

# AFTER THE WATERFRONT

THE WORKERS ARE QUIET

LeftPress Collective

Written by the LeftPress Collective  
Edited, printed and published by LeftPress Printing Society  
PO Box 5093, West End, Brisbane Australia 4101.  
Typeset in Bookman Old Style  
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### ***Dedication***

This book is dedicated to Phil and Joyce O'Brien.

Phil was a waterside worker on the Brisbane wharves and an active rank-and-file unionist in the Waterside Workers Federation (WWF). Phil wrote *Towards Peace: A Worker's Journey* with Bernie Dowling which was published by Social History of Australia Publishing Enterprise (SHAPE) in 1992.

Phil, who is now deceased, never gave up on the working class.

Joyce has been an activist inside the WWF and a peace campaigner. She now lives in retirement in Brisbane.

### ***Acknowledgements***

LeftPress wishes to acknowledge Bernie Neville, Pamela Curr and Jim Sharp for the stories they each contributed to this book.

Thanks are due also to Ian McLeod, Jeff Rickertt, Claire and Katherine who read a draft of the book and made suggestions and comment.

We wish to thank all those who have contributed.

We are grateful for their contribution but take full responsibility for the content of the book.

## Introduction

A menace is stalking our workplaces – the menace of global capital.

All the Powers of the old Market remain intact but new, global, forms of oppression are emerging: the unprecedented and worldwide explosion in credit which traps and enslaves not only individuals and households but also entire countries and regions, stripping them of their sovereignty and forcing them to adjust budgets and social policies to the dictates of international financiers; the cannibalising of one nation's essential industries and services by the business interests of another; the almost total dependence of some nations on natural resources found only in the lands occupied by others; the massive militaries seen worldwide with their equally massive expenditures which drain national budgets.

All these have formed an un-holy alliance so overwhelming that the political class no longer makes even a pretence of governing for the common good, but has abandoned all our destinies to ideologies of 'free trade', 'the invisible hand' and 'de-regulation' in the vain hope that the 'market' will achieve what it cannot: social cohesion.

The mainstream political class has long ago decided that Australia's future will be subjected to the demands of a globalised economy and to that effect has acted to reduce the role of government as near as possible to none at all. In Margaret Thatcher's words 'It's government's job to get the finances right and to provide a framework of law in which free enterprise can operate'.<sup>1</sup> That much and no more, she might have added.

Those in the political class who are the natural inheritors of this philosophy, flushed with the seeming invincibility of their ideology and noting the degree to which some in the working class have adopted their beliefs and granted them political support, triumphantly declare: 'we are all conservatives now.'<sup>2</sup>

On the other side, those who have traditionally opposed market forces, always lukewarm and piecemeal in their opposition, have crumpled before the onslaught of global capital and now themselves look to 'free enterprise' to arrange society's affairs and to solve society's problems.

Once their ranks were full of workers with experience in industrial struggle, workers who knew that their power lay in solidarity and collective action and were willing to use that power in defence of their rights, workers who understood that they were a distinct class whose interests and destiny were antagonistic to the interests and fortunes of employers and property owners. Now they are careerists who share the dominant view of our times, which holds that discord is not to be found in different class interests but in the corruption of individuals.

Discord follows misguided regulation by a government, failed interference in the market, or corruption. Modern problems are the problems of individuals — problems of corruption or collusion by individuals to benefit themselves through either state intervention on their behalf or monopoly activity of government owned corporations. The solution is to end worker collusion of unions, privatise government enterprises and limit the public sector.

A clear example of such 'individual' failure in modern economics is unemployment. The cause is seen as either corrupt business management or, more likely, failure of the individual unemployed person. The unemployed are failed individuals. They do not seize the opportunities offered by the market.

"Get your lawnmower, go out and mow lawns."

Peter Costello, Australian Treasurer,  
Words of advice to the unemployed,  
spoken in the Australian parliament

When it is difficult to pin societal problems down to individuals they are attributed to races, religions or failed nations. These groups interfere with the market in the same way as individuals. They fail to seize opportunities offered by the market because they are limited by old or primitive cultural practices, e.g. tribalism.

It is 'outdated practices' that limit human progress, not the expropriation and accumulation of wealth by the few. The European imperialist plunder of the world in the 19th and 20th centuries and its modern U.S. equivalent did not create discord but harmony. Some call it 'liberation', the coming of 'freedom'. This conquest smashes the barriers to human progress by the expansion of global markets.

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<sup>1</sup> ABC Radio National, Hindsight program 15<sup>th</sup> April, 2007: *An attitude of mind and faith – liberalism in Australia's political history.*

<sup>2</sup> Janet (Pauline Hanson of the tertiary educated) Albrechtsen writing in *The Australian* after the 2004 federal elections.

So also with workers in their industries: they should not collude or be allowed to form common cause with their comrades. They should ignore them. If necessary they should compete with them. Only in this way will workers advance as individuals.

These views currently dominate our society. Few question this logic. It is logic sharply distinct from class analysis. Class analysis holds that the market - supported by state power - acts in the interest of one class - the owners of property - to the detriment of the working class.

Should those who live by their labours accept the dominant view?

This question prompted the collective of LeftPress to write a pamphlet centred on an example of workers 'resisting progress' - the Maritime Union of Australia (MUA). On the surface a battle over the number of shipping containers that can be moved every hour through an Australian port may not appear momentous but it was more than this. It was an issue embroiled in the rights of workers to have a say over their employment conditions and to express this right through an organised union.

Was the MUA dispute of 1998 a continuation of the workers' right to challenge a system of exploitation, by collective action in unions, or was it a misguided challenge to human progress?

The MUA and its predecessors, the Waterside Workers Federation (WWF) and the Seamen's Union of Australia (SUA), were among the most powerful and militant unions in Australia during the period 1950 to 1998. Their members had achieved better wages than most other labourers. By 1998 the MUA's membership, as a result of increasing mechanisation of work on the waterfront, had become relatively small. It retained, through high membership and participation among waterfront workers, considerable influence over the work practices in the maritime industries. Maritime companies, recognising a prevailing decline of workers' union power in the late nineties, in collusion with government, sought to reduce union influence in order to increase their profits.

The dispute was triggered by an employer lockout. It was viewed by other Australian workers as symbolic. Some saw it as a last stand of strong unionism. For this reason they gave waterfront workers significant support, but for many reasons active participation in the dispute was low. Underlying this were onerous legislative secondary boycott provisions. Few unions mustered strike action in support, even though the employer action was recognised as a challenge to the right of all unions to organise. Preference was given to public protests. In the state of Victoria these made an impact. Overall, unions relied more on legal challenges through the courts than on industrial and political action.

This reflected an acceptance by union leaders that workers' class consciousness was limited or at a low ebb.

As a result the dispute, though highly focussed, was small. It did not expand into generalised action or even to other firms in the maritime industry. Major terminal operators, other than the protagonist, Patricks, continued operations throughout the dispute.

This containment meant that the dispute did not revive unionism as many had hoped. Not did it provide any momentum for political success for the Australian Labor Party.

It could be said the workers shouted but later became quiet. Today in Australia this is how they remain.

'The workers are quiet.'

This book focuses on the decline in unionism from 1985 onwards and implications for future struggles. It aims to improve our capacity to combat the opponents of unions by addressing difficulties that occur within unions, including:

- Problems with union leadership;
- Tensions between leaders and the rank-and-file; and
- Weakness in rank-and-file responses to repression.

Other points we set out to discuss in this book are the internal relationships within unions, the relations between different unions and those between unions and socialist groups.

With this book we hope to open a dialogue about the defence of the right to organise in unions with union members, delegates, organisers, industrial officers, union officials and union well-wishers.

After years of quiet, activists are trying to set up union support groups in one form or another. Among these are groups that hope to revitalise the political struggle for socialism. We believe that the future of unions and the struggle for socialism are inextricably linked, but that the relationship between workers organisation and political ideals requires serious thought. This book is a contribution to the debate about strategy and organisation that we hope is useful in building workers' political organisation.

LeftPress Collective

November 2007

## Chapter 1 Wide awake — The rise of union solidarity

In early 1998, around Australia, thousands of workers massed in solidarity with the Maritime Union of Australia. “MUA HERE TO STAY,” they chanted. Many workers and socialists were hoping that the tide had turned, that unionism was returning as a growing force in the Australian political landscape. The pickets, the rallies and the overwhelming sense of solidarity contributed to the determined resistance and the euphoria surrounding the victory in the High Court which permitted the wharfies, who had been sacked by the stevedoring company, Patricks, to return to work.

In the following years, it became clear that the optimism of the period did not translate into a resurgence in union membership. The membership levels of unions continued to fall, particularly in the private sector. In 1960 union membership was about 60% of all workers, by 1998 it had fallen to approximately 30% and in 2005 it fell below 20%. The graph overleaf illustrates the broad trajectory of trade union membership levels in Australia throughout the 20th century and into the 21st century.<sup>3</sup>

From the beginning of the First World War to the beginning of the Second World War the number of trade union members nearly doubled, in spite of the difficulties faced during the Depression. After the Second World War the efforts of the union militants were rewarded with strong union participation by the working class in the 1950s and 1960s. This period saw unions at their strongest at the May Day, Eight Hour Day or Labour Day celebrations (depending on which State you were in). Rank upon rank of union members marching proudly down streets in towns and cities were clapped along by crowds of onlookers, family, friends, and other supporters. None of this would probably have been possible without the hard organising work done in the 1930s by the communists in the militant minority movement, the unemployed workers’ unions and others.

### “Riotous Demonstration in City Streets”

So began the news story in the Sydney Morning Herald reporting the 1927 timber workers’ struggle in its usual sensational anti-worker style.<sup>4</sup>

The report continued with time-worn stereotypes of worker and unionist:

#### **Ballot Papers and Effigy Burned**

Police Draw Batons

Riotous scenes unprecedented in Australian trade union history were witnessed in the city last night when the striking timber workers, led by the Communists, held a street procession and demonstrated as a protest against the Lukin award.<sup>5</sup>

In defiance of warnings by the Federal authorities and the police, ballot papers were collected from the strikers, placed in a large canvas bag, saturated with kerosene, and publicly burned in a kerosene tin outside the Trades Hall. Later an effigy of Mr. Justice Lukin was burned by the Communist section of a crowd in Hyde Park although an undertaking had been given to the Commissioner of Police by Mr. J. S. Garden that this would not be done.

Traffic was blocked and standing room was scarcely possible. As the ballot papers, saturated with kerosene, burned brightly, the ‘Red Flag’ and ‘Solidarity Forever’ were sung. Derisive jeers for Judge Lukin followed and then orders were shouted from a Trades Hall balcony for the men to take their allotted places in the procession.

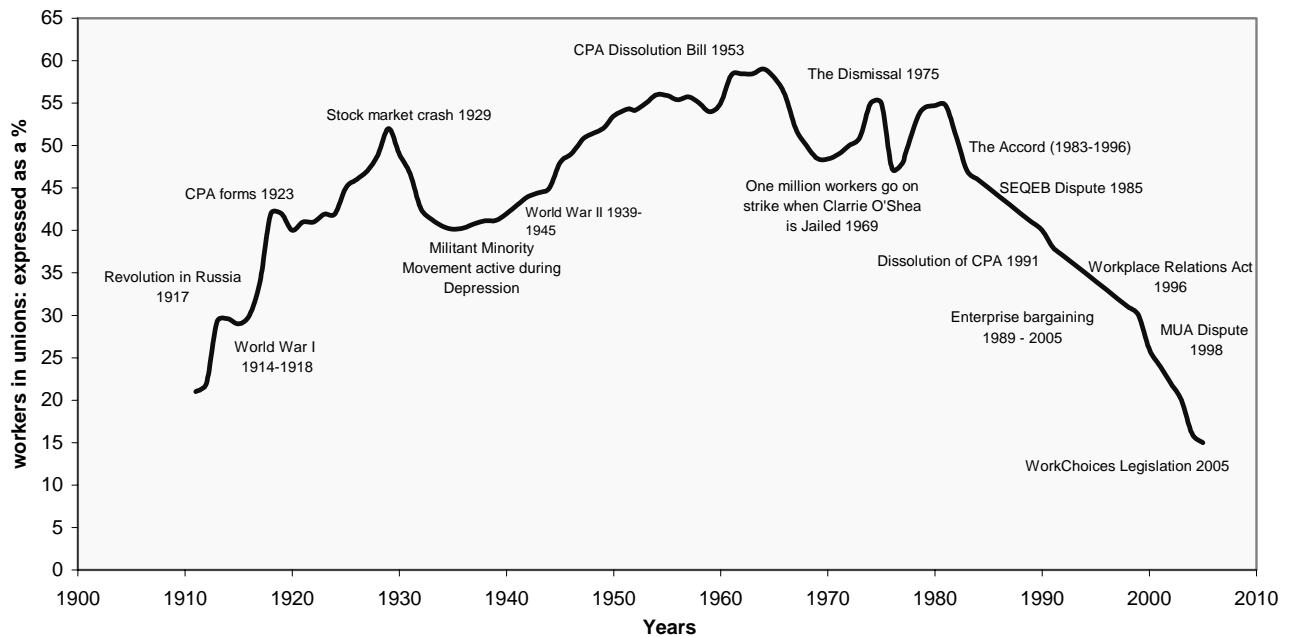
Posters displayed were ‘Lukin award means - heads the bosses win, tails the workers lose.’ ‘Result of the secret ballot can have no effect on the award; award must continue whatever the result of the ballot may; therefore, this ballot is the best joke of the year.’

<sup>3</sup> 1301.0 – ABS Year Book Australia, 2003

<sup>4</sup> Thornton, Ernie. *Stronger Trades Unions—Opponents Answered. The facts of Amalgamations, Secret Ballots, Balance Sheets.*

<sup>5</sup> On 13 January 1929, Arbitration Court Judge Lukin made a new award for timberworkers, which increased hours to a standard 48 for all timberworkers, cut wages 10% (despite a 5.7% increase in the cost of living), and increased the employment of youth at lower wages (likely to displace 2,000 men). This was definitely one of the worst awards in Australian history. *From the Plague to Reith* By Eric Petersen in *Marxist Interventions*  
<http://www.anu.edu.au/polsci/marx/interventions/law.htm>

### Union Membership: 1911 - 2005



Sources: Labour Report 1912-1958; Trade union members, Australia (6325.0); The Trade Unions by LL Sharkey 1942 p23 1961 Ed Published by Current Book Distributors. Australian Bureau of Statistics 6310.0 - Employee Earnings, Benefits and Trade Union Membership, Australia, Aug 2005). Historical tags were added by the authors.

Notwithstanding the sensational reporting, the story shows that the approach to advancing workers interests was clearly based in the militant collective action of the workers themselves. Seventy years later, events leading up to the 1998 MUA dispute showed glimpses of this strategy.

In the ongoing dispute with Patricks Stevedores, CEO Chris Corrigan sacked 55 wharfies in Sydney in 1994. The wharfies took their redundancy payment cheques to the Waterside Workers Federation offices to be put in a plastic bag until the dispute was over.<sup>6</sup> After the men were re-instated the then MUA national secretary, John Coombs, took the cheques and dumped them on Corrigan's desk.

Solidarity from the other unions and the community in the 1998 MUA dispute was also a flashback to the past, mirroring support received by the Timber Workers of 1929. However, more often than not, current trade union strategy is subsumed in legal manoeuvring, not the defiant burning of ballot papers by strikers.

#### **The right to organise**

Unions now struggle for relevance in Australian social and industrial worlds, yet they are needed just as much as at any time in the past 120 years. In the capitalist system, workers engaged in the selling of their labour remain in fundamental opposition to the employers who benefit from their exploitation of workers. It is also still true that workers are best served by unions that organise to represent them as a collective whole.

While the opponents of unions have ridden high since the election of the Howard Government, it may be comforting to think that it was easier to combat these opponents in the past. However, this is not the case. Over forty years ago, Jack McPhillips, former assistant national secretary of the Iron Workers Union, said:

“Workers won the right to organise, form unions and act together to defend and improve wages and working conditions only after bitter struggle against the combined forces of employers and governments.

Moreover the media has stood against workers and their unions since their very beginnings:

“The trade unions are, we have no doubts, the most dangerous institutions that were ever permitted to take root under the shelter of the law in any country’ (The Morning Post, 29 March 1834).”

<sup>6</sup> Coombs told this story at the first stop work meeting in Brisbane just prior to the April 7 mass sackings. He described how the wharfies in Sydney had dealt with previous attempts by Patricks to sack them. He pointed out that none of his officials had asked them to surrender the redundancy cheques. They knew that redundancy on Patrick's terms spelt the end of the union. This will be dealt with in more detail later.



Unions are now accused in the media of pursuing sectional interests against the common good. For instance, while the Maritime Union of Australia (MUA) and its predecessors, the Seamen's Union and the Waterside Workers Federation, had struggled hard to win good wages and conditions for their members in the 1950s the union continued to be vilified in the mass media as a corrupt organisation rorting the system on behalf of a privileged group of workers. So effective was this propagandising by the media that many within the working class to this day believe that wharfies had it easy and that the system needed reform.

The mass media took up the Federal Government's portrayal of the 1998 MUA dispute as a dispute about wharf productivity. However the working class movement understood instinctively that the allegations of low container loading rates were an assault on the union's right to collectively organise.

The dispute showed workers' employment contracts were not legally enforceable and only had weight through the collective strength of waterside workers' organisation. Corrigan's use of labour hire companies to lock out the wharfies and rob them of their entitlements was only possible because there had been a serious decline in the industrial power of workers and unions since the early 1970s.

The 1996-2007 Federal Government continued the assault on the organised working class by successive governments, undertaking to get rid of collective bargaining and the right to strike. One of the strategies was the introduction of secret ballots, designed to undermine decision making. Secret ballots are part of the arsenal of employers in isolating workers, creating fear and eroding the solidarity between workers, and so diminishing their collective strength.

During its history, the union movement overcame attacks such as these and established certain minimum union rights. These rights became an integral part of the struggles to defend and improve living standards.

