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Flexing some Muscle: Strategy and Outcomes in the Queensland Health and Fitness Industry

Abstract

In 1993, contrary to the trend towards enterprise bargaining, and despite an employment environment favouring strong managerial prerogative, a small group of employers in the Queensland commercial health and fitness industry sought industrial regulation through an industry-specific award. A range of factors, including increased competition and unscrupulous profiteers damaging the industry's reputation, triggered the actions as a business strategy. The strategic choices of the employer group, to approach a union to initiate a consent award, are the inverse of behaviours expected under strategic choice theory. This paper argues that organizational size, collective employer action, focus on industry rather than organizational outcomes, and the traditional industrial relations system providing broader impacts, explain their atypical behaviour.

Key words: strategic choice; health and fitness; awards; casual employment.

Flexing some Muscle: Strategy and Outcomes in the Queensland Health and Fitness Industry

This is a story of persistence, of a group of employers who, like the spider and Robert the Bruce, 'try, try, try again' to achieve their objectives. The employer group, from the Queensland commercial health and fitness industry, resorted to a strategy of industrial regulation when previous business strategies did not fulfil their aims. It is also the story of a service industry largely comprised of relatively new, small, industrially naive businesses being dominated by a group of longer-established and, in some cases larger employers, to drive their own agenda.

While the Australian fitness industry developed rapidly from the early 1970s, aided by government initiatives such as the 'Life be in it' campaign as well as a growing awareness of the benefits of physical activity at both individual and corporate levels, it experienced a significant burgeoning in the 1980s. As the industry developed throughout Queensland, the more highly populated urban and suburban areas of south-east Queensland (including Brisbane, Ipswich, the Sunshine Coast and Gold Coast) became inundated with fitness centres. This paper explores events and activities in the Queensland commercial health and fitness industry in the early 1990s that culminated in the creation of an industry-specific award[1], the *Health and Fitness Centres and Indoor Sports Award – South-East Queensland* (the Fitness Award), in 1994.

Despite its rapid growth and financial turnover (in 1989 it was estimated that Australians spent between $200 and $400 million annually on fitness classes [Watkins and Patterson 1993]), the industry was largely ‘invisible’ to external regulators and statisticians. Health and fitness centres were effectively an unidentified subsector of the Australian Bureau of Statistics’ (ABS) Recreation, Sport and Fitness category, and the key occupational groups, aerobics instructors, fitness counsellors, gym supervisors and exercise physiologists (collectively referred to here as

‘fitness workers’) were not included in the Australian Standard Classification of Occupations. Consequently, few details about the industry, its employees or employment conditions were known.

The notion that ‘industrial relations practices and outcomes [are] shaped by the interactions of environmental forces *along with* the strategic choices and values of employers, employees, trade unions and governments’ (Kochan, Katz and McKersie 1986:5), underpins this discussion. Kochan et al (1986) identified a shift in the balance of power in favour of management over unions in the US industrial relations (IR) system, and argued that the 'nature and extent of this transformation could not be simply explained by environmental changes' (Balnave, Brown, Maconachie and Stone 2009:19). Managerial strategic choices such as union avoidance or union substitution were viewed as key factors. Kochan et al's (1986) strategic choice theory sought to make explicit the impact that the strategic choices of IR actors have on IR systems and their outcomes.

At a time when ‘important groups of employers in many countries [came] to view traditional industrial relations frameworks and cultures as impediments to their corporate objectives’ (Sheldon and Thornthwaite 1999a:15), a group of employers in Queensland (Quality Health and Fitness Centres [QHFC]) was embracing those traditional frameworks. Making a strategic choice within the competitive and industrial contexts of the Queensland commercial health and fitness industry, this loose-knit group sought an industry specific award as a business strategy. The expected outcomes from the QHFC strategy were: taking wages out of competition; improving the industry's reputation with clients; and rationalizing the industry to improve profitability (QHFC President, interview 1993). Using an employer association to negotiate with a strategically selected trade union with no members in the industry, the QHFC's orchestration

culminated in the making of an industry-specific consent award which exploited the nature of employment in that industry.

Although not primarily motivated by IR issues the creation of the Fitness Award in 1994 had consequences for fitness workers and the union. The paper uses data collected in two cross-sectional, empirically based studies of the Queensland commercial health and fitness industry conducted in 1993 and 2008-09. The timing of the two surveys relates to different aspects of our interest in the industry. Our interest in working conditions in the industry developed from newspaper articles in 1992 about two fitness centres breaching award conditions and being granted a moratorium to negotiate a new industry-specific award. This led to the first survey, which provides details of the industry and employment conditions prior to the new award being introduced (Sappey 1996). The survey identified an interesting phenomenon of fitness workers appearing to trade off working conditions for employment in the industry (see Maconachie and Sappey 2011), prompting the later survey. The second survey updates conditions after some years of the award's operation, and also allows for the impacts of changes in the IR system and the industry to be assessed.

