater contracting out, including in relation to maintenance, relocation of equipment, security, cleaning and line-marking.

Not surprisingly, P&O Ports flagged its interest in reaching new enterprise agreements along the lines of the Patrick enterprise agreement. By early December 1998, P&O Ports was close to finalising new workplace agreements with the MUA. which, while not as comprehensive as the Patrick agreement, imitated a number of the changes contained in the latter (*The Australian*, 7 December 1998. 41).

The role of the federal government

The federal government, particularly by its Minister for Workplace Relations and Small Business, Mr Peter Reith, played an active role in the Patrick dispute in a number of ways. Indeed, prior to, during and after the dispute, the federal government was vocal in terms of expressing its opinions on the state of the industry, developments related to the dispute and its vision for the future of the industry. Emphasising the importance of removing the monopoly position of the WA, the government maintained that one of the key issue in the dispute was the apparent lack of voluntary unionism in the

industry. In a media release issued on 18 May 1998, the point was made as follows:

> The gross overmanning of the waterfront has been an impediment to reform.
>
> The adoption of genuine reform by the MUA would help create thousands of jobs and export opportunities that are currently being strangled by tile union monopoly (Reith Media Release, 18 May 1998).

Even prior to the dispute, the position of the federal government was made clear by a number of statements. For instance, on 14 October 1997, a media release by Mr Reith stated that '[as] a Government we are not interested in debate about whether reform is necessary – that fact is self-evident. The debate is over... The MUA must look to the international scene to benchmark its productivity rather than its closed shop (Reith Media Release, 14 October 1997).

The government's reaction to the Patrick decision to terminate the services of its workers through the liquidation of its service companies was as follows: '[the] Government supports the right of the company to introduce significant reform' (Reith Media Release, 7 April 1998). Two months later, as the settlement of the dispute between Patrick avid the MIJA was drawing closer, a further media release stated that '[the] likely settlement ... which has the prospect of very significant reforms, is only possible because an alternative stevedoring operation forced the pace of change' (Reith Media Release, 16 June 1998).

Aside from jawboning, the federal government played an important role in the dispute in terms of the funding of redundancy payments to ex-stevedoring workers through the establishment of the Maritime Industry Finance Company and the passing of the *Stevedoring Levy Imposition Act* 1998. In effect, the government established an arrangement which would provide short-term finance for the purpose of funding the generous redundancy packages the costs of which would be reimbursed over time through a per container levy paid by stevedoring companies. In exchange for this arrangement, the government established the so-called Seven Benchmark Objectives. Briefly, these objectives cover the following areas:

- An end to overmanning and restrictive work practices.
- Higher productivity via a commitment for the major stevedores to a benchmark of 25 crane movements per hour as a national five port average.
- Greater reliability and fewer interruptions through the elimination of disruptive work practices, leading to quicker ship turn-around.

- Reduced incidence of industrial action.
- Lower injury and fatality rates affecting stevedoring workers.
- Lower costs for exporters and importers to be monitored by the Australian Competition and Consumer Council.
- Full and effective use of existing and new technology.
- Of the package, it was maintained that '[the] reforms announced today, in conjunction with the *Workplace Relations Act,* will transform the face of Australia's ports, turning them from rort ridden, unsafe workplaces into reliable and cost effective world class operations that will benefit all Australians' (Reith Media Release, 8 April 1998).

The role of the federal government in the Patrick dispute was widely interpreted as excessively active and partisan. Nonetheless, there is a very long history of government involvement in waterfront matters and disputes and there have been many attempts over the years to effect improved cost-efficiency and reliability at Australia's waterfront. The list of relevant commissioned reports is a very long one. This involvement is not surprising given the role of the industry. As the Productivity Commission (PC 1998a, xi) has stated, '[the] waterfront is a key link in the distribution of traded goods. The efficiency of the waterfront affects the competitiveness of Australia's trade ... In value terms, approximately 70 percent of imports and 78 percent of exports were transported by sea in 1995-96. These trade flows amounted to close to $60 billion'.

How should the federal government's efforts in the Patrick dispute be assessed? Judged by the criteria of removing the monopoly position of the MIJA and introducing new competition into the industry, it is possible to judge the government's performance as disappointing, particularly in light of the effective departure of P&CS as a competitor in the stevedoring industry. By the same token, the fact that the combination of provisions in the *Workplace Relations Act* and the *Trade Practices Act* were significant in terms of preventing an extension of the dispute to other stevedoring companies as well as to other industries was a major conditioning factor in the dispute. The traditional pressures brought to bear on the government by shippers to effect an early settlement of a waterfront dispute were weaker in this instance.

On the face of it, the terms of the Patrick agreement provide for very significant changes to work arrangements which should add up to gains in cost-efficiency and reliability in the stevedoring industry. Notwithstanding early evidence of very substantial improvements to productivity at the Patrick operations at the Port of Melbourne, the management of the com-

pany has openly conceded that some of the terms of the agreement have not been implemented at the Port of Botany due to the actions of some local MUA officials. There is a disturbing parallel with the improvements to productivity evident during the WIRA process which effectively evaporated after the process was formally terminated. Similarly, the effectiveness of the federal governments Seven Benchmark Objectives remains unclear, although the involvement of the ACCC in monitoring the prices charged the stevedoring companies should ensure that at least some of the gains in productivity are passed on to shippers. As far as the MIJA is concerned, in terms of sheer member numbers, the strength of the organisation is diminished. However, its one hundred percent coverage in the industry remains in tact.

Conclusion

The waterfront industry in Australia has been the object of public policy reform for many years. The number of reports related to the industry is voluminous, with the WIRA process the latest concerted attempt. This policy focus is not surprising given the large and increasing flow of imports to and exports from Australia transported by sea. In addition, the key performance measures of Australia's waterfront industry, most notably in relation to container stevedoring, point to poor outcomes on cost, reliability and timeliness, relative to international practice (PC 1998).

Taking the case of container stevedoring, the industry is dominated by two major companies, Patrick and P&O Ports, which together account for the bulk of the market. Acting as duopolist, these companies have been able to behave as cost-plus operators and in turn have acted exclusively with the Maritime Union of Australia which has 100 percent coverage of operational employees. By the same token, the power of the MUA has been underpinned by its ability effectively to close down the waterfront through industrial action, as well as to seek and achieve sympathy industrial action on the pail of other trade unions. In the face of a total closure, shippers have often shown more concern about reliability of delivery than price and have bought pressure to bear on governments to bring about rapid settlements of disputes affecting the waterfront. This scenario has underpinned the power of the MUA. Of course, neither the history of the MUA should be forgotten nor the history of an industry characterised by dangerous, back-breaking work and casual industry-wide employment. The fact that jobs have often been passed from father to son – there are very few females working in the industry – has ensured that this history is not forgotten.

- The continuation of stevedoring services with P&O workers (and Sealand workers at the Port of Adelaide) remaining on the job throughout the dispute was a critical factor, Without this development, the changes effected through the Patrick enterprise agreement would not have been forthcoming. Certainly there are question masks over the direct efficacy of the secondary boycott provisions in terms of allowing P&CS to continue its stevedoring operations during the dispute – the company was prevented – and the non-implementation of injunction orders of the Victorian Supreme Court. These latter uncertainties suggest that the introduction of another competitor into the Australian stevedoring industry is relatively unlikely. Without such competition and in the face of one hundred percent unionisation, it is not clear whether the short-run gains in productivity from the latest round of enterprise agreements will necessarily be sustained.

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