Jack McPhillips listed trade union democratic rights as:

1. The right to form unions and to have them recognised by law.
2. The right of unions to exist independent of government control or interference from employers and other outside forces; and the right of union members to control their own organisations.
3. The right to bargain, to enter into agreements or contracts concerning wages and conditions.
4. The right to have these enforceable by law as minimum standards, i.e. the right to legalised wages.
5. The right to carry out activity for political aims.
6. The right of workers to strike and otherwise to restrict the use of their labour; and to be supported by other workers.
7. The right to elect representatives of a union's members on a job to act on behalf of the union and the members, free from victimisation by employers.
8. The right to hold meetings on the job.
9. The right of trade union representatives to enter an employer's premises and to inspect his time and wages records, in order to enrol members, discuss union business with members, police and enforce the operation of awards, agreements and industrial legislation.<sup>7</sup>

McPhillips was a communist worker and union leader. Communists no longer lead unions. Instead a weakened union leadership fights to maintain arbitration and conciliation courts they once attacked for restraining rather than supporting trade union rights.

After World War II, in a climate of shortages, the working class was in the ascendancy. But the arbitration and conciliation system was impeding the progress of workers by forcing unions to bend to the combined power of the state and the individual employer.

Employers standing alone feared the might of union solidarity.

Conciliation and arbitration courts sought to limit workers' power by appealing to workers' national consciousness to subsume their rights to a common good. In reality this was just a smoke screen to prevent growth in wages and workers' power. This was well recognised by communist union officials who sought not to be fettered by nationalism and stood for workers' rights first and foremost.

Unions like the wharfies that organised 'on the factory floor' held their own against employer and courts through the post war period up till the mid 1970s. This is reflected in the graph showing union membership in Australia. But a new challenge was to confront workers, the era of economic rationalism.

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<sup>7</sup> McPhillips, Jack. *Penal Powers Cost Unionists £1,000,000!* (Sydney: Current Book Distributors 1963 at p13).

## Chapter 2 Nodding off to sleep — Unions embrace economic rationalism

### *Australian Labor Party (ALP), Trade Unions and Economic Policy*

After the end of World War II the economic and political program of Australia's trade unions edged closer to the ALP. Trade union leaders were overwhelmingly ALP members. Most trade unions maintained direct links to the Australian Labor Party, through affiliation and support.

While trade unions moved closer to the ALP, the party's political and economic program moved closer to the general trend of orthodox economics. This trend toward economic rationalism gained pace after the dismissal of the Whitlam Labor Government in 1975.

The ALP was formed to gain parliamentary political power. From its formation a debate constantly raged as to the extent of compromise acceptable to achieve this goal. In the 1980s and 1990s this internal battle chose between adherence to the working class or opportunistic pluralism to attain parliamentary power. It was finally resolved during the Hawke-Keating Labor governments.<sup>8</sup> The importance of parliamentary power became paramount. This meant that the intellectual base of the party was embroiled in the conventional debates of the 'pluralistic'<sup>9</sup> society, whose parameters were dominated by the ruling elites. ALP politicians and trade union officials followed, avoiding a socialist critique of society, in an attempt to increase credibility across classes. Consensus politics superseded class politics.<sup>10</sup>

The parallel consensus within the party was that power was only possible with the support or at least the indifference of the masters of capital internally and U.S. power externally. The party adopted conservative, anti-socialist views and embraced market capitalism.

From the 1970s, following a surge in inflation (or stagflation, as it was known, because inflation and recession occurred in different parts of the economy) in industrialised countries<sup>11</sup>, the consensus within mainstream modern economics became directed towards a return to classical economics — re-invented as neo-classical economics.<sup>12</sup> This return to classical economic theory meant a 'freeing' of the market, reduction of the government sector, and reduction of government regulation (except for interest rate policy). The neo-classicists argued business failure and unemployment resulted from the failure to curb inflation. Conveniently these problems were not seen as inherent problems of the capitalist economy with its unstable business cycles or poor market-driven business decisions.

What was needed was a rationalisation of the economy, which would fix itself with less engineering of it. The term economic rationalism was born.

Economic rationalism implies the existence of an inherent natural law unaffected by human endeavour or weakness. The contradiction in neo-classical economic theory ignores the reality of powerful interests like monopoly capital distorting the market. It makes the dubious assumption that naked self interest is the only rational driver of decision making. Neoclassical economists posed their glimpse of human progress as the foundation of a rational society.

Economic rationalism was heralded as immutable truth, and ignored success derived from human cooperative behaviour.

The central unit of neo-classical economic systems is the firm. To encourage the private sector firm, Australian governments, both Labor and Liberal, reduced the size of public sector investment.

Neo-classical theory says the private sector will step in. But this is false. The firm's imperative for short term profits means it won't take up long term investments previously performed by the public sector. This tendency often turns to suppression of wages to avoid business failure. The relentless search for short term profit can send the business cycle and the economy as a whole through lower public consumption, into crises during which the firm suppresses wages to avoid business failure.

<sup>8</sup> Ernie Lane said long ago that 'figs do not grow on barren trees' in his memoir about the Labor Party during the period 1900s to the 1930s. In *Dawn to Dusk – Reminiscences of a rebel*. Lane provides some insight into the failings of the ALP from its outset. The contradiction between the desire for parliamentary political power and socialist objectives were always present. However a strong force within the labour movement (and as a result the ALP) for socialist purpose remained until the Hawke/Keating years.

<sup>9</sup> In politics, liberals argue that pluralism 'is a guiding principle which permits the peaceful coexistence of different interests, convictions and lifestyles' — see Wikipedia.

<sup>10</sup> Strangely during this time its protagonists assumed successfully an increased ideological position to the right.

<sup>11</sup> Stagflation is a period of high inflation combined with economic stagnation, unemployment, or economic recession. In the early 1970s stagflation occurred in the US by expansionary spending during the Vietnam War and the sudden shock of a rise in the price of oil (from Wikipedia).

<sup>12</sup> This was championed by the Chicago School of Economics led by Milton Friedman.

In the past, during the period of Keynesian economic policy, the system relied on the government to step in and patch up private consumption gaps. Even this modern intervention was frowned upon and resisted by monetarists of the modern era who promote radical individualism. Firms bent on further short term gain demand less taxation and budgets of governments to be cut or opportunistically allow funds to be diverted to military and security spending, avoiding productive long term investment.

Much of the current consumption is dependent on sale of resources to China. But riding the wave of Chinese economic growth will not immunise Australia from world economic failure. Chinese economic expansion will face its own bottlenecks and is increasingly dependent on consumption patterns in the U.S. and Europe. The U.S. seems destined to end in severe crisis because its economy has chronic trade deficits and its legislature has passed budgets geared to military expenditure to defend the status of its economy. Worldwide, the pattern seems the same:

1. Surging inequality
2. Falling real wages
3. Uncertainty from technological change leading to poor management decisions and waste.
4. Growth in homelessness and the working poor excluded from the benefits of the economy.
5. Disarray of the family as an economic and cooperative unit and destruction of its economic viability.
6. Infrastructure, both private and public, destroyed in periodic riots by the disenfranchised.
7. Middle income earners facing waves of uncertainty when companies downsize for short term gain.
8. Disintegration and inhibited growth of public infrastructure as governments avoid spending so as to achieve tax reductions for high income groups.<sup>13</sup>

In this changing climate, governments tell trade unions to change their practices or get out of the way. This is ironic because the tactics of old fashioned unionism, seen to be out of date, are becoming attractive for workers facing government policy. Governments are turning society back to the era of the robber barons, the unregulated era prior to the Great Depression of the 1930s.

The danger for workers, 70 years later, is not the threat of the minor crises that occurred post World War II, but is a savage repeat of major crises of the distant past, where poverty was seen as necessary for economic success. As Gore Vidal put it: 'It is not enough for some to succeed. Others must fail.'<sup>14</sup>

Contrast current times to the period of the 1950s and 1960s when there was strong wages growth during the post World War II capitalist boom.

Wages were keeping pace with growth in profits. Real wage increases were achieved by strong trade unions and weaker unions benefited from the actions of stronger unions through the flow-on decisions of a centralised wage fixing system. That is not to say that the survival of trade unions themselves was any easier. The jailing of many communist trade union officials is evidence of this. However those leaders were not so ready to adopt reformist tactics in periods of crisis. It was the likes of Ted Roach, the assistant general secretary of the Waterside Workers Federation who was sentenced to 12 months jail for contempt of the courts penal powers that led strong rank and file unions.

In 1954, the Waterside Workers Federation embarked on its greatest strike when union membership was at its peak. It had 27,000 members working on the waterfront. Compare this with 1998. In that year, there were only 3,000 wharfies in an amalgamated MUA of about 10,000 members which included seamen, clerical workers, tradespeople and hospitality workers on ship and shore. The MUA, like other unions, in recent times, has only been able to secure real wage growth through the acceptance of redundancies and subsequent sacrifices of conditions such as the working of 'double' and 'triple headers' by its members.<sup>15</sup>

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<sup>13</sup> *The Future of Capitalism: How Today's Economic Forces Shape Tomorrow's World*, Lester C. Thurow, 1996, William Morrow and Company.

<sup>14</sup> Gore Vidal — US author & dramatist (1925 - )

<sup>15</sup> A **double header** is two consecutive shifts worked by a waterside worker (usually of 15 hours duration). The pay rate is higher (up to 2 1/2 times the ordinary rate). There is a short break between the two shifts. A triple header is one shift more. These concessions by the MUA have not been given without criticism from within the organisation. For example, at the time, the retired members association in Queensland warned the MUA about the risk to the union of sacrificing jobs in exchange for working longer shifts (i.e. 'double' or 'triple headers') in a period of high unemployment. Greg Combet of the ACTU said: '*John Coombs (MUA secretary in 1998) and I are on record as saying the way to fix the problems [prior to the settlement] was to get rid of double shifts, put people on an annual salary. We've achieved that in the wash-up.*' At p225 of *Under the Hook* by Tom Hills and Wendy Lowenstein.) And again at p226: '*The wharfies never worked double headers until 1991. Employers wanted them-we didn't. I did that negotiation with John Coombs and we regret it. Glad we've got rid of them now.*'

Australia's modern economic rationalist wage relations began in 1983 with the Hawke Labor government's social contract (the Accord). Compare consequences of the Accord with the world wide pattern above:

- wage restraint;
- redundancies;
- loss of a progressive tax system<sup>16</sup>; and,
- amalgamation of unions.

Initially jobs were protected by tariffs but trade barriers were later lifted resulting in loss of more jobs. The trade-off that came with the Accord was that the growing unemployed were begrudgingly given the dole and the general population received Medicare. This was the social contract. Eventually more funds were channelled away from social needs with big cuts in education and welfare spending. Labor Prime Minister and former ACTU chief, Bob Hawke, commenting on TV in the early days of the social contract, said that workers up to this time were receiving a disproportionate share of the economic cake and more had to go to capital. Workers were told to tighten their belts in the interests of the country.

The Labor government, upon advice from its economic rationalist treasurer, Keating, attempted to reduce wages as a percentage of Gross Domestic Product (GDP) because of a fear that recession would result from higher incomes for workers. Wages as a percentage of GDP had increased under both the Labor government of Whitlam and the Liberal Government of Fraser. However, armed with the Accord, Prime Minister Hawke and Treasurer Keating were more adept at wage restraint.<sup>17</sup> During this period of the Accord wages did not get near the 60% of the GDP figure of the 1970s. Despite this, Keating's 'recession we had to have' occurred in 1990-91.<sup>18</sup> This was a period of many union defeats. It coincided with a change of direction by unions to a corporate structure and emphasis on individual needs over the needs of the collective. There were still some unions that ranked solidarity above services for individual members like union shopper, but the general trend has been toward a new direction in unionism.<sup>19</sup>

Now, on the speaking circuit, Paul Keating touts his role as Treasurer and Prime Minister in the following way:

"Globalisation is the intensifying of international linkages in trade and finance and increasingly in culture, which has been evolving apace since the mid 1980s.

In Australia, it is virtually impossible to think of an area of commerce which has not been affected by it and which has not had to adapt to its effects. Whether it be banking, agriculture, mining exploration or the provision of public services, education and infrastructure, the old compartmentalisation of business by work type or national boundary is a thing of the past.<sup>20</sup>

The amalgamation of unions in the 1980s and 1990s, often with unnatural alliances across industries, was associated with the development of corporate structures.

Theorists of the capitalist firm have always proposed corporate structures. This blunted the political focus of class struggle in bureaucratic companies and allowed governments and employers to manage unions more easily. They played on the willingness of union leaders to seek respectability as heads of large institutions that paralleled the bureaucracy of the companies where their members worked.

With managed wages and low administration costs (no strikes) the firm will prosper. Workers must be able to be treated as a resource like coal or plastic.<sup>21</sup> The economist Thurow states:

"The function of firms is to purchase resources or inputs of labour services for sale. Resources owners (workers and owners of capital, land and raw materials) then use the income generated

At p227 of *Under the Hook* a wharfie's wife commented that the abolition of the double header was in fact a worse position: *'The new agreement is a disgrace. They will start the day shift at seven. Must be on call two hours before, and two hours after. If the ship is there longer, you work longer...men will get killed.'* The Wharfies wife was asked why a double header, sixteen hours at a stretch was not worse. She replied: *'Double headers were safe because you only worked two hours at the one job then did something else. Got a ten minute break. The bonus was shared by all the men not to a panel who worked hardest on a particular job.'*

<sup>16</sup> A taxation system where, the more you earn, the higher are the rates of tax you pay.

<sup>17</sup> GDP is a measurement of the flow of goods and services produced in an economy in a given period, usually one quarter or a year. In calculating GDP, an attempt is made to put values on these goods and services and by doing so to provide a national aggregate. It also goes under the title of gross national product or GNP.

<sup>18</sup> Paul Keating's comment on the 1990-91 recession.

<sup>19</sup> *Unions @ Work — the challenge for unions in creating a fair and just society* Report of the ACTU overseas delegation. August 1999. See pages 53 and 57.

<sup>20</sup> CPA Promotion of Paul Keating as a keynote speaker at a business luncheon sponsored by Canon Pty Ltd on 23 March 2007.

<sup>21</sup> The dynamic nature of human labour is lost or disregarded in this model

from the sale of their services or the other resources to firms to purchase the goods and services produced by firms.”<sup>22</sup>

Having achieved this goal the firm, in a rational economic environment, expects its reward — profit. This is the reason profit is rational: someone must prosper from the process and who better than its managers and the persons who devised the firm, the owners of capital? Once again Thurow explains:

“The primary goal or objective of the firm is to maximise wealth or value of the firm...”<sup>23</sup>

Translating this model to the real world, the firm suffered limitations and constraints including:

“...the availability of essential inputs. Specifically, a firm may not be able to hire as many skilled workers as it wants, especially in the short run. Similarly, the firm may not be able to acquire all the raw materials it demands. It may also face limitations on the factory and warehouse space and in the quantity of capital funds available for a given project or purpose.”<sup>24</sup>

Legal constraints can be an additional problem.

“Beside resource constraints, the firm also faces many legal constraints. These take the form of minimum wage laws, health and safety standards, pollution emission standards as well as laws and regulations that prevent firms from employing unfair business practices.”<sup>25</sup>

Added to this is ‘the problem of inducing an agent [worker] to behave as if he or she were maximising the principal’s welfare.’<sup>26</sup>

### **Enter the coalition government, with Australian Workplace Agreements (AWAs).**

These agreements limit workers’ ability to bargain and at the same time cut a swathe through minimum wage laws. The government seeks to use its power over statutory law to impose on the free market limited bargaining power for wage earners. This shows it is alright to divert from free market theory in the interests of owners of capital.<sup>27</sup> The aim is to make workers act as passively as other inputs, such as a piece of land or a hunk of capital.

While collective organisation of the owners of capital is strengthened by the government role in the market, workers’ organisation is limited by preventing their right to collectively withdraw their labour.

To sell the change and push the real purpose of the legislation to the background the government turned to spurious statistics about real wages growth during its term of government.

It asserted that a real wage increase statistic of 14.9% during the years 1996-2005 represented a corresponding improvement in workers’ living standards.

The real wage figure is arrived at by measuring the change in average weekly wages 1996 to 2005, less the CPI increase, over the same period. Average weekly wages increased by 40.6% while CPI increased by 25.7%. Or so the conservatives’ statistical argument goes.

### **What are the problems of using this statistic?**

The ABS statistic looks only at:

- full time earnings during a period of significant increase in casual and part time jobs. This category of low wage workers is conveniently excluded.
- the skewed average, the mean. It does not look at the median or midpoint (meaning the wage earner with as many people earning more as are earning less).<sup>28</sup> The median income is the middle of the distribution of all incomes. This measure is less sensitive to the skewing effect from highly paid professional or skilled workers or with talents in high demand and short supply. It is the bottom 50% of Australian workers who will be the victims of new industrial relations environment.

The statistic ignores:

- those on the social wage including unemployed workers, the disabled and single parents.
- the situation of women workers who on average receive two thirds of the male wage.

<sup>22</sup> *The Future of Capitalism: How Today’s Economic Forces Shape Tomorrow’s World* page 9

<sup>23</sup> Ibid Thurow page 9

<sup>24</sup> Ibid Thurow page 9

<sup>25</sup> Ibid Thurow page 11. Note these limitations have not been placed on Chinese economic expansion.

<sup>26</sup> Ibid Thurow page 12. Perhaps a worker’s labour is not as convenient an input as other raw materials

<sup>27</sup> This challenges the very foundation of the arguments in favour of economic rationalism

<sup>28</sup> The mean or average is the sum of all workers wages divided by the number of workers. This hides the significant boost in average wages caused by the increase in wages of the managers. For example the million dollar packages paid to company executives.

Moreover, the CPI as an index impacts differently on each worker because it is confined to a limited basket of goods whose use varies from household to household. This also does not differentiate between consumption patterns of rich and poor.

The average wage does not reflect the hours worked to gain the same income.<sup>29</sup>

What is beyond doubt from the statistics and not disputed is that company profits rose 500% (1993-2005) at the same time as the current Federal Coalition Government boasted a 14.9% increase in wages.<sup>30</sup> One example is Patricks, the stevedore company that sacked its workforce in 1998, was forced to re-employ them, later halving their number in a settlement with the MUA. Patricks forecast a 22% increase in profits for the 2005-2006 year alone.<sup>31</sup>

Statistics can be used to give an indication of reality but they can also be used to distort reality. A more adequate analysis would be required to determine the real plight of workers under Howard government policy. Clearly wages as a portion of the income cake have declined significantly.