The 1993 survey involved a Queensland-wide mail-out of two questionnaires: one to 269 industry employers identified through the 1993 Queensland Yellow Pages telephone listings and local government records, with a response rate of 24 percent; the second to all 500 members of the Queensland Fitness and Health Association, the fitness workers' professional association, with a 33 percent response rate. The survey data were supplemented by unstructured interviews with officials from the key actors, Federated Miscellaneous Workers Union (FMWU), Queensland Confederation of Industry (QCI), and the Quality Health and Fitness Centres (QHFC), as well as fitness centre owners and managers, fitness instructors, state and local government planning and

health inspectors, the Queensland Chief Industrial Inspector, and a former Head of the Queensland Industrial Relations Commission (QIRC).

After preliminary interviews with industry representatives and fitness workers in early 2008, the questionnaire component of the 1993 study was largely replicated for the 2008-09 survey. The employer questionnaire was mailed to 310 fitness centres state-wide, the total listed in the Yellow Pages Business Directory, with a 16 percent response rate. The worker questionnaire was distributed to the 4,872 Queensland members of Fitness Australia, and achieved an 11 percent response rate. Both surveys cross validated employer and worker responses on the structure of the workforce, working conditions, employment practices, turnover rates, and standards of occupational health and safety. Data analysis was undertaken using SPSS statistical software.

A number of limitations apply to this study: the Queensland commercial health and fitness industry may not be representative of the industry in other Australian states in terms of employment conditions or employment relationships; employer and employee respondents are represented across Queensland rather than confined only to the south-eastern corner which may slightly skew some of the data; some employee respondents may have been employed in government-established fitness centres increasing union membership figures and distorting employment conditions slightly; and response rates must be considered in respect of generalizability.

Industry and employment contexts are explored to highlight factors triggering the QHFC's atypical behaviour in instigating IR regulation in an era of deregulation, as well as identifying factors that should have precluded such action. The making of the industry award and its content is examined, with survey data providing employer and employee views of the industry

and employment in it both before and after regulation, allowing the implications of the QHFC's actions for employment relationships and participants in the Queensland health and fitness industry to be assessed. The paper argues that organizational size, collective employer action, focus on industry rather than organizational outcomes, and the traditional IR system providing broader impacts, explain why the strategic choices of the QHFC are the inverse of those which might be expected under strategic choice theory.

The Industry Context

The commercial health and fitness industry is a service industry *par excellence*, constantly reinventing the services provided, influenced by industry and social trends as well as customer preferences. Nickson, Warhurst, Witz and Cullen (2001:171) note that services are usually characterized by their 'intangibility, inseparability and heterogeneity'. Intangibility relates to services not being able to be owned or possessed as manufactured goods may be, with performance or information often being the subject of the exchange. In the health and fitness industry intangibility is identified in the types of services offered: exercise classes, the use of gymnasium equipment, tanning in a solarium, or provision of information about diet and exercise. Inseparability denotes the interplay between customer and employee, with 'simultaneous production and consumption' (Nickson et al., 2001:172). This is a key feature of the fitness industry, with fitness workers' bodies used as 'a walking billboard advertising the employer's products and services' (Maconachie and Sappey 2011:10), to entice and motivate customer engagement. Heterogeneity, or variation, in service quality occurs from the labour intensity of the service interaction and from differences between customers and employees on any given day (Zeithaml, Parasuraman and Berry cited in Nickson et al. 2001).

The customer service component of service-oriented organizations results in employers fashioning specific types of labour markets, usually emphasizing flexibility. Lengthy operational hours, a relatively high proportion of casual employees and relatively low unionization levels are common in service industries, and these characteristics are evident in the health and fitness industry. The following discussion draws out both similarities and differences between the fitness industry and other service industries in respect of labour market factors and unionization rates, before outlining industry structure and growth issues, and the employment conditions that emerged from those elements.

Fitness centres cater to clients working out either before going to their own employment, or after doing a day's work, as well as those able to attend throughout the day. The bulk of organized classes are generally offered for 4-5 hours up to mid-morning, and for 3-4 hours in the afternoon/evening. The physicality of the work for those engaged in conducting fitness classes results in different types of labour usage to other service organizations. It is physically impossible for aerobics instructors to conduct 38 hours[2] of high energy classes per week, and most argue that a maximum of 15 hours per week can be sustained for short periods of 3 to 6 months without stress fracture injuries. The effect of this is highlighted by comparing labour use in the hospitality industry and the Queensland commercial fitness industry.

Buultjens' (2001:472) study of casual employment in registered clubs in New South Wales identified a workforce consisting of 39 percent full-time employees, 45.4 percent 'permanent' casuals, 10.2 percent relief casuals and 5.4 percent part-time employees. In 1993 our first survey identified the Queensland fitness industry workforce as very distinctly casualized, comprising 21 percent full-time and part-time employees, and 79 percent casual labour. Casual staff were employed in 93 percent of fitness centres, with 33 percent employing only casual

labour. The casualization rates remain distinctive in comparisons with casual employment nationally across all industries (2.7 percent), and even across the broader Recreation, Personal and Other Services industry sector (49.3 percent) (Mangan and Williams 1999). While 64 percent of employee respondents worked for only one employer in the fitness industry, some casuals had up to seven employers during the week of the survey. The employment of many casual instructors for just a few hours per week offered a number of employer benefits. It was: a marketing ploy offering a wide variety of instructors and classes to clients; a risk management strategy responding to workers' physical limitations; and a flexibility strategy to accommodate lengthy operational hours.

In the early 1990s Queensland accounted for approximately 19 percent of total employment in the national Fitness, Sport and Recreation industry (Watkins and Patterson 1993:2), with an estimated 27,000 workers and annual growth of 7.6 percent (Watkins and Patterson 1993:3). All employer respondents to our 1993 survey, except one, were classified as small business enterprises with 50 employees or fewer. The exception had a workforce of 200. The industry mode was to employ 14 or 15 employees per enterprise. The industry had sharp divisions between small, possibly family operated centres and larger, multi-million dollar establishments with several outlets.

Industry growth and relatively low entry costs drew profiteers. Significant competition led to high levels of business failure. In 1992-93 Recreation Services comprised 4.2 percent of Queensland small businesses but represented 17.1 percent of Queensland business bankruptcies (Queensland Small Business Corporation 1994:48). Nine Queensland fitness centres closed between June and August 1993, and 33.3 percent of employer respondents to the 1993 survey had been in operation for less than five years. Employer respondents rated 'too much

competition' as their single biggest problem, while wages and employment conditions ranked fifth.

Employment conditions ranked low as areas of employer concern for several reasons. *Firstly*, as Sheldon and Thornthwaite (1999b) have noted, small employers tend to avoid formal workplace bargaining, relying instead on the award system and informal individual agreement-making. This is supported by our 1993 survey data, which also shows the impacts of low unionization rates and weak regulatory enforcement. Despite putative coverage by three major awards (the federal *Squash Court Industry (Interim) Award 1980,* the *Queensland Motel Industry Award – Southern Division (Eastern District)*, and the *Queensland Club Etc. Employees' Award – South-Eastern Division 1989)* 59.3 percent of employer respondents stated that there was no award coverage for any of their employees. Only 15.3 percent of employer respondents identified all staff as covered by an award, while 16.9 percent considered up to a quarter of their employees were covered. Individual agreement-making occurred where awards were not identified. Fitness workers employed by Queensland state or local government authorities were covered by separate awards. This paper focuses only on commercial health and fitness centres, not on those operated by any level of government.

Secondly, employee bargaining power was diminished by the presence of 'volunteers'. Nineteen (19) percent of employers indicated they used volunteer labour including: genuine volunteers operating in community sports centres; 'trainees' (students completing a practical component in a degree program or undergoing Fitness Accreditation assessment); and people hoping to enter the industry by offering 'freebies.' It was standard practice for workers seeking employment to initially instruct classes without payment, with subsequent employment decisions

being largely based on customer feedback. Anecdotal evidence identified one worker conducting five unpaid classes for one employer prior to being employed casually.

Thirdly, the reported union density rate in the 1993 survey was 6 percent. Most union membership existed in enterprises where fitness workers were engaged in hotel/resort facilities with membership in the Federated Liquor and Allied Industries Employees' Union (FLAIEU). Sixty-three (63) percent of worker respondents indicated that they were not union members because 'no one had asked them to join' and none reported having had a union meeting at their workplace. Only one employer identified a union delegate in their workforce, and only one employer had been visited by a union official. This is consistent with the Small Business Index (1994) finding that 91 percent of small businesses had no union membership. Poor union organization at the workplace level is a significant factor in non-membership in unionized workplaces, where recruitment is left largely to union delegates or shop stewards (Haynes et al 2007). In industries with low unionization rates like the fitness industry successful recruitment relies on external union organizers, but the heavy reliance on casual labour, regularly changing hours and split shifts, as well as some workers having multiple employers, all exacerbate organizing the fitness workforce.

Another factor in the low unionization rates was that 53 percent of employee respondents had full time employment elsewhere. Even if unionized in their full time employment these workers were unlikely to see any benefit in belonging to a union for their casual employment, which averaged 4 hours per week.

Finally, the 1993 survey also highlighted significant age and gender divisions in the workforce. Only 6 percent of the workforce was 45 years or older, and 51 percent of fitness employees were under 25 years of age. A highly feminized workforce emerged with 60 percent

of full-time, 84 percent of part-time and 81 percent of casual workers being female. The core/periphery workforce structure facilitated the minimization of labour costs and maximization of labour flexibility to the employers' advantage (Deery and Jago 2002). Alongside individual agreement-making processes, weak industrial enforcement and low unionization levels facilitated strong managerial prerogative and led to non-standard work arrangements for industry workers. The major issues identified in our 1993 survey are outlined below.