More telling for Australian workers are figures on whether housing, food, education health and transport are affordable.

Peter Saunders states that evidence from Australian Bureau of Statistics (ABS) income data in the 1980s reveal a growing inequality overall and less protection for lower paid workers in particular. Based on the ABS data, from 1985 to 2001, male wage earners in the top 5% experienced growth in earnings of 45% whereas males in the bottom 10% saw their earnings decline by almost 10%.

In fact, across the three wage categories of men, women and people under 25 years of age, all experienced increases at the top while those at the bottom barely recorded an increase over a 15 year period.<sup>32</sup> This has been confirmed by similar studies showing top wage earners getting ten times greater increase in wages than lower wage earners.<sup>33</sup>

As the wage for many has gone backwards so too has the social wage on which many depend for income and health services. At the same time the cost of health services has risen markedly, now matched by growing transport costs.

In many cases, even where growth in wages has resulted, this has been at the expense of lost working conditions, increased work hours, loss of holidays, reduced shift allowances and loss of penalty rates. In some parts of the economy different sectors have benefited while others have faltered: mining compared with manufacturing for example. Regional areas have suffered. Coal miners and construction workers in large cities have been able to advance their wages through tough union bargaining and buoyant conditions. Often these have been at a cost of longer working hours or the result of high productivity.

A construction worker put it like this:

“I know that we are shitkickers but we can put up a high rise building faster than any construction workers in the rest of the world. Yes we get good money but only got that because of our union (the Builders Labourers Federation [BLF]). Now the government and the bosses don't want shitkickers like us to get decent money. They want to pay us shit money again. Why should doctors and lawyers get more money than us?”<sup>34</sup>

The debate in the media is not about real facts that a building worker could relate to but a smokescreen of statistics, averages and indexes. More telling for the ordinary worker is the ALP leadership and trade union leaders losing sight of the real debate and falling prey to the same statistics, averages and indexes.

In following the economic rationalist agenda and entering the debate on these terms and accepting some of the argument of these theorists in government, the ALP and the trade union leadership opened up the trade union movement to compliancy and the full frontal assault conducted by a conservative government.

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<sup>29</sup> Note the ABS warning in its statistics for 1996-2006: ‘Mean weekly earnings of employees in all jobs has increased from \$532 in August 1995, an increase of 62% over the 11 years to August 2006 (note that data was not collected in August 1996). However, it should be noted that changes in average earnings may be affected not only by changes in the level of earnings but also by changes in the overall composition of the employee workforce, including changes in:

- proportions of full-time and part-time employees
- number of hours worked
- mix of occupations and industries.’

<sup>30</sup> ABS Year Book extract Company Profits 1993-2005

<sup>31</sup> According to CEO Corrigan as reported in the Business section of THE AUSTRALIAN 19 Oct 2005.

<sup>32</sup> *Reviewing Recent Trends in Wage Income Inequality* Peter Saunders Social Policy Research Centre (UNSW) Feb 2005

<sup>33</sup> ABC TV News 29 August 2005

<sup>34</sup> Building worker at 2005 Rally against WorkChoices legislation

Lost in all this theory is the reality that ‘intrinsic problems of capitalism visible at its birth: instability, rising inequality, a lumpen proletariat are still waiting to be solved.’<sup>35</sup>

Not surprisingly in the background of the WorkChoices legislation are tools to assist capital in times of crises. These include the right to dismiss workers without reason and removal of redundancy payments. These clauses weaken workers’ entitlements on downsizing or liquidation.

Even more prominent than the easily identifiable problems of capitalism referred to above is a central contradiction between self interest to promote profit and need for cooperative behaviour to achieve production in the firm.

On one hand, self interest is promoted and workers’ cooperative behaviour, collective bargaining, is suppressed; on the other hand, vast corporations rely on complex social interaction and the cooperation of huge numbers of workers to advance the self-interest of distant shareholders.

The managing of this contradiction can threaten to cause rebellion of the many against the few, so the role of the mass media becomes important. The central contradiction has to be hidden and the workers distracted:

“Abetted by the electronic media the ruling ideology is moving towards a radical form of short term individual consumption maximisation at precisely the same time when economic success will depend upon the willingness and ability to make long-run investment in skills, education, knowledge and infrastructure.”<sup>36</sup>

Such is the lament of one theorist. But why are people so uncritical? It is, after all, only a theory.

### ***ALP adopts free market philosophy***

Another facet of the Labor Party’s “mission” is to encourage the belief that workers have a stake in, are a part of, the capitalist system. The Party has been ably assisted in this by trade union leaders from Hawke to the present day. Sharan Burrow and Greg Combet are two skilful exponents of the art of presenting the union movement as an essential part of the market system. They are willing to demand compensation from employers for injuries suffered in the workplace (e.g. the James Hardie asbestos case) but will not insist that it was the workers who built the workplace and therefore ought to control it. Instead they have relished their role as advocates at the annual living wage hearings, taking great pride in achieving pay rises of \$17 per week (year 2005) but ignoring the fact that the entire surplus value of industry belongs to workers.

They bolster the view that workers are just one part of a market economy and therefore have a ‘right’ to a ‘fair’ share of that economy. This was explicitly stated by Bob Hawke who, when president of the ACTU, famously declared that he had no quarrel with capitalism as such just so long as workers got their fair share of it.

The ALP leadership elevated naked self interest to the detriment of the philosophy that inspired Ben Chifley’s ‘light on the hill’. Examples of this abound. We select two below:

“At the end of the day, the neo-liberals believe, as Margaret Thatcher the Friedmanite said, there is no such thing as society. Neo-liberals are the emperor without any clothes if you strip back neo-liberalism to its core. Social democrats have a different view. I believe we are the genuine inheritors of the [Adam] Smithian tradition [of modern-day capitalism]. We accept price. We accept markets. We accept the legitimate pursuit of self-interest.” — rising Labor star, Kevin Rudd.<sup>37</sup>

“In my early years of political activity I made innumerable speeches condemning Capitalism for tending to enslave man as the servant of the profit making system rather than subordinating the system to serve him... Along the way of a busy thirty-six years in public office I became more and more interested in seeing that things worked more efficiently... I confess there was a fascination for economic growth, efficiency and thus all of us being better off.” — Former Labor leader, Bill Hayden.<sup>38</sup>

ALP leaders fell under the influence of advances in human production achieved by the capitalist joint stock company and forgot the exploitation of workers involved.

The ALP, together with the trade union leadership, moved down a path to economic rationalism. This can be simply demonstrated by reference to its program, in government, on banking and finance.

<sup>35</sup> *The Future of Capitalism* by Thurow

<sup>36</sup> Thurow, *ibid* p. 326.

<sup>37</sup> From *The Australian*, Cut & Paste column, March 14, 2006 [which was a quote from Australian Prospect online, on the new communitarian movement in *Winning over the Howard battlers in the new era*]. Is Rudd saying that we are the true liberal party and the other mob are the conservative party?

<sup>38</sup> Foreword to *Demons and Democrats* by Gavan Duffy at pp 3 & 4.

The Commonwealth Bank, founded by Andrew Fisher's Labor government in 1911, provided banking services all through a vast and successful public sector organisation. In the late 1940s, the Chifley Labor government attempted to nationalise all banking and finance. This failed in the High Court with a constitutional decision in favour of private sector banking. The private sector mobilised all its forces including mass rallies of bank employees to support its High Court challenge.

In the ensuing thirty-four years, from the defeat of the Chifley Labor government by Menzies's Liberals in 1949 until the Hawke/Keating period (1983-1996), the ALP was in power for only a brief period (1972-1975).

The Hawke-Keating Labor government privatised the Commonwealth Bank making it a public company in 1991. The Labor government issued shares first in 1991 and again in 1993. In the first months of 1996, the Coalition Government completed the process with an issue of a tranche of shares. It was the Hawke-Keating Labor government that deregulated banking and finance giving a free hand and high profits to the private sector. Labor floated the Australian dollar in 1983 with open access given to foreign monopoly capital.<sup>39</sup> Chifley must have turned in his grave.

As Federal Treasurer and later as Prime Minister, Paul Keating championed this change program like a reformed drunk espousing the evils of alcohol. After losing the 1996 election, Keating took every opportunity to claim these banking and finance policies as the crowning success of the ALP government from 1983 to 1996. Since then Keating has hailed them as pillars of the economic program that ushered in the 'prosperity' claimed by his Liberal successors, Howard and Costello.

What Keating saw as success was the ALP's capitulation to the power of capital and the economic rationalist agenda. The ALP's turnaround left workers dependent on the whims of capital and left trade unions set up for a full frontal assault by capital to force wages down and to increase profits.

What drove Hawke and Keating to lead the ALP on the path to economic rationalism?

The brief rule of Whitlam Labor (1972-1975) was trumpeted by their opponents as a period of poor economic management.<sup>40</sup> This characterisation was largely successful, forcing the ALP from office and traumatising the party sufficiently to cause it to alter its economic program towards economic rationalism.

At this time, unemployment was growing in the industrialised world. In Australia unemployment moved from less than 1.6% in early 1972 to more than 4.5 % in 1975.<sup>41</sup> At the same time, inflation reached double digits.

The Australian establishment moved from indifference to shock in response to the election of a Labor government with a 'radical' agenda. The ambivalence at first of some was shattered when a wages 'breakout' occurred and the reality of an independent foreign policy was realised side by side with a wide ranging social program.

This led the establishment to conclude that the ALP might not be able to control the working class masses. In hindsight the threat was paltry but at the time it assumed massive proportions in the eyes of those who formerly held power. What followed the realisation that a different elite was in power was a fightback by the former elite. The most turbulent period in Australian parliamentary history, at least since the Second World War, resulted.

Inspired and prodded by establishment judges, captains of industry, and the Liberal party, the governor general used his reserve powers to sack the government. This broke political conventions. The ALP was at first enraged but later traumatised when it lost the second early election forced on it: Labor won the first in 1974 but lost the second in 1975. The majority of the public, including backward sections of the working class, responded to a fear campaign that the security and prosperity of the nation was at threat. The constitutional coup, as it was called, was successful.

Seeking legitimacy for the third time in four years, both Labor and Whitlam discovered it was third time unlucky. Tactically, the ALP response was poor. Led by Whitlam and Hawke (then ACTU president), they suppressed working class rage. The ALP leadership pulled back in fear of the working class taking political power. They refused to answer the breaking of political convention, by the establishment, with a similar response from the working class.<sup>42</sup> The system itself was not to be challenged, not surprising when the background of the two ALP leaders is examined: Whitlam, a lawyer by profession, was a

<sup>39</sup> The ALP's socialist objective had died; it was buried during the Hawke-Keating years. The market failure of the great depression and the role of banks within it were forgotten; the short term economic success for the few was heralded as godlike, leaving demon capital poised to reclaim its mantle where capitalist greed again exceeded its capability.

<sup>40</sup> In defence of the Whitlam government it coincided with a period of world-wide downturn; but, notwithstanding this, the Labor ministry displayed poor practical application of ideas and a poor understanding of the limits of government.

<sup>41</sup> National Archives of Australia, Cabinet records 1972-1975.

<sup>42</sup> To be fair the Australian working class, as a whole, was not prepared for revolutionary action even though at this time it did have a significant militant section within its ranks. It would have required a quick amount of learning militancy on the job for many workers. History is littered with examples where this has happened but it also contains examples where the opposite is true. No one could be certain of the outcome of an alternative strategy.



'silvertail' by comparison to ALP members and even previous leaders; Hawke was a former Rhodes Scholar resulting in an education at Oxford University.

Hawke had begun the tradition of ACTU leaders without 'shop floor' experience in the labour movement. So there is little wonder Hawke did not call for a revolt of the rank and file when the Tories, ignoring the rules of the fight, had Labor on the canvas with the dismissal of the Whitlam government.

The ALP economic program that followed the constitutional coup became confined to mainstream economics.

It was inevitable the ALP, without an ideological alternative, would go along with the turn to neoclassical economics when it became mainstream theory in advanced capitalist countries.<sup>43</sup> The trade union leadership, side by side with the ALP, went with the flow.

Under the weight of this new aggressive individualism, working class organisations and trade unions began to change. Membership began to decline in many countries, including Australia. In a confused and perhaps contradictory response, trade unions, the collective organisation of workers, also turned to individualism to try to survive. Union shopper became an important tool to retain membership. A poorly led, divided, and weak labour movement championed home ownership as a want not a right.<sup>44</sup> Workers began to value cheap goods as more important than quality of life.

In government, the ALP actively promoted the rundown of public sector infrastructure. The need to sustain working class organisation was downplayed.

In this power vacuum in Australia a Coalition conservative government was elected in 1996. This government was returned in 1998, and 2001. It was re-elected for the third time with an aggressive agenda in 2004.

Among other 'reforms' the government set out to pare back welfare by forcing disabled people and single parents into the workforce. They were required to stand up and benefit as individuals rather than depend on the social wage. This clarified the next stage of the agenda to force all towards heightened individualism.

The ALP, having capitulated to economic rationalism in government, dutifully followed the same course in opposition. In Government, Labor had advocated mutual obligation for welfare recipients; the Coalition Government pursued similar policy aggressively. Labor introduced tertiary education fees in the form of a Higher Education Charge (HECS); the current Federal Coalition Government increases fees to full cost payment and abolished compulsory student unions. Labor introduced the enterprise bargaining model for workers; the Liberal/National Coalition legislates 'free' choice and virtually made individual agreements compulsory at the whim of the employer.

So while those dependent on the social wage had to show a lopsided mutual obligation now the workforce was subjected to lopsided contracts. Australian Workplace Agreements (AWA's). Even the temporary collective of student unions was to be abandoned and student services to be provided by the private sector or lost.

Under this vision all citizens were to be elevated to individual contributors and consumers whose earning capacity is to be used to advance the capitalist firm and whose recreational pursuits will be limited to shopping for goods and services. To support rampant consumerism amid impoverishment, low-paid workers are needed 24 hours a day and seven days a week.

To create this Utopia workers must be forced to abandon collective bargaining, abandon standard wage fixation and standard work practices. Trade unions must accept their role as representatives of the individual in the free market.

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<sup>43</sup> Neoclassical (or neo liberal) economics is also referred as economic rationalism.

<sup>44</sup> This made it easier for free marketeers to instil in workers' minds the idea that a house is 'wealth - an economic investment' rather than a home in which to nurture children and cultivate family life. Thus workers could be more easily persuaded to abandon their youngsters to child care in order to work the excessive hours required to service increasingly unpayable mortgages.

## Chapter 3 Industrial relations nightmare — Courses of action

Long before *WorkChoices*, industrial relations and other laws were anti-worker. The law recognises workers as the subjects of capital. The system relies on workers' compliance — forced or misled, stick or carrot.

Unions have already begun to oppose such laws more rigorously. But what strategies are to be followed?

### 1. Accept the IR legislation and the current system

#### *Reform the laws through parliament*

The union movement currently operates, by and large, through the system of industrial law. Even the Patricks dispute saw very little organised defiance of laws, unions putting great emphasis on a legal approach. As time is beginning to show, the legal victory in that dispute was not necessarily an advance for workers.

One risk in constantly trying to play the game, and use the rules to the workers' advantage — resting on the belief in the 'independent umpire' — is that the unions are likely to be bound by the rhetoric, and the law, and find themselves caught in a destructive system out of which they won't be able to break. The unfortunate thing is that there isn't a union leader who, for a single minute, believes that the system is fair.

Playing by the rules may empower a legal fraternity and a small section of the union movement but may also disempower the vast majority of workers. This will be death by a thousand cuts, as workers' rights and conditions are whittled away by a system that can't keep still, and has to search for any way it can to increase the exploitation of labour.

The continuation of the existing system will see, increasingly, workers fighting among themselves, loss of militants to self-employment and social movements, workers abstaining from industrial action, declining union memberships, a growing distance between union officials and the rank-and-file, while the employers rub their hands with glee. With time we will be left with a dying generation of unionists bewildered by a new generation of workers who see little relevance in unions.

Benefits are few. The structure remains intact and there are systems in place to stop gross abuses of workers. There are career paths for a few unionists into bigger unions, better paid jobs in parliament, onto the boards of superannuation funds, and even into the industrial relations courts. For the majority of unionists, it's an occasional blue, a two percent wage rise every once in a while, and a few drinks on Labor Day, superannuation that pays for a trip around Australia in retirement and a decent burial at the end.

Reform through parliament aims at overturning the wide range of anti-union legislation that has been passed in parliament over the past 30 years (ranging from the 1976 secondary boycott legislation to the *Workplace Relations Act* amendments of 2005). The focus is on getting worker representatives into parliament.

While perhaps all strategies short of a revolution aim at better laws, this option is characterized by union affiliation with the ALP, lobbying and financial support. It means engaging with pre-selection processes to choose candidates, and holding the successful ones to a pro-worker position.

This strategy demands that unions avoid embarrassing their parliamentary allies through partisan demands, and adhere to their demands to serve the 'national interest'.

#### **Extend Enterprise Agreements till after 2007 election**

The strategy is to push employers into workplace agreements that merge the conditions in Enterprise Bargaining Agreements (upon expiry) with award conditions. This is to ensure that there is no loss of conditions such as penalty and overtime rates and union representation in disputes. These conditions were taken away under the *WorkChoices* legislation enacted on 27 March 2006.

Under s116B (1) of *WorkChoices* amendments there are 12 conditions of employment which can no longer be included in awards. These were previously known as allowable award matters. The abolished award conditions are:

- a) rights of an organisation of employers or employees to participate in, or represent an employer or employee in, the whole or part of a dispute settling procedure, unless the Schedule 1 Main amendments 290 *Workplace Relations Amendment (Work Choices) Act* 2005 No. 153, 2005 organisation is the representative of the employer's or employee's choice;

- b) conversion from casual employment to another type of employment;
- c) the number or proportion of employees that an employer may employ in a particular type of employment;
- d) prohibitions (whether direct or indirect) on an employer employing employees in a particular type of employment;
- e) the maximum or minimum hours of work for regular part-time employees;
- f) restrictions on the range or duration of training arrangements;
- g) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;
- h) restrictions on the engagement of labour hire workers, and requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire worker performs work under a contract with a labour hire agency;
- i) union picnic days;
- j) tallies in the meat industry;
- k) dispute resolution training leave;
- l) trade union training leave<sup>45</sup>

The proposed enterprise agreements tried to work around the above legislation. Under *WorkChoices* legislation introduced in 2006 there were 5 minimum Fair Pay and Conditions Standard (FPCS) which are (1) hours of work, (2) annual leave, (3) parental leave, (4) minimum wage and (5) personal/carer's (sick) leave.