Working hours

Some employers redefined employment classifications, with several employee respondents reporting that as full time workers they were not entitled to paid sick or annual leave. Full-time employee respondents worked from 32 to 62 hours per week, while part-time respondents worked from four to 38 hours per week. Casual employees worked between one and 45 hours per week, with a mode of four hours. The dominance of managerial prerogative was demonstrated in changes to working times, with 69 percent of fitness workers being asked to work with less than two hours notice, while 31 percent had work cancelled without pay or adequate notice. Weekly roster changes affected 43 percent of casuals' hours, with only 27 percent of employee respondents having unchanging hours.

Pay

Reported pay rates for fitness workers in 1993 varied significantly from $8.50 to $60.00 per hour, with survey data showing average gross weekly earnings of $80.00. In Australia, highly casualized workforces should imply the payment of penalty rates[3], but only 3 percent of workers reported receiving such payments in their last pay period. Mixed functions were common (56 percent), with 20 percent of employee respondents noting a differential pay rate for mixed duties at management’s discretion, and some indicating they were not paid for auxiliary duties.

Working without pay also extended to other occasions, such as special aerobic displays (40 percent) and fitness centre open days (31 percent). Of those doing unpaid work, 77 percent were casuals.

Training and associated costs

Fitness workers reported spending a minimum of $20.00 per week on costs associated with their fitness job (clothing, training, annual accreditation costs, insurance and equipment). While workers organized training themselves, some fitness centres also required specific training to be undertaken. Within the previous 12 months only 41 percent of employee respondents had received employer-initiated formal training, with 18 percent paying towards those training costs. Attendance at training was always compulsory for 27 percent of workers, and 41 percent advised that they were not paid for attending training.

Restrictions on trade

While some workers were engaged by multiple employers, 34 percent of employer respondents implemented a restrictive work policy with the threat of dismissal if employees worked for a competitor. Reduced hours were common, and threats of dismissal were reported by 27 percent of employee respondents (90 percent of whom were casuals) for this offence.

Despite industry conditions favouring managerial prerogative, and IR trends favouring enterprise bargaining, the QHFC sought industrial regulation through an industry-specific award for the south-east Queensland region. The triggers for this action are discussed in the following section.

The employer group and their responses to industry issues

The QHFC comprised the larger or longer-established operators in the South-East Queensland industry. Membership figures were unclear, with sources citing between 34 and 50 members. This provided the QHFC with between 11 and 17 percent industry coverage in terms of employers, but accounted for approximately 50 percent of Queensland fitness market share. The QHFC President was the largest fitness centre employer in the 1993 survey (with 200 employees), giving him enormous power and influence which he actively sought to exercise through his role with the QHFC. The QHFC had previously devised strategies to moderate some of the effects of their turbulent industry environment with varying success. Some of these issues overlap in chronology but are explained here in a linear fashion.

From the late 1970s there had been a push from some industry sectors to commence a registration and accreditation process of fitness personnel in Queensland (Australian Council of Health, Physical Education and Recreation [ACHPER] 1991:4). A lack of formalized industry training combined with the proliferation of fitness centres resulted in issues such as no screening of casual participants, potentially damaging exercises, unsatisfactory exercise spaces, and classes run by unqualified staff (Australian Consumers Association 1988: 11). Discussions between the National Boards of ACHPER and the Australian Sports Medicine Federation in May 1984 led to the formation of the Australian Fitness Accreditation Council (AFAC), and the Queensland Fitness Accreditation Council (QFAC). The QHFC spearheaded a campaign to have compulsory accreditation of Queensland fitness centres with an industry body such as QFAC administering it. The QHFC President stated that this had been an unsuccessful strategy to 'weed out' unscrupulous operators, most of them small and operating with low overheads (interview 1993).

A series of scandals highlighting shoddy industry standards came to the fore with the 1984 Australia-wide collapse of the Vigor and John Valentine chains affecting thousands of

members, while the 1987 collapse of the Western Australian-based Laurie Potter's chain of health clubs left 80,000 'life-time' members stranded (Australian Consumers Association 1988). Queensland was not immune to these issues arising from unscrupulous operators, in particular concerns over 'lifetime memberships' and gym closures leaving customers out-of-pocket through pre-paid memberships. The Queensland Attorney-General's Department introduced a White Paper, *Legislative Proposals Relating to the Prepayment of Monies for Goods and Services* in 1985, in a move to protect consumers from such activities. The employer group (initially called the Queensland Gym Owners' Association) formed to respond to its proposals. Amendments to the Queensland Credit Act in 1986 resulted in the White Paper being withdrawn.

Seeking to identify a market niche and distance itself from disreputable aspects of the industry, the group changed its name to Quality Health and Fitness Centres, and from 1988 consistently sought sanctions against unscrupulous industry operators, cooperating with the Queensland Consumer Affairs Bureau, and supplying information to the Fitness Consumer Watch Committee (QHFC President, interview 1993).

Two labour-related issues also motivated the QHFC's regulation strategy. The *first* factor was a 1988 application by the FLAIEU to extend coverage of the *Club Etc. Award* to include employees of a large south-east Queensland country club. The club operated a fitness centre, and the QIRC ruled that the extended application would incorporate all south-east Queensland health and fitness centres. This hypothetically resulted in the *Club Etc. Award* and the FLAIEU covering all fitness workers, something the QHFC did not want (Industrial Inspectorate interview 1993; QHFC President interview 1993). The *second* was the imposition of penalties on two north Brisbane squash/fitness centres in 1992 for award breaches. In one instance, although the offending centre was not a member of the employer association, Queensland Confederation of Industry

(QCI), the QCI paid the fine to avoid a test case. In the second instance, the employer breaching the *Federal Squash Court Industry Award* was granted a moratorium by the Inspectorate so negotiations for an industry-specific state award could commence.

In this environment, QHFC members as larger employers began to feel they were potential targets for government regulatory agencies of all types because of their higher visibility, and sought to share that regulatory burden with their smaller competitors (QHFC President, interview 1993). The QHFC practiced a code of self-regulation, but with at best 17 percent representation of industry employers was severely limited in its influence on industry conduct. In light of previously unsuccessful attempts to eliminate unscrupulous elements and impose compulsory staff training standards, the unwelcome interest in the industry from both regulatory agencies and the FLAIEU led the QHFC to pursue a different strategy. It instructed the QCI to begin negotiations with a trade union for an industry-specific award which would be 'more appropriate' than existing awards with long-established penalty rates and conditions. This action provided the QHFC with an opportunity not only to avoid the imposition of an award with unfavourable conditions, but also to further their goal of industry rationalization, with QHFC members surviving (QHFC President, interview 1993). The QCI began negotiations with the Federated Miscellaneous Workers' Union (FMWU), a union with no members in the industry. The incentive for the FMWU was a preference clause[4] giving them coverage of fitness workers, and a membership drive was planned (FWMU organiser, interview 1993).

During the negotiation process the FMWU amalgamated with the FLAIEU (Jamieson 1993) to create the Australian Liquor, Hospitality and Miscellaneous Workers' Union (LHMU). While the QHFC had not wanted industrial involvement with the FLAIEU, in reality the amalgamation had limited effect on the unions' separate operations for some time. When the QCI

applied to the QIRC for the new award in October 1993 the union noted as agreeing to the award conditions was the FMWU.

The 1993 survey data revealed that 93 percent of employer and employee respondents knew nothing about the negotiations for an industry award. The four employers who responded positively were QHFC members. Thus the majority of industry participants were excluded from the process. The result was an award that did not capture the true bargaining dynamics between industry operators and their fitness worker employees.

The consent award, its contents and effects

The application for the new award entitled *Health and Fitness Centres and Indoor Sports Award – South East Queensland* (the Fitness Award) was lodged with the Queensland Industrial Relations Commission (QIRC) on 22 October 1993, and heard between 4 March and 14 April 1994 (Queensland 1994a:22). By 1994 the QIRC, like industrial tribunals around Australia, had experienced a shift from centralized arbitration to decentralized bargaining. Bowden and Rafferty (2009:69) note the QIRC's 'work ... became more complex', dealing with increased levels of industrial disputation, unfair dismissal applications and matters requiring individual rather than broader consideration. In this environment the creation of a consent award, with agreement reached between the bargaining parties prior to approaching the QIRC, must have been a pleasant diversion.

The QIRC was obliged to approve the consent award provided it met general requirements, so concerns in the hearings were procedural rather than substantive. Despite the industry being represented as ‘award free’, various union and employer groups applied for exemption for their members currently working in the industry under awards. The range of exemptions and the award’s regional specificity were unique to the Queensland fitness industry.[5]

The exemption of fitness centres operated for guests under the *Motel Industry Award - Southern Division (Eastern District)* led to different conditions between fitness workers in these centres and those engaged under the new Fitness Award, within the same region. Disparities also emerged between employment conditions for fitness workers in south-east Queensland and those working elsewhere in the state under other awards.

The *Health and Fitness Centres and Indoor Sports Award- South East Queensland* became effective on 3 May 1994 (Queensland 1994b: 235-243), despite an obvious lack of understanding of the industry, the nature of the work, and its employment practices by the Commissioner, the QCI representing the QHFC, and the union (Queensland 1994a).