There is some doubt about the lawfulness of this type of enterprise agreement. Court cases are likely to occur over disputes that arise from any loss of conditions as the officials were avoiding strike action until they find the perfect dispute (wherever that may be). They want to defend the perfectly spoken and well turned out mother of five sacked for being late for work on account of her disabled son. But what about ordinary workers?

### **Benefits**

Legislative changes offer far-reaching effects with a potential for achieving a more favourable framework for industrial relations, with institutional recognition of workers' rights. This strategy avoids exposing particular sections of workers to confrontation and possible sacrifice, associated with serious industrial action. Parliamentary reform involves a broader political process. It does not risk the union organisation because of 'illegal' activity contemplated by other strategies. In other words, this strategy does not expose the unions to a major confrontation with the state.

### **Risks**

Under this strategy, unions have considerable resources tied up in getting people into the parliament rather than in looking after their members and organising industrial action. Funds that could be put into a strike fund or organising members go to another organisation i.e. a political party like the Labor Party. The leadership is constantly engaged with the parliamentary process, diverting energies away from the day-to-day concerns of the rank-and-file.

Furthermore, this strategy demands that the ALP achieves the highly unlikely scenario of winning a majority in both houses, or, more likely, of winning a majority in the House of Representatives and getting compliance from smaller parties in the Senate. However, getting candidates elected is not guaranteed and even if a candidate gets into parliament there are many other issues in the parliamentary system competing for the attention of parliamentarians.

Once elected, many ALP parliamentarians relegate union rights to a low priority on their list of reforms, and make few solid commitments. Even within the campaign against the industrial relations reforms of the Howard Government, it took union pressure for the then Leader of the Opposition, Beazley, finally to promise (in June 2006) to abolish AWAs if the ALP were elected. He did so when it became obvious that he would need to make such a promise to have a chance of electoral success in 2007.

The cost of getting ex-union officials into parliament is that the obligations of office prevent the new MP from defending workers' rights: pressure to govern 'for all in the national interest' translates into governing in the interest of business.

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<sup>45</sup> *WorkChoices* legislation - 116B Matters that are not allowable award matters.

Under this strategy unions become stakeholders in a system that is dedicated to economic goals like efficiency and productivity in the capitalist economy, the national interest, and free trade agreements with countries where trade union and workers' rights are minimal.

This strategy is one of the cornerstones of Australian unionism, and closely bound to the origins of the Australian Labor Party. It is the tribal myth of the ALP that, with the defeat of shearers in Queensland in 1891, it was not possible to achieve workers' rights through industrial action alone, and only with parliamentary representation could workers' rights be achieved.

Yet history is replete with examples of ALP governments neglecting or turning on the union movement. Perhaps the worst example of this occurred during the 1949 coal strike when a Labor government turned troops on workers. More recently failure by the Hawke Labor government to repeal the anti-secondary boycott provisions of the *Trade Practices Act* were used during Hawke's time in office to financially cripple the AMIEU (Meatworkers union). Hawke also used Air Force pilots to break the pilots' strike.

In 2005 the ALP government in Victoria used the previous conservative government's essential services legislation against power workers. This was legislation it had previously condemned and had pledged to change.

In Queensland once the 1985 SEQEB dispute was over and the ALP came to power, it did not reinstate sacked SEQEB workers or change the legislation dramatically. It only offered better redundancies and continued the drastic rationalisation of the electricity industry exemplified by changing the way the important task of cable jointing was performed.

An interview with Bernie Neville who was one of the sacked workers has revealed the effects that loss of the dispute had on infrastructure and planning in the electricity industry in south-east Queensland.

Prior to the dispute, 94-95 cable jointers and trades assistants were employed in Brisbane at such SEQEB depots as Rocklea, Albion, Gregory Terrace, Greenslopes and Southport.<sup>46</sup> These skilled tradesmen performed important maintenance work to ensure electrical supply, often around the clock. In February 1985, these technicians were all sacked along with the linesmen.

Before the dispute, trades assistants had been trained on-the-job under the supervision of experienced cable jointers. They also received theoretical instruction off-the-job. After the dispute was lost, SEQEB management, supported by government, no longer resourced this means of retaining skills.

As part of its project to 'rationalise and modernise' electricity supply, both SEQEB and Government preferred to import skills from offshore rather than invest in local technical training. This importation of skills from overseas is akin to the current practice in the Australian health system where overseas trained doctors are recruited to overcome the shortfall in local medical training.

After the 1985 dispute, SEQEB management led by Wayne Gilbert employed technicians on different wages and conditions, some on poorer conditions under individual contracts called 'voluntary employment agreements' and the rest on collective agreements.

SEQEB management cut cost of maintenance wherever it could.

Also, when the government amalgamated the Brisbane City Council electricity department with the Southern Electric Authority, government funding did not go into re-skilling.

As a result, the system was not maintained properly, transformers and cable fell into disrepair and ultimately failed. This led to a crisis in the electrical system culminating in frequent blackouts especially during summer.

It took twenty years of National and Labor party governments to fill maintenance positions in the power industry left vacant by the linesmen, cable jointers and trades assistants who had been sacked by Bjelke-Petersen — and then only after complaints by business about power failure.

As for the great moderniser, Wayne Gilbert, he went to New Zealand to become the CEO of a privatised power company, Mercury Energy. This company supplied electricity to the capital, Auckland.

In 1998, Auckland experienced a failure of its cables supplying the inner city resulting in an unprecedented loss of power to the city for over a week. During a subsequent inquiry into Mercury Energy, Gilbert died of a heart attack.

Historically the ALP has always supported the conciliation and arbitration system. These institutions are biased in favour of the employer. The ALP will go no further than this to defend unions. The arbitration system weakens unions because it takes out of workers' hands decisions about their jobs and conditions. The ACTU argues for collective bargaining rights, but decisions by the collective are constrained by the arbitration decisions which bind unions and the ACTU. This constraint on members decisions is one cause of reduced participation and ultimately a decline in union membership and democracy within unions. Put another way with legal recognition has come the IR club that puts the

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<sup>46</sup> SEQEB = South-East Queensland Electricity Board

deals between union officials and employer representatives at the forefront of unionism. Such a strategy is based on trade-offs and alienates the membership from their union leaders.

## 2. Defy the laws in a piecemeal way

### *The half-hearted approach*

The mass education campaign approach taken by the ACTU is an example of this option. Occasionally a protest action is called by the leadership. Like the peace protests of recent years, protests have disarmed workers as they were carried out in isolation. They are more a struggle for ideas and the moral high ground, not a struggle for power.

One example of the piecemeal strategy is the Queensland Council of Union's (QCU) limited industrial strategy, put into action just after the *WorkChoices* legislation was enacted on 27 March 2006.<sup>47</sup>

The strategy is limited because it places constraints on industrial action until after the 2007 federal election. There is some flexibility allowed here, depending on who is talking. There is a lack of consistency. However the QCU general secretary conceded at a combined delegates meeting on 5 April 2006 that 'there will be a blow-up at some point and when that happens it will be all hands on deck'.

The QCU general secretary did not elaborate what she meant by 'blow-up' and refused to call a general stoppage on 28 June 2006. On the other hand, ETU state secretary Dick Williams at a public 'Light the Fuse' rally in Brisbane's Roma Street Forum on 7 April 2006 said, to the applause of the 2000 members of the five unions present (AMWU, ETU, Plumbers' union, CFMEU and BLF):<sup>48</sup>

"I do not shy away from calling the 28 June rallies a general stoppage."

His Labor confreres looked on nervously as the rank-and-file cheered. It was reminiscent of the 1982 general strike called against Bjelke-Petersen's *Right-to-Work* legislation. That legislation carried much of the same restrictions on the right to organise. The Trades and Labour Council (TLC) called the whole stoppage off by sending state secretary of the BWIU (Hugh Hamilton) out to inform the assembled workers at the Roma Street Forum. Would Dick Williams be forced to eat his words by the QCU? The ETU in Victoria also supported a general stoppage but the ACTU had been careful to call it a national protest.<sup>49</sup>

### **Where did the piecemeal strategy come from?**

Knowledge of this strategy has been gleaned mainly from reports received from workplaces, from public rallies and meetings. These include reports from a well attended local government union meeting conducted on 28 March 2006 by representatives of the Australian Services Union (ASU), Transport Workers Union (TWU) and Australian Workers Union (AWU). Also the QCU strategy is confirmed by piecing together discussions, articles of union resistance and through listening to speeches by the QCU general secretary and Dick Williams (state secretary of the ETU (Qld)) and union lawyers.

The piecemeal strategy appears to have been discussed and settled upon by the QCU executive. But this account is not based on direct knowledge of discussions in the QCU executive for the simple reason that the content of those discussions has not been made available save for some brief comments from Dick Williams (both QCU and ETU) at the Brisbane Labour History Association (BLHA) conference in February 2006.

No doubt much of this strategy has been discussed in the ACTU executive. To that extent it is a coordinated strategy but, as events that occurred after the introduction of the *WorkChoices* laws have revealed, it is very much a response to actions taken by employers and government.

For example, the QCU general secretary, Grace Grace, has claimed that the Cowra meatworkers sacked after the introduction of the *WorkChoices* laws and then re-instated got their jobs back as a result of the media coverage obtained by the union media campaign. However there was no discussion of the part played by the local meatworkers' union in the backdown. The workers were already unionised and they had collective agreements which made it hard for the employer to sack the 29 meatworkers without provoking action by the other 180 workers employed at the Cowra meatworks. However there was no discussion by the leadership of industrial action in response to the sacking; union militancy would not look good on the evening news.

<sup>47</sup> The QCU is the representative of the ACTU in Queensland.

<sup>48</sup> Light the Fuse rallies were a series of rallies throughout Queensland conducted by the five unions listed in the text above. They were divided into three regions North, Central, and South-East Queensland. They commenced in the North just after Cyclone Larry devastated North Queensland towns like Innisfail.

<sup>49</sup> One ETU worker was heard at the rally to yell out over noise of the PA: '*The ACTU are like Dairy Farmers, they milk the workers.*'

There is direct evidence that this strategy may be employed by a number of unions mentioned above. The Electrical Trades Union (part of the Communication Electrical and Plumbers Union (CEPU) appear to have adopted the strategy. How far these unions have put it into action is still unclear at the time of writing.

Some corrections by the unions may be necessary after response by employers and government. An important element is the protection of union assets. At least one union has placed its major assets in a trust to prevent interference by employers or government in the event of industrial action.

The above strategies require commitment from the rank-and-file but it is still a top-down process. This means that the architects of the strategy are the officials of the unions and peak body named above, together with their legal advisors. There has been little rank-and-file input so far; however, this is likely to change when members are asked to vote on the agreements. All the proponents of the strategy appear to be ALP members.

Victorian Trades Hall Council held a meeting in Melbourne on 29 March 2006 and passed a motion which included this clause:

“This meeting calls on the union movement to step up its defence campaign and supports a mass mobilisation for the next national day of protest set down for Wednesday 28 June 2006, as part of the ongoing industrial and political strategy. This strategy also includes the union movement working with their local communities to enhance their support for the campaign to oppose the legislation and ultimately defeat the Howard Government.”<sup>50</sup>

### Elements of piecemeal strategy

This industrial strategy is subservient to an overall electoral strategy where the ultimate object is to have the *WorkChoices* legislation sorted out in the next Australian parliament. The piecemeal approach does not preclude protest demonstrations or the threat of industrial action. Street demonstrations are only a small part of the strategy. In some places (like Melbourne), taking to the streets may play a larger part but will always be subservient to the electoral objectives of the ALP.

Some unions have increased their membership through their opposition to *WorkChoices*. Membership increases in the ASU and ETU (for example) are quite strong and others may follow. However these new members are joining in a time of crisis, are inexperienced in the hardship of struggle, and may lack solidarity. They may be joining mainly for self preservation.

The QCU's limited industrial strategy contains these main elements:

**Deeds to defend union organisation.** Unions have asked employers to sign a ‘deed of arrangement’ (a contract) that includes the existing conditions that are now specifically prohibited by the *WorkChoices* legislation.

Under this proposal these deeds of arrangement will include some or all of the prohibited matters listed below.

According to Division 7.1 of Part 8 of the *Workplace Relations Regulations 2006*, a term of a workplace agreement is prohibited content to the extent that it deals with the following:

- i) deductions from the pay or wages of an employee bound by the agreement of trade union membership subscriptions or dues;
- ii) the provision of payroll deduction facilities for the subscriptions or dues referred to in paragraph (a);
- iii) employees bound by the agreement receiving leave to attend training (however described) provided by a trade union;
- iv) employees bound by the agreement receiving paid leave to attend meetings (however described) conducted by or made up of trade union members;
- v) the renegotiation of a workplace agreement;
- vi) the rights of an organisation of employers or employees to participate in, or represent an employer or employee bound by the agreement in, the whole or part of a dispute settling procedure, unless the organisation is the representative of the employer's or employee's choice (?);
- vii) the rights of an official of an organisation of employers or employees to enter the premises of the employer bound by the agreement;
- viii) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;

<sup>50</sup> The full motion passed could be viewed at this website on 11 April 2006. See <http://www.vthc.org.au>.

- ix) restrictions on the engagement of labour hire workers, and requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire worker performs work under a contract with a labour hire agency;
- x) the forgoing of annual leave credited to an employee bound by the agreement otherwise than in accordance with the Act;
- xi) the provision of information about employees bound by the agreement to a trade union, or a member acting in a representative capacity, officer, or employee of a trade union, unless provision of that information is required or authorised by law.<sup>51</sup>

Such deeds will be questioned by employers and may be tested by them in the courts. The employers argue that under the *WorkChoices* legislation the unions cannot enforce new contracts that contradict the abolition of allowable or prohibited matters. These conditions are crucial to the ability of a union to organise. This common law deal is to bind the employer on matters specifically prohibited by the new legislation. The parties to common law agreements are the employer and the union. The union members are excluded from such agreements under common law.

These deeds do not challenge *WorkChoices*, but work around it by using existing industrial and legal instruments such as common law agreements to overcome the loss of award conditions under *WorkChoices*.

One union industrial officer put it this way:

“Deeds of agreement are, by and large, being obtained quite readily from employers. The enforceability of these Deeds is rather questionable from a legal standpoint. Only the union and the employer are parties, not members. A member cannot enforce the deed. A union could sue in the common law courts if a term of the deed is not observed. But what is the measure of the damages lost by the union (as opposed to the member)? And what if the right in question relates to an employment condition rather than (relating to) an amount of money? There are real problems with any reliance upon deeds of agreement. Employers signing the deeds are telling unions that they are happy to conduct their affairs in the same way as before the introduction of these new laws. However, this may simply be a ‘wait and see’ strategy as employers sit back and let someone else take the running.”

### **Unions acting as employee advocates**

Unions will set up an incorporated association to negotiate on behalf of members who have been offered AWAs. The object of these negotiations is to bring all the conditions negotiated in enterprise bargaining agreements into AWAs so that no union member is disadvantaged as a result of the employer opting to use AWAs as an instrument of their employment.

The *WorkChoices* legislation says that AWAs abolish all prior award conditions. The employer, under pressure from the union for a collective agreement with previous awards, may decide to use AWAs. The use of the union as a bargaining agent to negotiate individual agreements compromises the collective principle of unions. Besides, AWAs that contain conditions won in collective bargaining are merely a backdoor way to overcome the abolition of the no disadvantage test.<sup>52</sup>

### **Benefits**

The main appeal of this strategy is that the unions do not risk all. This was also the strategy employed in the 1998 MUA dispute. Pickets defied the Victorian anti-assembly laws at Swanston Dock but the MUA refused to pull out P&O workers in solidarity with the locked out Patricks workers. Also the MUA did not call for support from other unions offering industrial action.

In this strategy the main actions, like pickets, are mostly spontaneous and as a result do not involve central planning. However to be successful much planning is required. Picketing is an action which blocks entry. It is a defensive line to deter scabs, and it is more than a protest action. Real pickets are unlawful in Australia, banned by the *Trade Practices Act*, as well as the *WorkPlace Relations Act* and its *WorkChoices* amendments.

<sup>51</sup> Prohibited content in workplace agreements in Division 7.1 of the *WorkChoices* legislation.

<sup>52</sup> *Labour Law – an introduction* by Creighton and Stewart, Federation Press 2000, 3<sup>rd</sup> Edition, at p422 in [13.100] ‘Under the earlier Workplace Relations Act 1996 there was provision, in theory at least, that unions could always bargain upwards from the wages and conditions set by existing awards which are now regarded as a safety net. Interestingly there was never any test case in the AIRC that defined exactly how the NDT was to be applied. Was no worker to be worse off or were the conditions for workers across the board not to be undercut. In practice there were trade-offs where some conditions were improved at the expense of others despite the power of the AIRC to refuse to certify an EBA where workers would be disadvantaged by the loss of those conditions traded off. During the nine years of its operation under the WRA 1996 AIRC took a conservative stance preferring to stay on side with government and employer than to support the rights of workers.’

In the MUA dispute in 1998, pickets were more like protest. What we mean here is that the ACTU executive did not engage in the organisation of what picketing there was, they limited themselves to protest. Where pickets blocked entry, this was arranged by union organisers, rank-and-file workers and community support groups. So whatever Bill Kelty actually meant when he said there would be 'the longest picket line in history', the actual pickets only came about as a result of rank-and-file organisation. Kelty merely joined in after the organisation had already been done by others (See *The Long Night* in the chapter on the MUA dispute).