The Fitness Award further strengthened the QHFC employers' position by providing significant departures from previously applicable awards with: a wider spread of hours; an earlier commencement time; a much lower casual loading; lower weekend penalty rates; no late work allowance; no redundancy provision; more flexible hours of work which may have disadvantaged employees (such as no consecutive days off specified); no time off during notice periods to find alternative employment; no dressing and meal room; and a lower rate of pay for 'other' classifications of staff (Sappey 1996: appendix IX). The employers' bargaining position was also highlighted in the subtleties of some award clauses such as overtime penalty rates being based on a weekly/fortnightly roster rather than an eight-hour day, and medical certificates being required for all sick leave absences.

While the new Award represented a formalization of the employment relationship, its overall outcomes for employees were ambivalent. Employers were now required to stipulate whether employment was 'weekly, part-time or casual' at hiring, alleviating the situation reported by some of being employed full-time, but without leave entitlements. Other distinct

employee benefits included the introduction of week-end penalty rates, overtime rates, statutory holiday penalty rates, a meal allowance, sick, bereavement and long service leave. These were major steps in bringing employment practices into line with other industries, and potentially advantaged all permanent employees (21 percent). Casual loading potentially benefitted all casual employees (79 percent), while the standardization and formalization of wages payment, rest pauses and meal breaks was advantageous to all.

The Award also identified classifications and associated skills and training, going some way to alleviating the QHFC's concerns about unqualified instructors and their impact on clients. While the Award made a generic statement about ‘continuing and upgrading the training provided to employees’, it did not specifically provide for the development of an industry training program, or the reimbursement of costs associated with fees, textbooks and additional travel to attend training. As 59 percent of employee respondents to the 1993 survey had not received any training from their fitness industry employer in the previous twelve months, the generic nature of the training clause made it unlikely that this clause would benefit the majority of fitness workers.

While the Fitness Award imposed specific conditions upon fitness industry employers in south-east Queensland for the first time, these were generally less onerous than provisions contained in other awards which had potential coverage of these businesses. Despite this, the QHFC believed many smaller operators in the south-east region could not afford these minimum wages and conditions, and would be forced to close. The subsequent reduction in competitive pressures was anticipated to provide 2 percent increases in returns on investment (QHFC President, interview 1993). Consumers would benefit through increased security of their memberships and improved standards of service.

The QHFC's objectives of increasing industry reputation and decreasing competition had variable success in the short and longer term, with unintended consequences that resulted in even further business regulation. By early 1995 a 'large number of fitness centre closures exposing members to loss of the unexpired portion of their memberships' (Dixon 2003:4) led the Queensland government to again consider regulation for consumer protection. While it is not clear that the closures were related to the Fitness Award and its conditions, the timing would suggest that at least some centres fell victim to the QHFC strategy. While possibly successful in reducing competition, the strategy may also have inadvertently again damaged the industry's reputation, prompting government intervention.

Between 1995 and 2000, a working party of relevant stakeholders discussed the development of a Code of Practice for the fitness industry. A mandatory Code of Practice was deemed necessary by the Queensland government, and although the number of complaints relating to the fitness industry reduced significantly over the consultation period, from 143 to 14 (Beattie, Media Release 8 October 2000), the Code was implemented as a Regulation under the *Fair Trading Act 1989 (Qld)*, commencing operation on 1 July 2003 (Dixon 2003:4). The reduction in complaints over the period may indicate other aspects of the QHFC's strategy (such as improved standards overall) began to appear.

In the longer term the industry appears to have rebounded from these problems. The Australian fitness industry continued to expand, with Access Economics (2009:i) noting growth of approximately 7 percent year on year between 2004-05 and 2007-08, and a contribution to the Australian economy in 2007-08 of $872.9 million. Data from our 2008-09 Queensland industry survey indicate several significant changes. The business environment is still competitive (74 percent of businesses less than 10 years old in 2008-09 versus 65 percent in 1993), but

competition has moved from first to fourth position in employer respondents' business concerns. Industry rationalization has occurred to some extent, however, this is linked to the development of a strong franchise model rather than to award creation.[6]

Larger organizations (franchise chains) now represent 52 percent of industry operators compared to an estimated 5 percent in 1993, with 40 percent of franchised fitness centres operating for less than five years. This has consolidated the market, and supports better administrative practices, knowledge and management within the franchise, as well as standardization of operations. Employer respondents reported franchising had also created changes in relation to regulatory compliance, however, consistent with research elsewhere employers' focus is typically on complying with franchise obligations rather than with employment contracts or awards (Ji and Weil 2009).

The most notable change in terms of employment is the increased use of independent, self-employed contractors (personal trainers), not covered by award conditions. The 2008-09 survey data highlights leakage from casual employment to contractors of approximately 14 percent, with 46 percent of employer respondents using contractors. Like the presence of volunteers in the 1993 environment, the involvement of contractors affects the bargaining power of fitness employees. Fitness workers reported in 2008-09 that the rise of contractors had increased the use of restrictive service conditions in individual contracts, with 18.5 percent reporting having been threatened with dismissal for working for a competitor. This is confirmed by 51 percent of employer respondents reporting implementing a restrictive work policy.

Although the Fitness Award was identified as the dominant tool for wage setting in the 2008-09 surveys, employers still selectively pick, or ignore, specific conditions. While 73 percent of employers claimed to pay allowances and penalties, only 10 percent of worker

respondents had received them in their previous pay packet, and 85 percent had not received any allowances in the previous 12 months. At least 31 percent of workers are still occasionally required to perform unpaid work, while 65 percent reported being asked to work with less than two hours notice, and 31 percent had had work cancelled without pay or adequate notice. Managerial prerogative over employment conditions remains unchallenged.

The union's role in the industry remained negligible. The anticipated membership increase did not eventuate and reported union membership dropped to 1 percent in the 2008-09 survey. While the Australian Liquor, Hospitality and Miscellaneous Workers' Union (LHMU) website (www.lhmu.org.au) recognizes sport and recreation as an area of coverage, it is viewed as a subset of the hospitality industry. Fitness work (of any category) is not included in descriptions of work their members undertake, nor any specific information provided for them.

Discussion and conclusions

Kochan, McKersie and Capelli (1984) identified declining union density, increased managerial anti-union or union avoidance sentiment, increased use of alternatives to collective bargaining focused on worker participation or engagement, increased managerial proactivity and innovation relating to employment conditions and benefits (including the use of individual contracting), as well as a decrease in the regulatory role of government in the US as contributing to the need to reconsider theoretical approaches in IR. Their strategic choice theory highlights IR practices and outcomes as being shaped by the interaction of environmental forces, unions, workers, public policy decision-makers and management. Their argument, based on the transformation of US IR, is that changing external environments induce organizations to adjust competitive business strategies. While such changes are consistent with the values, beliefs and philosophies of key decision-makers, they occur within embedded institutional structures which, along with power

distribution between the key actors, constrain to some extent the available options for change. In such a context, IR processes and outcomes continuously evolve through the interaction of environmental pressures and organizational responses (Sekiguchi 2005).

Kochan, Katz and McKersie (1986) developed a three-tiered typology to illustrate the primary levels of IR activity (strategic, functional/policy, and workplace), as well as the three main actors (management, unions/labour, and government). While it is generally accepted that implemented decisions flow downwards from the strategic level to the workplace level, flows in the opposite direction (although less discussed) may also act as catalysts for change.

Strategic choice theory posits that sharp increases in competition force managers to make decisions which affect the organization and the IR system. Choosing to remain in the competitive environment requires new or adjusted competitive strategies, 'influenced by the history and current state of industrial relations in the firm and the industry' (Kochan et al 1984:26). Thus, management are no longer simply passive reactors to union demands, but increasingly influence workplace IR (Petzall, Abbott and Timo 2003). In assessing the firm's situation, managers need to consider not only the cost and predictability of their labour supply but also their competitors' IR characteristics, and whether wages and labour costs have been taken out of competition.

Kochan et al (1984:24) state that the key to understanding 'the dynamics of an industrial relations system during periods of significant change in product markets' lies in understanding how 'market shifts interact with business strategies and prior or current states of industrial relations.' In 1993, the Queensland (and Australian) IR systems were well into a transition from centralized collective bargaining to decentralized enterprise-based bargaining.[7] While collective bargaining remained the cornerstone of the system (either through union or

worker group negotiations with employers), many employers sought individual contracts. Decreasing union density and the introduction of human resource management (HRM) practices in many firms led to employers instituting union avoidance and union substitution strategies (Peetz 2002**)**. These changes parallel those identified by Kochan et al (1984; 1986) in the US, and one might assume that employers, especially those in competitive industries, would strategically choose to implement such practices and policies to their fullest extent.

However, a group of employers in the Queensland health and fitness industry reacted atypically. Rather than use the decentralized IR system, their strong managerial prerogative, and negligible unionization at most workplaces to introduce individual contracts and HRM practices to further limit union involvement in the industry, they embraced the traditional centralized IR system and a union.

Kochan et al (1986) argue that the integration of HRM and business strategies has resulted in IR decisions being increasingly affected by marketing, production, finance, investment and other business-related issues. In the case of the Queensland health and fitness industry a range of business-related factors created the impetus for an IR strategy: the comparatively recent emergence of the industry; a confusing array of overlapping awards leading to non-compliance; predominantly unorganized small business employers, ill-informed of their industrial responsibilities; low-entry costs increasing competition; and few industry standards affecting the industry's reputation. These factors led a group of the longer-established and larger employers (the QHFC) to seek regulation. The use of industrial regulation, in the form of an industry-specific award, allowed this group to take wages out of competition, 'levelling the playing field' by reducing wage competition and regulating the labour market with the objective of forcing smaller competitors out of the industry.