In the piecemeal approach there is little disciplined, organised and systematic co-ordination of defiance of the laws. This was evident in the defiance of anti-picketing laws in Sydney where workers, acting spontaneously, tore up railway tracks, and welded barricades in front of wharf gates. There is little effort committed to political organisation; workers are left to their own devices, often acting spontaneously without planned political support of their actions. It is the workers who will wear the repression. This may reduce legal sanctions for the unions or their peak body. For example, The ACTU were distanced from the 1998 MUA pickets by court rulings. One of the ACTU's main lawyers in the MUA dispute claims that he was banned by the court from attendance at the pickets, and took no part in haranguing scabs.<sup>53</sup>

The QCU and its affiliates delayed action against *WorkChoices* until legislation and regulations were enacted before beginning the marginal seats campaign and isolated protest action. The repressive laws against the building unions had already been enacted in November 2005. However some unions, such as meatworkers and building workers, did take the precaution of trying to get their EBAs signed prior to the introduction of the *WorkChoices* legislation. The QCU for the most part waited to see what effect *WorkChoices* and associated legislation would have in the electorate before adopting any form of opposition strategy.

### **Risks**

Industrial action under this strategy is limited. It is designed to maintain current conditions and thereby to limit calls by rank-and-file workers for strikes. One such call was made at a combined union delegates meeting at the TLC building in Brisbane (both QCU and ALP headquarters) on 5 April 2006. Delegates attempted to put a motion demanding the QCU call a 24-hour stoppage on 28 June 2006. The QCU general secretary called the motion out-of-order and would not countenance industrial action. The QCU general secretary was supported by the general secretary of the Queensland Teachers' Union. The ETU delegate made an apology to the meeting that no motions could be put. All was to be subsumed under the tactic of winning marginal seats in the next federal election. The QCU general secretary then spent 40 minutes filibustering.

### **How long will the rank-and-file put up with such tactics**

The QCU general secretary showed PowerPoint slides outlining to union delegates the results of polling that had been undertaken by the ACTU in marginal seats. This presentation highlighted the positive aspects of this polling that showed the current Federal Coalition Government to be unpopular in those seats because of the current IR reform (*WorkChoices* legislation).<sup>54</sup> Industrial action by workers was not condoned; all energy was to be focussed on the ballot box. If strikes were unavoidable they too had to play a role in the election of an ALP government.

One third of Australian workers, outside the union loop, have their wages set through unsigned unregistered agreements. Some of the conditions in these agreements are there because of the flow-on effect of union campaigns. However many of these agreements contain sub-standard conditions and wages, especially in retail and services industries where casualisation is widespread. In effect, these conditions, imposed by employers, are outside the regulatory system of government or union. Workers under these agreements are the working poor and will remain that way unless unions find a way to organise them.

Such workers, through desperation, can break the demand for better conditions by organised workers. This is the current government's intention. The working poor in Australia number 1.8 million. These workers make less than \$27,716 a year (2/3 of the median wage). In the decade of the current Federal Coalition Government the number of working poor increased by 50% from 1.2 million workers to 1.8 million workers.

Some workers cannot afford a phone, a car, petrol or registration fees for the car, or even to go to the pictures because it may mean less for food. They cannot afford dental care or school excursions for their children. These people may not be as materially deprived as people were in the Great Depression but during the period of the current Federal Coalition Government they have been surrounded by the

<sup>53</sup> *I didn't do that: waterfront lawyer* by Dan Box, THE AUSTRALIAN, May 14, 2007

<sup>54</sup> Your Rights at Work Worth Fighting for — UNION IR UPDATE 2006 ISSUE 1 available at <http://www.nswactieu.labor.net.au/campaigns/general/253.html> (url checked on 29 December 2006).



rising wealth of many Australians.<sup>55</sup> The introduction of a Fair Pay Commission designed to lower the minimum wage places even greater hardship on these workers. Division between workers follows such inequality. Guest workers are being brought in to further reduce wages. Exploitation increases. These workers are not even permitted citizenship rights.

### **A piecemeal approach is high risk**

The high risk nature of this strategy becomes apparent when you consider it depends on a federal Labor government being able and willing to 'tear up' *WorkChoices* and other anti-union legislation. This is something that the ALP has been unable to achieve in the 13 years that it was in government in the 1980s and the 1990s. The laws against secondary boycotts, so effective against the meatworkers and the MUA, were retained on the statute books under Labor. The Accord policies diminished the effectiveness of unions and they lost members in droves during the same period. The unions may increase their membership during the period of opposition to the *WorkChoices* legislation; they may continue to supply resources and funds to the ALP, but this will come to nought if union members find Labor does not get rid of legislation that threatens their jobs and conditions.

In Britain the failure by New Labour to protect workers and their unions from economic rationalism led to the formation of new political parties. The miners had been loyal to the British Labour Party after their crushing defeat by Thatcher in the year long miners' strike of 1984-85. However the miners' union leader, Arthur Scargill, later set up the Socialist Labour Party when New Labour in government continued the policies of Thatcher. A Scottish Socialist Party was also formed and had some success. Ken Livingstone, the mayor of London, won against the official Labour candidate and was quickly readmitted to the Labour Party. The Socialist Alliance (SA) and Socialist Workers Party (SWP) both (initially at least) attracted some support from those disenchanted with the Tory policies of New Labour. But many British workers became distrustful and disenchanted, unable to believe any political solution was possible.

Elsewhere in the world left-wing governments in Latin America, in Venezuela, Bolivia, Ecuador and Argentina, have been elected and may yet challenge the imperialism of the US in the region.

In France during March and April 2006 there were two general strikes against the introduction of new IR legislation making it easier to sack young people. The student worker alliances created during this period reflect the strength of French socialist parties in the union movement there by defeating these laws.<sup>56</sup>

Unfortunately, Australia may adopt the British model and not come up with its own solution to defeat economic rationalist governments of Liberal and Labor.

Where there is strike action by one group defying the laws they may be easily isolated from the other unions. This may reduce ability to defend the actions both industrially and legally. At least one organiser and some rank-and-file members were blacklisted and were forced out of the industry during the 1998 MUA dispute. One organiser in Brisbane did not work for four years. This is the risk now for unions like the BLF, ETU and plumbers union. It is the organisers and officials who will be hit by large fines. Can they withstand the pressure? Or will they desert their membership and look for an easy way out?

## **3. Defy the laws in a concerted campaign**

### ***An uncommon approach***

This strategy presupposes the only weapon that workers have to stop the government and employers' attacks is their unions' industrial power. It recognises that union power based on collective bargaining is stronger than organisation based on enterprise bargaining. In contrast acceptance of AWAs leads to no formal organisation of workers.

The concerted defiance strategy means that the restriction on union entry is met by forcing entry. Even ALP leaders could be encouraged to defy the laws. During 1977-78 in Queensland some Labor leaders defied the street march ban and were arrested. These included former cabinet minister Tom Uren, Senator George Georges, future Queensland cabinet ministers Anne Warner and Matt Foley, and NSW Labor Council secretary John Ducker.

Such defiance could be used as a springboard for opposition to the laws of secondary boycott and on the restrictions placed on the right to strike.

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<sup>55</sup> *Living Low Paid: Some Experiences of Australian Childcare Workers and Cleaners* Helen Masterman-Smith\*, Robyn May\*\*, Barbara Pocock\* This report arises from a project funded by the Australian Research Council and the Brotherhood of St Laurence, Liquor Hospitality and Miscellaneous Workers Union (LHMU), SA Unions, Unions NSW and the Victorian Trades Hall Council. See [www.lowpayproject.com.au](http://www.lowpayproject.com.au) (url checked on 29 December 2006).

<sup>56</sup> Story from BBC NEWS: <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4895164.stm> (url checked on 29 December 2006).

ACTU leaders have protested to the media that the unfair dismissal laws in place after WorkChoices are bad. Yet under the unfair dismissal laws of 2003 (prior to WorkChoices) there were only 42 reinstatements out of the 8,000 determined by the AIRC to be unfair dismissals.

It is the loss of collective bargaining under both ALP and Coalition governments that has greater impact on the lives of 12 million workers in Australia. The collective strength of the union will challenge the power of the master far more effectively than an industrial relations commission.

Campaigning in marginal seats has been another tactic put forward. Unions could encourage ALP politicians to demand access to the workplace to speak with workers about the issues that concern them. This would require a defiance of *WorkChoices* legislation. It could be cast as a political issue of free speech where the legislation can be tested without the penalties that accrue in the industrial situation. It can be used as a cover for union organisers who need to access the workplace on a daily basis and would take some of the heat off them if they accompany politicians defying the bans on entry.

The loss of overtime and penalty rates can be challenged by workers refusing to work on weekends and public holidays. How can many employers function without labour at these crucial times in the current capitalist economy? It is difficult to categorise such action as a strike and difficult to impose penalties on the unions and their organisers. The loss to workers is reduced because they only lose their penalty rates by refusing to work overtime and on weekends. Once again this may be a platform for further industrial action.

To defy the laws in a concerted way requires the building of workers' political organisations.

### **Benefits**

Done properly, with a well thought-out plan by militant sections of the union movement to organise against employers in specific industries - say, the wharves or coal mines - an all-out assault in targeted areas could have a two-fold benefit:

- (1) Demonstrate the ineffectiveness of current workplace legislation.
- (2) Demonstrate the insipid character of much of the current union leadership and the need to change it.

Another benefit is that by people working and organising together a strong union is created. Solidarity benefits those who participate and helps spread the notion that power resides in workers' hands. Leadership can no longer be imposed by outside organisations, leadership emerges from within the rank-and-file. Cohesive organisation that is difficult to crack is developed.

### **Risks**

Quite apart from the obvious risks from a clash with the state armed with its anti-worker legislation, the greatest danger lies in major rifts among unionists themselves. Because of the inexperience in industrial action over the past 20 years, it is certain the state will come down hard. How the strikers deal with these attacks will be a test for all.

Mainstream leaders, everyone from Hawke to Combet, have accepted the 'right' of the capitalist system to exist.

Yet under them are trade unions that are institutions determined to defend their proletarian status. Craig Johnston from the Manufacturing Workers Union was among those who attacked the front doors of parliament house during a demonstration in 1996.

Former ACTU president Jenny George was a leader and speaker at that demonstration.

In an interview with the ABC's Geraldine Doogue, the ACTU president deplored the behaviour of the militants, distanced herself from their action and described this as probably her worst experience as a union official. Thus, mainstream leaders are unlikely to lend support to militants waging an all-out assault and may even be ready to construe their efforts as pro-terrorist.

There are practical ways in which division and isolation can be overcome in the concerted campaign. Two examples are outlined below. The first, about forming a strike committee is a lesson from the 1985 SEQEB dispute in Queensland. The second on how to form a union support group, is from the 1998 MUA dispute.

### **The Strike Committee**

Bernie Neville, an experienced unionist and member of the 1985 SEQEB workers strike committee, says this about forming a strike committee:

"In any dispute, the first priority of the rank-and-file is to form a strike committee. This committee must be in full control of the rank-and-file, even to the exclusion of union officials, the reason being, the officials may have a different agenda to that of the rank-and-file. For example,

some union officials have a stronger allegiance to the ALP than the union. At the same time as the formation of the strike committee, it is advisable to form a committee of spouses of the striking workers. Here again, there must be no interference by spouses of the union officials for the reasons previously stated.

You must give spouses control of any strike relief money received by families in dispute. The aim of this action is to ensure that the welfare of the children is the first priority. Parents who fear for the welfare of their children may not support strikers in disputes. This will put pressure on some strikers to withdraw from the dispute.

The strike committee must at the outset produce and distribute a strike bulletin. The bulletin must report all the actions and problems that arise through the dispute. The bulletin will also be a platform for the rank-and-file to voice any concerns and fears at the direction which they feel the dispute may be taking.

Seek out counsellors and nutritionists to advise families on any problems they may have. The role of the nutritionist would be to make sure that the food provided through union distribution was of high nutritional value. Being involved in a dispute is very stressful and, if you neglect the body, morale will nose-dive.

The strike committee must meet on a daily basis, and must also be in daily contact with elected union officials. The purpose is to advise them of any actions or activities being planned by the strike committee.

Do not allow any containment of the dispute by officials or politicians. Spread out and embrace all support and any talents outside of your union which can be used e.g. artists, writers, printers and academics. Strike committee members must be allowed to visit other work-places and university campuses to get their point of view across.

Beware the politician and the would-be politician. Both have a different agenda to the workers. During the SEQEB dispute a union official of the Metal Trades Union had his eye on a Senate seat. With this in mind he did everything in his power to help shut down the dispute, because of the damaging effect it was having on the ALP. He eventually got his seat in the Senate after the dispute. This former workers' representative, after being told by a member of the bar staff that it was after hours, and that she could not therefore serve him liquor, proceeded to abuse her and call her a fat wog. It would seem that racism and sexism can be common among union officials. All efforts must be made to eliminate these attitudes.

Despite all the efforts of the Hawke government, Kelty and Crean, the ACTU and sections of the trade union movement, who all wanted to accept sackings in the first few weeks, a well organised group of rank-and-file managed to continue action for 18 months demanding re-instatement of all the workers. Finally, the men decided that there was no possibility of winning the dispute. Hughie Hamilton announced in the Sunday Mail that it was over.

The state ALP had promised the men that they would get their jobs back when the ALP government came to power. They are still waiting.

The lesson learnt from the 1985 SEQEB dispute—BEWARE FALSE UNITY”

### **How to form a Union Support Group**

While the union struggle demands that the leadership come from union members and their union, there are additional actions that their supporters can consider. These actions can be done in consultation with the union, but require levels of organisation and cooperation which have been lacking in recent years. Action in the broader social sphere could be decisive in ensuring victories for the union and have broader implications for workers around Australia.<sup>57</sup>

Here are some useful points to be considered in forming a union support group:

1. call a public meeting to organise a support group;
2. develop, in consultation with the union, an organised presence at the picket lines including an information tent;
3. co-ordinate participation in the picket by interested people;
4. produce a strike bulletin;
5. help co-ordinate donations to the sustenance of the strikers;
6. organise meetings of support in workplaces, universities, public forums; and,

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<sup>57</sup> A union support group may be a Workers' political organisation.

7. agitate for the rescinding of anti-worker laws like the *Workplace Relations Act* and the secondary boycott provisions of the Trade Practices Act.

Organising a political support group would, of course, produce a dynamic between the union and its supporters and have to be handled carefully to maintain trust. On the other hand it may provide the basis for new working class activity. This may create opportunities not simply to fight the attacks by capital and government but to allow workers to seek new horizons beyond the narrow ravine of wage labour. The wages system itself needs to be challenged, for it keeps the worker servile to the master.

## Chapter 4 Comatose — Corporate unionism

When enterprise bargaining was introduced many unionists thought that EBA negotiations offered improvements for workers. Many still say that today. But is this an illusion? Was it only an improvement for the insiders in the Industrial Relations club? Or were there real advances for workers? Did wage parity go out the door and some workers get ten times greater increases than others, as claimed by the ABC TV News on 29 August 2005?

Labor Prime Minister, Keating, said in 1993 that Labor wanted a model of industrial relations that:

“... places primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals...

Over time the safety net would inevitably become simpler. We would have fewer awards with fewer clauses...

For most employees and most businesses, wages and conditions of work would be determined by agreements worked out by the employer, the employee and their union.”<sup>58</sup>

According to Keating, enterprise bargaining introduced by Labor was collective bargaining at the enterprise level. Under this system moderate wage increases could be negotiated in return for increased productivity by workers thus protecting profit margins in the case of the private sector and placing a restraint on government budgets in the case of the public sector.

Under the *Workplace Relations Act 1996* and its amending *WorkChoices* legislation enterprise bargaining provides for three main types of agreement:

1. Non-union enterprise agreements.
2. Union-negotiated enterprise agreements.
3. Individual Workplace Relations Agreements (AWAs).

However the industrial realities for workers in Australia mean that workers' wages are set by:

1. Registered collective agreement (38.1%);
2. Unregistered individual arrangement (31.7%); and,
3. Awards only (19.0%).
4. Registered individual agreements [Australian Workplace Agreements (AWAs) (3.1%)
5. Unregistered collective agreement (3.0%).

The remaining 5.1% of employees were working proprietors of incorporated businesses.

In the private sector, the most common method of setting pay was unregistered individual arrangement (39.0%) which contrasts dramatically with the public sector where registered collective agreements predominate (92.9%).<sup>59</sup>

### Enterprise Bargaining

Of those workers whose wages and conditions are regulated, union collective agreements are the most widespread form of that regulation. These enterprise bargaining agreements (EBAs) were previously certified by the Industrial Relations Commission and included a 'no disadvantage test'.

Under this process, average federal award wages fell behind enterprise bargaining wages by 30%.<sup>60</sup>

Under the new federal system the agreement does not have to pass a 'no disadvantage test' so minimum conditions under the award can be eroded.<sup>61</sup> Awards no longer provide the minimum standard; this is set by the so called Fair Pay Commission under direction from government. The Fair Pay Commission rubber stamps all enterprise agreements without the certification process. Weak and unorganised workers lose under these arrangements.

Enterprise bargaining agreements (EBAs) are for varying periods - two-year or three-year agreements are common - and have a nominal expiry date. They are re-negotiated, sometimes after that expiry date. Under the system in place prior to 2006 changes to the old conditions remain until new

<sup>58</sup> Sydney Morning Herald *Work in progress* Friday, 27 May 2005

<sup>59</sup> Australian Bureau of Statistics No. 6306.0 - Employee Earnings and Hours, Australia, May 2006

<sup>60</sup> *Awards, Minimum Standards and Bargaining after WorkChoices* presented at *Workers or Slaves: Strategies of Resistance against WorkChoices*, Brisbane Labour History Conference 25 February 2006.

<sup>61</sup> Australia has a hybrid industrial relations system with awards as the platform with certified agreements specifying conditions as part of enterprise bargaining.

conditions are negotiated and certified in a new agreement. This provides an incentive for unions to sign the agreement so that any improved condition (e.g. increase in wages) can flow through to workers.

Generally speaking those workers who had their wages regulated in the 1990s under certified enterprise bargaining received wage increases that kept pace with the Consumer Price Index (CPI). The EBA cycle dominated trade union thinking and negotiation, even though many workers' wages and conditions were set outside this system without union involvement. Within the EBA system, wage increases were tied to an increase in productivity. Workers had to work harder and longer for the same real wages. The employers knew that if they did not provide the CPI increase the unions would be forced to call on their members for industrial action. And the unions knew that if they went for more, the employers would use the *Workplace Relations Act* against them, resulting in large fines for 'unprotected' industrial action.'

A stalemate had been reached.

Enterprise bargaining has undergone a number of cycles under the current Federal Coalition Government. From a low base in the late 1980s under the previous Labor government, formal enterprise agreements were estimated to have covered more than 2.5 million workers by late 1996, which represented somewhere around 36 per cent of all Australian employees.<sup>62</sup>

A cottage industry formed around this process. It is often referred to as 'the IR club' and comprises union officials, human resource managers, solicitors and barristers, public servants in the industrial commissions (states and federal). The participants share one thing in common: they work outside the workplaces whose conditions they determine, i.e. ordinary workers are not included in the IR club. Greg Combet, the current secretary of the ACTU, is one example of the IR club. He graduated from University as a mining engineer. On the ABC program 'In the National Interest' Greg Combet had this to say about his union education:

"I was studying mining engineering in Sydney, I'm a Sydney boy, and I started work in coal mines out west of Sydney at a place called Lithgow, and started as a coalminer out there to do my time, and I was 18. I worked in underground coalmines, and I joined the Miners' Federation at the time, that's the name of the coalminers' union; it's now part of the CFMEU, and that was the beginning of my union education, and left a tremendously important impression on me, and really I've been a union person ever since. I learnt first-hand how important it was to stick together in a fairly difficult working environment then."<sup>63</sup>

When Greg Combet became an industrial officer of the Maritime Union of Australia (MUA) he had never worked on the wharves either as a wharfie or a clerical worker. Before the 1998 MUA dispute he was promoted to ACTU secretary. His life as a rank-and-file worker was confined to those short stints he did in the mines in Lithgow while a University student. So his direct experience as a worker was limited to that experience. In short he was appointed by officials grooming someone with a University education to become ACTU leader.

ACTU secretary Greg Combet was questioned on ABC news (the national broadcaster) about the current Australian Government's intention to alter the industrial relations system.

He replied: 'The Government should know that it will face workers at the next election.'

Industrial struggle has now become subordinate to the parliament, at least in the minds of some. In the 1998 MUA dispute, ACTU Assistant Secretary Combet and MUA national secretary Coombs were the architects of the industrial strategy.<sup>64</sup> Their aim was to reduce industrial action to a minimum.

After the 1998 MUA dispute was over, with the redundancies handed out, and conditions traded away, the effects flowed on. The total number of working days lost across Australia due to industrial disputation reached almost all-time lows. For example in January 1999 just after the MUA dispute the number of working days lost was the lowest since January 1994. In the same month, the number of employees involved in industrial disputes was the lowest since such data was first compiled on a monthly basis in 1969.<sup>65</sup> Under fire from the employer class, a small target strategy was adopted by the union movement.

John Coombs said this about Combet when he gave the running of the 1998 MUA over to the ACTU assistant secretary:

<sup>62</sup> *Enterprise Bargaining Under Labor*, National Institute of Labour Studies Inc, Flinders University of South Australia.

<sup>63</sup> ABC Radio National on *The National Interest* - 15 April 2001 - Unions; Australia's trade @ <http://www.abc.net.au/rn/nationalinterest/stories/2001/280162.htm>

<sup>64</sup> Combet, formerly a senior industrial officer of the MUA, was elected ACTU Assistant Secretary in 1996.

<sup>65</sup> Industrial Disputes (6321.0) Australian Bureau of Statistics January 1999.

"I was never a brilliant scholar, and I recognised that Greg's done a degree at university; he could handle himself on his feet, he was very smart and he had a wonderful capacity to relate to workers,"<sup>66</sup>

Combet may have learnt from his brief experience in the mines but he had little experience as a rank-and-file worker and these workers did not elect him to lead. How does this qualify a person for leadership of workers in the union movement?

In the world of corporate unionism, the 'selection criteria' for leadership of unions would include:

- the ability to speak and make press releases to mainstream monopoly media; and,
- to act as legal advocate in the industrial relations courts.

A cynical interpretation is that such a leader would to be a master of spin to all and sundry including union members.

John Coombs again on the MUA dispute:

"I was confronted with the undeniable truth that I would have lost all those jobs if I didn't agree (to the deal where half the wharfies were made redundant and the union lost its closed shop on the waterfront)-- and the union to boot," says Coombs. "We would have lost everything. And to carry that record to my grave, well, it was not something I was prepared to do. I followed great union leaders like (Jim) Healy, (Charlie) Fitzgibbon, Norm Docker and Tas Bull. No way was I going to go down as the bloke who lost the union. It needed all the soul we could muster to save it."<sup>67</sup>

Coombs, the unionist from the rank-and-file, felt no longer able to represent workers on his own. He needed professionals. He had passed the test of corporate unionism by agreeing to the deal Combet had struck.

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The ALP 2007 IR policy document, *Forward with Fairness*, defines enterprise bargaining in this way:

"Collective bargaining will be based on bargaining at the level of an enterprise. The well understood definition of 'enterprise' will continue and may include a single business or employer, a group of related businesses operating as a single business or a discrete undertaking, site or project. For example, this means a collective enterprise agreement can be made for employees at a warehouse, a chain of shops, a manufacturing plant or a major construction project."<sup>68</sup>

We would like to address three examples from three different industries to show the effect that enterprise bargaining has had on union solidarity.

As well as taking up a lot of union officials' time we believe that enterprise bargaining has diminished the unionism that existed in the 1950s and 1960s and weakened the kind of unionism we advocate in this book.

The first example is from the public sector, the second from the building industry and the third from the manufacturing industry. It is the story of how three unions, the Commonwealth Public Sector Union, the Builders Labourers Federation and the Australian Manufacturing Workers Union dealt with Enterprise Bargaining during the period of the 1990s and into the early 2000s.

### **1. Enterprise bargaining in the public sector – bureaucratic unionism**

Enterprise (or agency) bargaining helped restrict mass mobilisation of public servants over the issue of disbanding the Commonwealth Employment Service (CES) in 1997. When mass meetings were called in Brisbane, CPSU officials attempted to limit the calls for action and treated the privatisation of the CES as a problem confined to one department rather than a threat to the entire public sector. In the CPSU in Queensland a rank-and-file group resisted this approach and managed to overturn the national executive recommendations and pass a motion for industrial action against the privatisation of the Commonwealth Employment Agency.

The state secretary of the Community and Public Sector Union and later ALP senator (Claire Moore) unsuccessfully tried to persuade the large mass meeting in the Brisbane City Hall auditorium to support the national recommendation. The state secretary was defeated on the floor of the meeting by a vote in favour of public sector wide industrial action — an unusual result from public servants who generally preferred to support their officials because the rank-and-file was poorly organised. But not on that day.

<sup>66</sup> *Playing John Coombs* by Drew Warne-Smith *The Weekend Australian* April 30, 2007

<sup>67</sup> *Playing John Coombs* Op. Cit.

<sup>68</sup> See <http://www.alp.org.au/media/0407/msirloo280.php> (checked 21 May 2007).

Nonetheless, after that meeting the CPSU was successful in undermining these calls by negotiating redundancy payments for the affected CES staff thus blunting the calls for broader opposition. The CPSU lay down the gauntlet to the radicals; as if to say, you see, not even the CES workers copping the brunt of the privatisation will fight. The CPSU returned to its station in life, managing the relationship they had with management, negotiating, signing on to successive enterprise agreements. And if the CPSU could not buy off the activist opposition by offering them positions in the union, some CPSU officials and members would go around spreading lies about activists even to the point of advocating their sacking from the public service.

In the words of one rank-and-file activist:

“...that period (trying to fight the destruction of the CES) was a real turning point for the CPSU. In retrospect it was the point of no return. The CPSU leadership shut down mass meetings after we rolled the national recommendation. We have never had a mass meeting since.”

Thus, without unity through mass action across the public service, mobilised by all branches of the CPSU, all jobs were lost in the CES, and subsequently many in other agencies: Telstra, Department of Social Security and the Australian Taxation office.

The CPSU officials thus secured the role they said that they opposed but secretly cherished. They received a place at the table even if it meant managing the change to a privatised Job Network Scheme. The national executive of the union was given input into the new Public Service Act which was used to weed out any critical views through the use of the APS code of conduct.

Across the public service, moderate options were tempting for the CPSU officials and members because a radical alternative was hard.

CPSU members are isolated in agencies, some of them quite small. Although some are on good wages and conditions they are isolated from the rest. Those on good conditions are immunised from inequality elsewhere in the public sector where workers face aggressive bosses, mind-numbing work and job uncertainty. An increasing number are casuals or temporaries (non-ongoing employees [NOGs]).

The isolation is increased by the way the CPSU operates. Officials and organisers operate as a unit or branch of the CPSU in separate agencies rather than public sector wide. The CPSU has become corporatised to reflect the departments (the enterprise) where their members are. There is little public sector wide union culture as there was when union members socialised across departments on picnic days or even in a central pub.

As a result the CPSU's main job is perceived as fixing members problems in each separate agency or department. So, if there were a struggle going on in call centres in Telstra or Centrelink, members from other agencies may not even know about it and, if they did, it would be even less likely that the CPSU would call upon them to take industrial action on behalf of the call centre workers in the other department. Of course there would always be excuses offered if someone had the temerity to raise such a secondary boycott, usually along the lines that members would not be prepared to stick their necks out. So when Telstra foreshadowed 12,000 cuts on the eve of the introduction of the *WorkChoices* legislation scarcely a whimper was heard from the CPSU about industrial action.

### **Business as usual, organisers negotiating individual contracts on behalf of members.**

Under the new *Workplace Relations Act* management was forever threatening (actually with mixed success) to go directly to the workforce and sign staff up to non-union agreements, thus making the union irrelevant.

Soon there were so many temporary employees who were not union members that for a while management could secure a 'yes' vote on their agency agreements regardless of there being union agreements (because the non-union workers could vote down conditions the union wanted in pursuit of perceived self interest). All management needed to do was offer a CPI increase in wages linked to productivity and a workforce without job security would surrender other conditions won in the decades before.

As each new enterprise agreement was negotiated this fear was exploited by the CPSU officials and used against the few union members who wished to challenge enterprise bargaining by bargaining collectively across the public sector. Management employed more non-ongoing employees and new staff were employed under AWAs. In the end the CPSU abandoned collective agreements by assisting workers to negotiate AWAs. The CPSU as a union of workers had ceased to have any relevance, demonstrated by a dwindling membership density.

## **2. Enterprise bargaining in the building industry – lack of solidarity**

The union signed up yard workers of a multinational scaffolding company engaged in large construction projects for public infrastructure. In 2000, the union negotiated with the scaffolding



company for an enterprise bargaining agreement (EBA) favourable to workers. Some time after this agreement was signed a lorry driver who made frequent deliveries to the scaffolding company's premises, engaged the workers employed there in conversation. The following account is based on those discussions which occurred over a period of weeks.

The EBA was negotiated because the scaffolding company was supplying equipment to a high-rise project being built by an international developer.

Organisers from the union met with the scaffolding company's managers and presented them with an ultimatum: agree to the conditions for members or your equipment won't be unloaded at construction site by the union members there. The conditions won were \$200 a week more than a lorry driver earns for taking equipment to the site plus \$20 a day travelling allowance, effectively another \$100 per week extra; sick leave, worker's compensation and a funeral scheme unheard of by other workers.

However, of the original team signed up by the union, only one remained and new workers refused to join the union. The fact the union won conditions for the new workers did not entice them into joining the union. The rest had left because of high turnover with workers seeking better jobs elsewhere.

“The moral here is that if the union does not attempt to raise the class consciousness of its members its efforts will be lost”— lorry driver.

The conditions differed for the lorry driver. In his yard, truck drivers received wage rises through the annual 'living wage' adjustment negotiated at that time in the Australian Industrial Relations Commission (AIRC) by the Australian Council of Trade Unions (ACTU).<sup>69</sup>

Every year this lorry driver waited for three or four weeks after the rise had been awarded and then asked his workmates 'have you noticed a few extra dollars in your pay packet recently?' Invariably the answer was 'no'. Again, the fact that the union movement was working to improve their lives was lost on his workmates. The lorry driver described the dispute at the scaffolding company in the following terms:

“I had to go to the scaffolding company's premises and was able to engage in conversation the one remaining member of the original group signed up by the union. I questioned him over the union's activities later subject to investigation by the Cole Royal Commission.

The information I discovered from this man tallied with what an ex-manager told the Royal Commission.

The worker said that initially the union did not approach the men themselves. Rather, a truck carrying the scaffolding company's equipment arrived at the construction site, and the union insisted it come from a union workplace or it wouldn't be unloaded. The company attempted at first to persuade the workers to join another union but soon realised that this wouldn't facilitate the unloading of their gear. They had agreed to pay the men's union dues but then withdrew this offer and told their workers to join the union.

That done, union organisers presented the company with an EBA and told them to sign up or the trouble would continue. Deal done. Interestingly, the worker who told me this story was aware that the union organisers could face serious trouble from the Cole Royal Commission investigation.

However, he indicated he felt no especial responsibility toward the union. When I asked him if he had ever encouraged the new workers (non-members) to join up he said 'why would they, they have their EBA.'

When I pointed out that the EBA was thanks to the union he shrugged and said 'that means nothing to them'. He informed me that under the terms of the union agreement they had a wage increase to \$20.80 per hour for the men and \$22.80 an hour for him (as foreman); the travelling allowance had risen by \$4 to \$24 a day, they got 24-hour worker's compensation cover no matter where they were, a paid rostered day off each month, accumulating sick leave, and funeral benefits. In short, conditions completely out of kilter from what similar workers had. They felt no responsibility to the organiser who secured this deal for them.

This worker seemed to me uncomfortable with the deal they had and the way in which it was done, that is, without any effort on their part and without any real contact with the union then or since. He was aware that the matter of the travelling allowance paid to men doing storeman's work was a point of contention with the company and agreed, although with a cheeky grin, that it's a bit of a rort.

It seems to me that there is a fundamental problem here for the union movement.

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<sup>69</sup> The Fair Pay Commission took over this function in 2006 from the AIRC under WorkChoices.

Obviously, unions which still have plenty of clout can achieve conditions for their members which, really, are not excessive but are out of proportion with what other workers can secure. Employers who have to provide wages and conditions which other employers, their competitors, don't have to offer employees doing the same work feel resentful and that they are being ripped off.

The reason for this situation? The secondary boycott provisions. Where once the stronger unions could impose more or less uniform conditions across the entire workforce, we are now fractured and divided.

Now, the strong prosper while the weak are left on the minimum wage, if that.

Is this not the fundamental problem we have? And is it not clear that this situation was exacerbated by the Hawke-Keating years? There was a news report in the AUSTRALIAN under the heading, (which is revealing in itself): *IR reforms playing into the hands of Labor says Keating*" Keating said this: '...the enterprise bargaining system Labor introduced in 1993 allowed for the first time a rise in real wages based on productivity and profits without fuelling inflation. There was no hopscotch quality to wage rises any more...' By 'no hopscotch' Keating means the gains achieved by the strong didn't flow on to the weak. He went on to say: '... this means the labour market is no longer in need of fundamental reform, and having reformed it, I stake those claims on the outcome – moderate wage rises when the economy was growing.

That's where we're at, caught between two political parties who have no hesitation in using the power of the state to ensure that workers get no more than a minimal share of the nation's prosperity and then only those still with the power to bludgeon it out of employers like the scaffolding company (name deleted).

These actions by union organisers on behalf of their members resulted in the following findings against them by the Cole Royal Commission:

"Freedom of Association On 19 May 2000 the (name deleted) site, (name deleted), a union organiser, delayed the unloading of a truck owned by (name deleted) scaffolding company because the scaffolding company's storemen and employees were not members of the union.

In doing so, (name deleted) breached the freedom of association provisions of the IR Act. Section 122 of the IR Act has the effect that these actions are taken to be actions of the union, meaning that the union acted unlawfully.

Coercion. A union organiser, threatened the scaffolding company with industrial action if it did not sign an agreement with the union acted unlawfully by breaching s. 185 of the (name deleted) IR Act 1999, which prohibits threatening or taking industrial action to force an employer to sign an agreement."<sup>70</sup>

This is not an isolated account of what is happening in our unions. It is a widespread practice for unions to operate in this way, with little increase in class consciousness by the workers involved.

### **3. Resistance to enterprise bargaining – two different responses in one union.**

Before we discuss the resistance put up by *Workers First* let us analyse a third example of enterprise bargaining by the Australian Manufacturing Workers Union (AMWU).

A certified agreement (CA) was signed by the AMWU and Austral Bricks Pty Ltd in 2003. The CA is read in conjunction with the State Engineering award. The CA overrides the award where there is any conflict or inconsistency between the two. The object of the CA is outlined at Clause 10 as being to promote the efficiency and performance of the company.

The CA includes a standard clause stating no further claims by the union (or management) could be made before the next EBA round in 2006.

One question we ask is how can anyone know there won't be new claims coming from the union membership during the period of the CA? Are there ways around it? We suppose one answer to that is the *Workers First* group who in Victoria ignored such clauses.

Presumably the 'no claims' clause in an EBA is legally enforceable against the union. On the other hand Corrigan proved in the Patricks dispute that employment contracts are not legally enforceable by the union against the employer. This was because Corrigan rearranged the Patricks companies so that the wharfies were employed by a shell company with no assets.

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<sup>70</sup> These findings are from the Cole Royal Commission into Building and Construction Industry. Details from this reference have been deleted to protect union organisers involved.

Clause 12 of the Austral Bricks CA deals with hours of work. It is deficient in that it does not specifically exclude weekend work. If the award does not exclude weekend work then it becomes possible for Austral Bricks to make workers do part of their 38 hours during weekends.

There is a clause in the CA that excludes AWAs at Austral bricks (i.e. all workers are subject to the CA between the union and Austral). If the employer decides to employ people on contracts, how will the union legally enforce the clause prohibiting such individual agreements?