In the Queensland commercial health and fitness industry the competitive context and only partial success of previous strategic efforts created the impetus for the QHFC to adopt a strategy of industrial regulation to rid the industry of unscrupulous operators, improving its reputation and reducing competition. In seizing the initiative, the QHFC with at best 17 percent employer coverage, orchestrated the negotiation of a consent award with a union of its choice. Trade unions are generally perceived as structuring labour standards through worker mobilization (Gray 2004). In creating an award that regulated the Queensland fitness industry unambiguously for the first time, the QHFC (in conjunction with the QCI) effectively usurped that union role. Research into union organizing in the service sector in the United States (Savage 1998; Waldinger, Erickson, Milkman, Mitchell, Valenzuela, Wong and Zeitlin 1998) has identified knowledge of the industry and activist rank and file members as key elements. Neither of these elements was present in the Queensland fitness industry for the union. With no membership in the industry when negotiations began, and with little knowledge of the industry, the nature of the work or its employment practices, the union agreed to award conditions that did little to interfere with established managerial prerogatives.

Although it is impossible to know what was in the minds of QHFC members when they selected the union with which to negotiate the consent award, factors such as the unionization rate of the industry (approximately 6 percent in 1993), the highly casualized nature of employment, a high proportion of workers having primary full-time employment elsewhere, and the very limited hours worked by many fitness workers (a mode of 4 hours per week) would no doubt have featured prominently. Their industry knowledge would almost certainly have led them to believe that unionization rates were unlikely increase (or increase marginally at best), so their offer of a preference clause to the union was virtually meaningless.

This case study supports the view that the outcomes of an IR system are the products of vested interests and strategic choice. However, while the strategy of taking wages out of competition was consistent with strategic choice theory arguments, the QHFC's embracing of the traditional IR system and negotiating with a union was the inverse of Kochan et al's (1986) arguments. Not only did they not institute union avoidance or substitution practices, they actively promised a union a preference clause by which to organize their workforce.

Four explanations are advanced for this behaviour, two relating to potential flaws in strategic choice theory and two related to the specific embedded institutional structures, power distribution and values of the participants. *First*, Kochan et al's (1984; 1986) three-tiered typology of IR activity focuses on sizeable organizations with multiple levels of management, demonstrating the relationships between decisions at various levels within the organization, and between it and its IR environment. In this instance the organizations were small (with one exception), with the owner/manager typically the sole decision-maker. *Second*, strategic choice theory focuses on the actions of individual organizations or institutions. Here, a group of competitors with similar values and beliefs about the industry interacted to impose their views on others in the industry. *Third*, managerial prerogative was dominant in the industry, with unionization rates extremely low and a highly casualized workforce. Employers held all the power in negotiations. *Fourth*, the option of using the traditional IR system was still available despite the transition to the new decentralized system. Selecting this option allowed the imposition of QHFC-determined wages and working conditions onto all industry employers in South-East Queensland, something that selecting individual contracts or enterprise bargaining arrangements could not accomplish.

The union also made strategic choices in agreeing to negotiate the consent award. Unlike the employers, their strategy did not come to fruition. This highlights the importance of due diligence by parties entering into negotiations, as the long-term consequences of being enticed by apparent 'gifts' such as access to workplaces for union organizing may suffer in the light of full knowledge of the industrial situation.

Strategic choice theory has been used to explore the atypical actions of a group of employers in the Queensland commercial health and fitness industry. Propelled by a business strategy to improve their industry and their own commercial interests, the small group was able to reshape the industrial landscape of their industry. By highlighting the employer group's actions as contrary to those anticipated by Kochan et al' (1986) strategic choice theory, this case study identifies that IR is even more complicated than Kochan et al envisaged. Collusion between IR actors over strategic actions alters the dynamics of the original model. It is clear from this industry example that small, owner operated businesses colluding over a collective vision for their industry respond differently to environmental forces than large organizations focused on individual organizational outcomes. However, while contrary to assumed actions, the case study shows that the interactions of environmental forces *along with* the strategic choices of IR actors shape industrial relations outcomes.

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[1] An award is a legally enforceable decision of an Australian industrial tribunal that contains the terms and conditions of employment in a firm or industry. These decisions may be arrived at following arbitration or conciliation in the tribunal, or approved following agreements reached independently by the parties (a consent award) (Sutcliffe and Callus 1994:17).

[2] The Australian National Employment Standards provide for a maximum of 38 ordinary hours of work per week.

[3] Casual employees are paid higher hourly rates (a loading or penalty) to compensate for not being entitled to paid sick or annual leave.

[4] A preference clause, inserted into an award, means that union members would be given preference in employment over non-unionists. This practice is now prohibited in Australia.

[5] All other states had fitness awards that applied across the state.

[6] Similar consolidation through the expansion of fitness centre chains Australia-wide is noted by Access Economics (2009:1).

[7] A hybrid process began federally in 1987, with the shift to enterprise bargaining occurring in 1991. This process spread to the state industrial relations systems rapidly.