One of the chief aims of the Austral Bricks Certified Agreement was to avoid strikes. This was done through a fairly standard disputes clause. The union agrees to go through five steps to solve a dispute. The five steps are that the union delegate on the job must first raise the dispute with the relevant supervisor, then with the relevant manager. Following that if there is no resolution there will be a phone hook up between a union official and the relevant manager and then with the state secretary of the union and finally the union must then go to the Qld IRC. Of course there is no provision to go on strike in the EBA. All these steps are open to manipulation by management. One ploy is to change the relevant supervisor or manager in order to frustrate attempts to get the IRC to rule on the dispute. Management then argues in the industrial relations commission (IRC) the union has not taken the correct step in the process and challenges the jurisdiction of the IRC to rule on the dispute.<sup>71</sup>

### **Pattern Bargaining**

Pattern bargaining broke enterprise-by-enterprise agreement making. Pattern Bargaining means negotiating across a range of enterprises or public sector agencies for 'above-the-award' pay and conditions. It is not enterprise bargaining. The EBA negotiations are across an industry or industries. Each EBA contains the same demands and may be set to expire at the same time. This creates unity of purpose and gives unions greater bargaining power. It gives the union a base across industries which permits it to have a strategic impact on the behaviour of employers.

The ALP conference in May 2007 endorsed pattern bargaining in the following terms:

"Where more than one employer and their employees or unions with coverage in the workplaces voluntarily agree to collectively bargain together for a single agreement they will be free to do so."<sup>72</sup>

It was the AMWU, ETU, CFMEU and other unions in Victoria under the leadership of *Workers First* that applied this method to some effect. They were supported by some of the Victorian leadership of the CFMEU, the ETU, the Textile Clothing and Footwear Union (TCFU) and the BLF in that state; thus managing to extract better wages and conditions from the large construction and manufacturing firms in Melbourne. The TCFU set up its own group called *Workers Strength*.

Both state and Federal Governments railed against this 'distortion' of enterprise bargaining because it favoured the workers. The employers formed an association called 'Employers First' to counteract it. In the wash-up the Federal Government set up the Cole Royal Commission (2001-2003) to curb the new union tactics and bring charges against the union's leaders.

The ALP state government in Victoria used the criminal law to jail the one advocate of *Workers First*, the former Victorian state secretary of the AMWU, Craig Johnston. The federal branch of this union led by the ALP's Doug Cameron, supported his jailing and banned him from the union.

*Workers First* threatened the status quo between employer and union under Enterprise Bargaining.

The *Workplace Relations Act 1996*, its *WorkChoices 2006* amendments, and the Secondary Boycott legislation introduced by the Fraser Government in 1976 are the equivalent of those ancient penal powers fought against by the workers' movement in the 1950s and 1960s.<sup>73</sup> Previously, militant unions prepared to fight for collective bargaining in preference to arbitration and conciliation courts that they distrusted. The union movement had come full circle. On this occasion it has accepted the new industrial environment while Johnston languished in jail.

The question must be asked: when are they going to deliver the prosperity for all? Will the 'trickle down' effect ever occur? Even in this period of dominance over workers the capitalists still seek more. Free trade is still restricted by workers' rights, they tell us. Many will not be happy until they return to the day when workers line up at the gate each day to be chosen for work. Economic rationalists to-day, like their predecessors of the 1830s who convicted and transported the Tolpuddle Martyrs, regard trade

<sup>71</sup> This tactic was used by the employer in the case in the AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION *Workplace Relations Act 1996* s.170LW application for settlement of dispute by *Ian Curr and the Australian Taxation Office*. The employer was able to defer the dispute resolution procedure for five months until it had sacked the union member with the dispute before the Commission.

<sup>72</sup> *Forward with Fairness — Labor's plan for fairer and more productive Australian workplaces* at page 13.

<sup>73</sup> S45D & E of the *Trade Practices Act* (the secondary boycott legislation) has been used against the Transport Workers Union and two rank-and-file members of the same union have faced Federal Court action under the *Workplace Relations Act*. (B. Dowling in *Big Rigs* published by Queensland Times on 1 May 1998)

unionism as nothing more than a conspiracy to subvert free trade. Workers combining to advance their interests as a collective is anathema to the economic rationalists. They see trade unions as an impediment to cheaper labour. Trade unions promote ideas of class consciousness which undermine the efforts of the owners to get workers to identify with the profit motive of the firm rather than their collective well-being. Economic rationalists accept trade unionism, but only as a social club for workers to join, not to represent the legitimate aspirations of their members.

In the midst of this, a strange contradiction has emerged. There are owners of firms and governments that see productivity is greatly enhanced by a disciplined labour force, and unionism provides a framework for discipline, through social cohesion. Some see these owners and their managers as good employers who enter into agreements with unions. The history of Australian political struggle has been dominated by the driving mission of the Labor Party to force or to encourage the employer to be the good boss, to reward a fair day's work with a fair day's pay.

While many Australian workers accept this as the only practical way to advance their interests, there are others who do not believe that the capitalist system can ever fully serve the interests of the working class. They know that, more than ever, workers' fortunes are tied to markets; more than ever, workers are objects buffeted and destroyed by market forces. They have organised in various political organisations.

The MUA leadership saw the stevedore Sea-Land as being a good boss. In the words of John Coombs, the national secretary of the MUA during the Patrick dispute:

“At Sea-Land the labour are recognised as human beings. Management listens to its workers, shares information with them, favours co-operation to the military style confrontation that has been the hallmark of Patrick management.”<sup>74</sup>

Social Democrats have always advocated a partnership in capitalism. Economic rationalists have tried and continue to attempt the abolition of the arbitration system. If they are successful, that may be the end of the Labor Party that introduced arbitration between union and employer.

However the end of arbitration does not mean the end of unions because the contradictions that brought employer and worker in conflict are still there, perhaps even sharper than ever before. It was these contradictions that brought the need for workers to organise unions, long before they were legalised. Look at the union struggles in South Korea in the period 1995-2005. Many unions operated illegally, their leaders were in hiding, yet they were well organised and capable of strong action in support of their members. The BLF was de-registered by the Hawke Labor government but went on to be stronger than before, winning many above-the-award gains for its members.

### ***Australian Workplace Agreements (AWAs)***

Under the *Workplace Relations Act* registered individual agreements were called Australian Workplace Agreements. Yet by 2005 they still only accounted for between two and three percent of all employees under awards or union agreements. Many private sector employers set wages through unsigned unregistered agreements<sup>75</sup> (38.5% of workers) or compliant enterprise agreements (24.2% of workers) rather than going to the expense of having individual agreements (AWAs). While far fewer unsigned unregistered agreements exist in the public sector there are an increasing number of AWAs.

These are individual agreements negotiated between employers and individual workers. In the same way that Enterprise Bargaining Agreements are based on the platform of previously negotiated awards, Australian Workplace Agreements are based on awards or on enterprise bargaining agreements that replaced the awards.

In October 2005 AWAs represented only 2.5% of all agreements despite having been introduced by the 1996 *Workplace Relations Act*.

As mentioned above, awards were not indexed to changes made under subsequent enterprise bargaining agreements. So AWAs based on awards can be inferior to enterprise bargaining agreements. This was the case under a Clerical Award where clerks employed by labour hire firms like Select Australia (a Dutch firm) are paid less and work longer hours than public servants employed by the Queensland government under enterprise agreements. However this is not always the case. For example in the Commonwealth Department of Employment and Workplace Relations the benchmark for the AWAs was certified agreements signed by the CPSU. The better the certified agreement, the better the AWA. Hence by July 2005 53% of non-management staff in DEWR had negotiated AWAs. One public sector worker had this to say about AWAs:

<sup>74</sup> Address by MUA National secretary John Coombs Australian Institute of Management 1998 Annual Conference (16 October 1998): *Getting it Right: Changing the Rules of Management Managing Their Way*.

<sup>75</sup> Unregistered Agreements may or may not exist on paper, i.e. they may be verbal; when they do exist on paper they remain unregistered.

“This is a subtle demon we are dealing with here! The problem is that the CA (certified agreement) forms the benchmark for AWA wage discussions and it is vitally important for all staff that good CA outcomes are achieved, regardless of whether people are actually covered by the CA or not. It is also important to know what we are losing in signing away superior CA conditions...To give you a idea of the kind of outcomes under AWAs for a fairly unexceptional ...officer (DEWR worker) like me, I asked for and got an 11% base salary rise when I went on the AWA and got a \$4,100 bonus for the seven months of that financial year that it covered me. One year after signing (salary can be reviewed on application any time and must be each year), I asked for and got a further 5% base salary increase and have just received a \$6,500 bonus.”

This particular public servant gave up on the collective agreement and was able to sign up to a higher wage. However public sector workers with traditionally higher union membership have higher wage levels. Public sector workers often have marketable skills (university degrees) that are in demand by government so they have some leverage with their managers, an advantage not enjoyed by many other workers.

Contrast the outcome for the public sector worker above with what has happened in South Australia and Victoria in 2005, when a plastics manufacturer, Kemalex, made workers on the assembly line sign AWAs. Under the terms of the AWA the Kemalex workers were required to apply for their own Australian Business Number (ABN).

Under the ABN legislation each worker at Kemalex is a registered business. By this means the employer escapes from the legal responsibility for deducting tax, paying long service leave, holidays and sick leave, employer funded superannuation and workers compensation. The workers have to cover all these contingencies themselves. To Kemalex, it mattered little that these individual workplace agreements were a sham and challenged even the legal meaning of employee.

Using the threat of redundancy, Kemalex revoked the union enterprise bargaining agreement and signed up its process workers to individual contracts. The Kemalex workers were paid \$17 per hour as individual contractors. This means that they received an extra \$4.30 an hour in exchange for losing all the conditions mentioned above. This was no compensation at all and the workers and union opposed it by strike action and picketing.

Large mining companies in Western Australia achieved similar results in the Pilbara undermining efforts by the Australian Workers Union and the CFMEU to have union negotiated enterprise agreements.

### **Conclusion**

In the 1990s, with workers on the defensive, capitalists were given a dream run. Unions had become mere facilitators of enterprise bargaining and individual work contracts.

For the most part, unions accepted the enterprise bargaining model and the economic rationalist program that prompted it. Enterprise bargaining which is round table agreement with the employer is a stark contrast to bargaining by strong unions across enterprises and industries outside the arbitration system.

Such bargaining is the direct confrontation with individual employers by workers and their union representatives where the union sets the conditions demanded by its members. It relies on the industrial strength of the union, not co-operation with employers who hold most of the cards in the arbitration system. Enterprise bargaining is a restraint on collective bargaining because it restricts bargaining to a single workplace.

Enterprise bargaining has weakened unions. Yet, in some industries, where unions are strong, collective bargaining has still been possible across enterprises i.e. in parts of the building industry.

These days, most trade union officials seek success in the legal process. It has become the leading edge of union struggle. They rely on arbitration and conciliation and laws enacted by Labor governments. Often the debate centres around whether an action by workers is lawful or unlawful rather than on the right to organise to improve worker conditions. There was a time when the lawfulness of industrial action was not in question because nearly all union struggle was unlawful. Legality brought a contradiction in that many union actions have become unlawful again. It is not just the IR lawyers the unions will be talking to but the criminal lawyers. But the lawyers present another contradiction. Their presence takes power from the worker.

## Chapter 5      **Arise ye workers from ye slumbers — New direction for unions**

The future of unions is of paramount importance, and unions themselves have played on the grim statistics to try to shore up commitment to recruitment. The ACTU-supported publication *Power at Work* argues that if the percentage of workers in unions declines at the current rates the union movement has only eight years to live.<sup>76</sup> This forecast is most likely exaggerated with a more probable scenario being unions confined to the public sector and big industries such as mining and construction.

Such hyperbole, if designed to cause panic among union officials and members, is a little late, in that union leadership was warned of the crisis to come by the 1998 MUA dispute and its aftermath. Union leaders have had plenty of time to analyse and adjust to the prevailing conditions since the Patricks dispute, but perhaps the real worry is the failure of strategies employed to date.

### **Membership levels – strategies for recruitment**

A period of militancy after the 1998 MUA dispute coincided with a brief halt in the decline in union membership followed by another sharp fall between 2001 and 2002 and subsequent decline (see table *ABS Trade Union Membership Figures 1993-2006*).

Declining membership has followed the strategic failure by the union movement to adequately represent workers' interests. The union leadership's focus has been on entering the power structures such as the Parliaments, the Reserve Bank, the Industrial Relations Commission and the boards of various public utilities and super funds.

The ACTU has consistently been fixated on building the corporate strength of union management structure when it should have focused on building solidarity and membership through shop floor action.

Most often, union membership increases follow activity in the workplace and workers' recognition of the need for cooperative action, rather than the skill of union management or changes in union structures. Growth in membership often follows success, not the converse.

Year	%	<i>Membership</i>	<i>Total workers</i>
1993		2,376,900	
1994		2,283,400	
1995		2,251,800	
1996		2,194,300	
1997		2,110,300	
1998	28	2,037,500	
1999	26	1,878,200	
2000	25	1,901,800	
2001	24.5	1,902,700	
2002	23.1	1,833,700	7,938,095
2003	23.0	1,866,700	8,116,087
2004	22.7	1,842,100	8,116,500
2005	22.4	1,911,900	8,526,600
2006	20.3	1,786,000	8,776,000

The author of *Power at Work*, Michael Crosby, says that Australian unions will reverse membership decline with a so-called organising model followed by unions in the USA:

“They should embrace an American model, with less concentration on providing supplementary services and more emphasis on organising in workplaces.”<sup>78</sup>

<sup>76</sup> *Power at Work - Rebuilding the Australian Union Movement* by Michael Crosby The Federation Press 2005

<sup>77</sup> ABS Employee Earnings, Benefits and Trade Union Membership Cat No. 6310.0 August 2006.

<sup>78</sup> Michael Crosby quoted in *Drastic remedies prescribed for shrinking unions* Sydney Morning Herald Weekend Edition September 24-25 2005.

But it is nearly as far from the ACTU to the shop floor as it is from US unions to Australia. Furthermore the success of the 'organising model' in the USA is dubious, where union membership levels were at 14% in 2002 and still in decline.<sup>79</sup> Moreover US unionism has been concentrated mainly in only three centres: San Francisco, New York, and Detroit/Chicago.<sup>80</sup> This concentration of unionism has its parallel here in Australia where the hub is Melbourne.

Greg Combet, in his foreword to *Power at Work*, says the book argues that 'unions can no longer rely on institutional support from governments, industrial tribunals, awards or 'passive employers' and 'unions must direct their resources towards building organisational power in the workplace and the industry.'<sup>81</sup>

These are strange words indeed from an ACTU leader who sought refuge in the courts during the 1998 MUA dispute then sought minimum wages to be set by the Australian Industrial Relations Commission and finally sought a seat in parliament. Who helped give credibility to these institutions if not the unions themselves?

In the lead up to the 2007 federal election campaign, union leaders were on the lookout for workplace disputes that would deliver their message against the IR laws to the electorate. But what about the workers? In 2005 ALP officials paid lightning visits to hotspots like the Boeing workers' pickets in Newcastle. It was like the Prime Minister's quick visits to Baghdad. What would Kemalex workers picketing after a lockout think of Bomber Beazley's meagre words of encouragement outside the gates?

During the 1998 MUA dispute Labor members and candidates, some cynically carrying slabs of beer to dry pickets, visited the wharfies' tents to win favour with the workers. This behaviour is no different from left-wing political organisations selling newspapers at pickets and thereby looking for a foothold in a union through connections with militant workers.

Combet might be thinking of unions as propaganda units in a Labor Party game of arbitration and industrial relations policy; the groups outside the ALP might simply want more newspaper sales.

Some hoped militancy would continue to grow under the Federal Coalition Government. However leftists have tended to fall in behind the ALP which played the role of dampening what militancy there was. This brought about tensions between unionists themselves and seriously threatened the unity of the union movement.

About the time of the MUA dispute several Victorian unions signalled they could break with the ACTU's continued support of the Australian Industrial Relations Commission (AIRC).

One such unionist, Michelle O'Neil, said: 'Well, I think there's only so many times that you get sold out'.<sup>82</sup>

Victorian unions abetted by the Federal Labor government left the State Industrial System en masse in the early 1990s to submit to the federal umpire. To worsen matters, the conservative Victorian state government of 1996 referred its power to legislate on industrial relations to the Commonwealth with significant consequences. The upshot was the unions shooting themselves in one foot and having the other hacked off by conservatives.

The unions pursued a short-term strategy that depended upon the Labor Party remaining in power federally for its continuing success. The Labor Party's inevitable loss of office exposed the poverty of a strategy which preferred legal manipulations to organising workers' industrial strength.

Other Australian states retained their own conciliation and arbitration systems. These mirrored the federal laws but they were perceived under Labor to offer a softer approach to unions.

Under successive ACTU leaderships of Kely, George, Burrow, and Combet, tensions arose between the ACTU and some Victorian unions. This led to the emergence of alternative union leadership contenders such as Dean Mighell (ETU), Michelle O'Neil (TCFU), Martin Kingham (CFMEU) and Craig Johnston (AMWU).

Existing trade union leaders seem more preoccupied with developing their career path outside the trade union movement – either as members of parliament or corporate consultants – than with the development of a strong labour movement. Such leaders can hardly be expected to make workers' interests paramount when they are conscious that their desired "career" depends upon ingratiating themselves with those opposed to working class power.

Are emerging trade union leaders destined to follow the path of many other ACTU union leaders to safe Australian Labor Party (ALP) seats? Jenny George obtained a sinecure as a senator in the NSW upper

<sup>79</sup>ACTU's *Union Renewal in Australia* 02 October 2002 by Michael Crosby.

<sup>80</sup> The ACTU sent a delegation to the US in July 1993 and it was from this time that unions in Australia began to study seriously the strategies being pursued by American and Canadian unions.

<sup>81</sup> *Power at Work*, Crosby op. cit.

<sup>82</sup> Victorian secretary, Textile Clothing and Footwear Union (TFCU) in 2004.

house. Bill Kelty became a director of large super funds. More recently, ACTU secretary, Greg Combet, obtained ALP endorsement in the safe seat of Hunter in NSW.

From 1999 the ACTU took up what it calls the 'Organising Model of Unionism.' The idea behind this model is to run 'campaigns where the union focussed on person-to-person contact, housecalls, and small group meetings to develop leadership and union consciousness and inoculate workers against the employer's anti-union campaign.'<sup>83</sup> The ACTU is taking advice to get away from leafleting at the workplace entrance, mass meetings and mailings to non-union workers.

Greg Combet says:

"At a time of unprecedented change and challenge many unions have trusted Michael (Crosby) to shine a light into every nook and cranny of their organisation. He has advised them how to modernise their union and to rebuild their membership. His experience, and his passion for change, has informed this book [*Power at Work*]. His account of the strategic imperatives confronting Australian unions in the 21st century is the most comprehensive statement of the issues yet written."<sup>84</sup>

### **Union membership and revenues**

For all the dire predictions, the ACTU speaks for a workforce of more than 8.7 million workers, about 20% of whom are union members. In 2004 those unions had an estimated annual revenue of \$506 million.<sup>85</sup> They maintain costly resources: head offices and call centres in capital cities and expensive lawyers to run court actions, and paid advertising in the press, on television and radio.

However, in a sharp contradiction with their resources, they are at their weakest where it counts — on the shop floor.

While almost all union officials would argue they are acting strictly in the interests of their members, they also have a vested interest in their future within these organisations. It may be that they take decisions that aim to minimise risk to the structures that underpin their power. The flow of officials into the political elite would suggest that their personal interests and those of their members may not be one and the same.

Membership (and with it, revenue) is only one indicator of the effectiveness of strategy. Active participation (militancy) is another.

But what is needed for workers' organisations to grow strong? Is it numbers alone, or is it militancy?

### **Victorian Militancy**

Following the 1998 MUA dispute there was a growing militancy within union ranks in Victoria where the mobilisation of workers had been greatest. In March 2000, the Construction Forestry Mining and Energy Union undertook vigorous campaigns like the building workers' 36-hour-week campaign. Militants like Dean Mighell, Martin Kingham and Craig Johnston were elected to the leadership of the ETU, the CFMEU and the AMWU respectively. Their collective strength was established through a system of pattern bargaining, which proved to be an effective strategy for improving wages and conditions. Later Joan Doyle was elected by the rank-and-file to lead the Communications, Electrical and Plumbing Union (CEPU) postal and telecommunications branch.

This new militancy was soon to come into conflict with employers and government officials keen to curb this growing tendency.

The Cole Royal Commission was established to attack the unions representing workers in the building industry, and soon produced its first casualty, with Martin Kingham from the CFMEU being charged with contempt. The contempt charge flowed from Kingham's refusal to provide information to the Royal Commission about shop stewards who attended a CFMEU training course.

While militancy grew, there was no effective strategy to defend workers who were taking greater risks. This is exemplified by the case of Craig Johnston who was jailed for defending the jobs of locked out AMWU members.

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<sup>83</sup> Bronfenbrenner, Kate and Juravich, Tom, *Union Tactics Matter: The Impact of Union Tactics on Certification Elections, First Contracts and Membership Rates*, Institute for the Study of Labor Organisations, Working Paper

<sup>84</sup> From the Foreword of *Power at Work* by Michael Crosby

<sup>85</sup> The ACTU claims that union officials generally are poorly paid. The low level of wages is a function of the 'poverty' of most Australian unions. Annual subscriptions' range given in *Union Renewal in Australia* were from \$200 to \$350 p.a. These are conservative figures with some union fees charged on a sliding scale up to \$500 per annum.



## Workers First

A group of militant workers in the Australian Manufacturing Workers Union created *Workers First*. After a number of campaigns the Victorian Branch of the AMWU, *Workers First* broke with the ALP faction that held control of the federal AMWU (under the leadership of Doug Cameron).

*Workers First* initiated a campaign of defiance of Section 45D of the *Trade Practices Act* (TPA) through 'pattern bargaining'.<sup>86</sup> Craig Johnston voiced the feelings of a number of unionists when he said:

"These laws (Industrial Relations legislation) are bad laws, they are crook laws, they need to be broken."

But Johnston, despite the support of many rank-and-file workers, *Workers First*, a few union officials and the Socialist Alliance, still ended up in jail. After being involved in an action in response to a lockout, Johnston was charged with affray.<sup>87</sup> At the court hearing five thousand workers stood outside the court with placards claiming Johnston's innocence while inside his lawyers entered into plea bargaining with the expectation of mercy from the court.

The *Green Left Weekly* portrayed the incident that led to Johnston's jailing:

"The media has perpetuated an image of the sacked workers' protests being violent. But there were no threats or acts of violence towards any people during the protests. However, some property was damaged. The protest on each premises only lasted a few minutes."<sup>88</sup>

Johnston was not guilty of the charge of 'threat to kill' or the charge of 'affray'. However Johnston's lawyers did not account for the resolve of the employers and the establishment in Victoria to make an example. He was sentenced to two years and nine months' jail, with nine months to be served prior to parole. In hindsight, Johnston was poorly advised on the guilty plea.

In the end, both Kingham and Johnston relied on the same strategy that led to the reduction in MUA militancy and loss of jobs and conditions on the waterfront in 1998. They both sought refuge in the legal system to extricate themselves from repression. Their approach of defying repressive industrial laws was not matched by the same defiance in fighting quasi-criminal (the law of contempt which was the charge against Kingham) and criminal laws (the criminal law of affray). This reflects a lack of experience in the union movement of how to combat the full arsenal of repression available to the state.

The militancy of *Workers First* created tensions with the leadership of the ACTU, and eventually saw a split in the AMWU, with the ALP-aligned federal AMWU secretary, Doug Cameron, wresting control of the Victorian branch from *Workers First*. Cameron and the ACTU thought tactics used by the emerging militant unions might threaten their position and disassociated themselves from Johnston. Cameron publicly supported Johnston's jailing under the pretext that he was a bullyboy. On the other hand Kingham secured sufficient ALP support to beat charges of contempt brought by the Cole Royal Commission inquiry into the building and construction industry.

In the short term, Johnston's jailing severely weakened the attempt by *Workers First* militants to challenge industrial laws and militants to challenge ALP leadership of the union movement.

### Comparison with the case of Ted Roach

Johnston's case is reminiscent of a prior era when Communists in the Waterside Workers Federation were jailed opposing the penal and other anti-union provisions.

Yet the contrast between Ted Roach (WWF) and Johnston (AMWU) is striking. Roach was a member of the Communist Party of the 1950s and was sentenced to jail under the following circumstances described in his own words:

"In 1949 the Chifley (Labor) Government decided to bring down legislation to prevent the miners obtaining any funds, so they froze trade union funds ... The WWF (Waterside Workers Federation) had three Branches on strike and had a five shilling levy collected for strike pay. I quickly drew all the money out and put it in three different places so I had access to it and the only other person who knew where the places were, was Della Elliott, the wife of E V Elliott, the secretary of the Seamen's Union. I'm paying the strike pay and they whacked the miners and McPhilips (another prominent Communist). They sent them all and give them 12 months. Then I get up to show cause why he shouldn't sentence me and I'm doing a bit of haranguing and he said 'It is the law Mr Roach.' I said 'Yes your Honour it is the law to starve the miners' wives and their kids.' ... Isaacs said 'I'll hold you responsible for this unseemly outburst in my Court.' He

<sup>86</sup> Pattern bargaining is collective bargaining to achieve good conditions across different workplaces. It is banned under the *Trade Practices Act* and WorkChoices Legislation.

<sup>87</sup> Affray is a charge where there is unlawful fighting or unlawful violence used by one or more person against another, or there was an unlawful display of force by one or more person without actual violence.

<sup>88</sup> From *Green Left Weekly*, 1 September 2004.

said '12 months.' The law to starve the miners' wives and kids... didn't like me saying that. We got out in six weeks anyway, with demonstrations."<sup>89</sup>

However there was no getting out in six weeks for Craig Johnston, who served the full nine months of his non-parole sentence and had the threat of two more years in jail if he were involved in similar actions.

### **Political alignment**

The emergent leadership of the militant unions in Victoria had sworn to support each other, and they did, up to a point. The new militant leadership could mobilise on an industrial agenda; but could they defend a political one? When Kingham and Johnston went to court their support base rallied outside the court in protest. But that was as far as it went.

They lacked a coherent political focus as was apparent from by their diverse political affiliations. This reflects the lack of an effective political organisation and strategy to bind militant workers and union officials together.

Kingham was in the socialist left of the ALP, Mighell had a brief flirtation with the Greens, returned to the ALP and was asked to resign in May 2007 by the new ALP leader, Rudd. Mighell swore not to go back. Johnston signed up with Socialist Alliance. And when the federal ALP opposition reversed its party platform of tariff protection for the footwear, clothing and textile industry prior to the 2004 federal election O'Neil threatened the TFCU would withdraw from its relationship with the ALP.<sup>90</sup>

The spike of militancy proved to be just that. No new workers' political organisation emerged from it. However this is what was needed; workers' political organisations were needed to build militancy and organisation to improve worker conditions.

After the 1998 MUA dispute there was little socialist organisation apart from the occasional protest or public meeting. There were a few public meetings held when Craig Johnston was sent to jail but these subsided as the reality of the repression sank in.

Emphasis has been placed on protest by Left groups to try to re-establish some links with the rank-and-file lost in the years of the decline of the Communist Party and the years spent in single-issue campaign groups like *Refugee Action* and *Stop the War* collectives in each state.

In the US, Europe and to a limited extent in Australia protests took the form of an anti-globalisation movement. In such a political climate the ideas of socialism lost meaning to workers. The risk of pushing for real change became too great. The sins of capitalism are evident and may be opposed through protest; but, in the end, what would replace it?

The workers have little say or involvement in the capitalist world and could only watch the antics of the machine men in the union or the socialist newspaper sellers at protest rallies. Union delegates are either lectured by paid officials or by others preaching that it is up to the workers to win the EBA contest or even to stop the war in Iraq.

These Left organisations are hampered by their inability to rise above the failure of their political strategies. The ideas of Marx are still relevant but today's socialist organisations have been unable to effectively deal with the changes brought about by the capitalists, their imperialist wars and the suppression of workers' rights. Marx famously said 'the traditions of the past weigh like a nightmare on the brains of the living.'<sup>91</sup>

### **Existing Political Parties**

The Labor Party was one of the earliest workers' political organisations in Australia. However, despite its support from rank-and-file workers, the Labor Party has always rejected any suggestion of representing class interests. Rather, it has portrayed itself as representing some broad "national" interest, which rests upon the false assumption that bosses and workers share common interests. The ALP, long ago adopted the corporate culture which surrounds it.

Within the trade union movement, the dominant tradition has been one which emphasized cooperation between classes. Notwithstanding a more militant leadership than today's the ideas of social democracy dominated unionism during its heyday in Australia from 1945 to 1975. This coincided with the post-war capitalist boom. Beyond 1975, capitalist ideology has been on the up and socialist ideology in decline: waves of capitalism have weakened worker organizations.

Increasingly, union leadership has adopted the language and ideological assumptions of corporate capitalism.

<sup>89</sup> Interview with Ted Roach 1990: Recording by Greg Mallory but omitted from Mallory's book about Ted Roach and Jack Munday *Unchartered Waters* 2005.

<sup>90</sup> *Labor lily-livered over tariffs: union* ABC Radio National PM - Tuesday, 30 November, 2004 Reporter: Louise Yaxley

<sup>91</sup> From *The Eighteenth Brumaire of Louis Bonaparte* by Karl Marx.

To quote a transport worker:

*"Best practice' unionism is an empty phrase; we want militant unions with a socialist focus. Terms such as 'strategic unionism', 'corporate unions' or 'best practice unions' come straight from business text-books and reflect a mentality and agenda totally at odds to the cast of mind which workers must develop to fight the forces mounted against us. We need militant unions engaged in action, every day, which always makes it clear to the membership that their interests are not only opposed to those of employers but are in fact crushed by the employers' agendas."*

It may take a hurricane for the ACTU to adopt this proposal. The ACTU performs a dual role. It looks after the political interests of the Labor Party as well as being the peak body of the union movement. This close association is no more evident than in Queensland where the Queensland Council of Unions (the ACTU) is a tenant in a building where the ALP has its Queensland headquarters. To be employed as a media officer, organiser or industrial officer often requires ALP membership as a pre-requisite.

Several attempts have been made by rank-and-file groups to win positions in union bureaucracies dominated by Labor Party members. Most have failed.

Some support (up to 30% in some union elections) has been generated from disaffected workers burdened by large mortgages, declining public education for their children, and the failure of the health system. However no organisation has been able to follow this through and to build rank-and-file organisation, even though fledgling attempts exist.

For example, in September 2007, there was rank-and-file concern about the use of a fund set up by the NSW branch of the Transport Workers Union. The fund was financed directly by labour hire companies employing workers at Sydney airport to carry out contract work for QANTAS. The employers and union did a secret deal in exchange for 1% of the workers' payroll. This deal was to fund the Transport Workers Union's salaries and expenses bill for lawyers, consultants, and officials. It is clear that the rank-and-file were not told about the secret deal or the fund.

When rank-and-file members of the union became concerned that their wages and conditions may have been traded off, who did the rank-and-file turn to?

They turned to the Labor Party.

More specifically they turned to Kevin Rudd whose wife runs labour hire firms like the ones that did the secret deal with the TWU officials. It was the NSW Labor Party who had set up this scheme and hidden it from rank-and-file workers for ten years. And who did the ALP send out to defend the union? The Labor Party sent out the president of the ACTU, Sharan Burrow, the same person the ALP sent out to defend Therese Rein's labour hire companies both here and in the UK:

*"The leader of the Australian Council of Trade Unions, Sharan Burrow, said she would seek briefings with the British union on whether Work Directions UK would harm workers..."*

After Ms Burrow's inquiry the media were able to obtain a clarification from the UK union:

*"But yesterday Mr Flynn said his union (British Public and Commercial Services Union) had voiced general concerns over the privatisation of work-placement services, not Ms Rein's company in particular."<sup>92</sup>*

The rank-and-file had turned away from their own power as heart and soul of the union and gone to the architects of corporate unionism, the true believers in top-down unionism. They went to the very people who forsake the interests of rank-and-file workers to finance corporate unionism. Sharan Burrow's predictable defence was to argue that union officials had followed sound business practice in having appointed independent auditors to ensure that the TWU fund was constitutional and that the constitution had been followed.

We argue that this is but one example of how the debate over the future of unionism in Australia remains centered in success or failure of social democracy. We do not accept that the Labor Party can deliver to workers good conditions and wages. This is because the ALP rejects working class interests, making them subservient to the 'national or the public interest'. We argue that social democracy (the ALP) is wedded to business and the employer class.

### **Socialist Groups**

We have not analysed various theories put forward by existing socialist groups. These theories remain like our proposal for workers' political organisations — one view of how to advance the interest of workers. We do not believe that the various alternatives have taken any lasting root in workers' thinking or practice in Australia for a long, long time. It would be utopian to think they had.

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<sup>92</sup> The Melbourne Age "UK union backtracks on Rein criticism" Julia May, London September 27, 2007

Most of the book's critique is aimed at social democracy. There is no sustained analysis of the far left at all. We doubt the existence of socialist organisation in the working class in any meaningful sense. We do not pretend to have any easy solution for the continuing isolation of socialist groups.

The distractions have been many.

Broad issues of war and refugees have been the focus with a narrow base of supporters. Disheartened rank-and-file candidates (in union elections) have fallen back into the rat race, working longer hours to find some refuge in the consumer society they oppose.

But the working class is always far from defeat. An alternative to the focus on strategic unionism, modernisation and rebuilding membership is to re-establish working class consciousness through workers' political organisation.

In arguing for a political alternative aimed at advancing working class interests, the following questions need to be addressed:

1. How should a workers' political organisation be built?
2. Should it be a socialist party with tight discipline or should it be a looser grouping?
3. If such a project were able to be launched by the existing, albeit small, socialist groups, would the rank-and-file support them?
4. Has the economic upturn in capitalism over the past 15 years delivered enough to blunt the desire for an alternative?

Workers' political organisation is not merely a proposition. It grows out of contradictions inherent in the master servant relationship. We concern ourselves here mainly with an argued rejection of social democratic (i.e. the ALP) ideas and practice. This is because these ideas are dominant in the union movement and have not been seriously challenged in the past 30 years.

### ***Workers' political organisations***

This book has attempted to discuss the broad trends in the Australian labour movement within a context of dwindling socialist ideas and organisations. We have argued that the historic mission of the Australian Labor Party has been the modernising of capitalism in moments of crisis, and subsumed workers' interests into the so-called national interest, thus thwarting attempts to achieve socialism, specifically worker control of production.

We have shown how the ALP-style approach has been used by the union leadership to manage class conflict. The net outcome, we argue, is a gradual slide in workers' conditions and a retreat from the socialist aspirations once held as a fundamental tenet by workers' organisations. Alternative approaches to workers' struggle were also discussed, with historic examples provided, showing that on occasions when alternative approaches were adopted, far from being utopian, they delivered better outcomes for workers and contributed to the developing strength of the trade union movement in the early and middle years of the twentieth century. Yet the organisations of that period carried their own weaknesses, which were later exploited by a class determined to roll back any advance that the working class had made, in order to maintain their wealth and power.

So, where to from here?

For those who maintain their socialist aspirations the challenge seems daunting. The demise of the Communist Party of Australia, and the shift of those who had been active in the New Left into 'issue politics' meant that there are no organised formations of the political left that have any significant leverage within the organised workers' movement. Those with an uncompromising class perspective have been pushed to the extreme margins of workers' struggle.

A generational shift has compounded the problem. Many of those militant unionists who cut their teeth in struggles of a previous epoch retired, and became increasingly out of touch with the day-to-day state of the working class. Younger militants joined environmental organisations and fought for peace and the rights of refugees, but strangely kept their distance from union organisation. There was no counterweight to those individuals from Labor families who sought personal gain and advancement through the union movement, convinced of their own working class credentials; they mistakenly viewed their advancement as a legitimate substitute for the advancement of the class as a whole.

With the failure of the radical left to engage seriously with Australian workers and their organisations the Australian union movement, the gap between socialist ideas and unions engaged in day-to-day struggle widened. Unions became part of a romantic narrative that increasingly had taken hold in the left. They took on a distant and elusive character, idealised into a static mythical past, but in their current state seen as a corrupted shadow of their former selves. Yet we have shown that the dynamic within the union movement, between leaders and members, between progressives and conservative elements has characterised the whole history of the movement and that the present is a particular moment in this dynamic relationship. That is to say, the debate to which we have contributed has been

going on for well over a century, and will continue to inform working class struggle, with all its ups and downs for some time to come.

In the early years of the twenty-first century the conservative trend within the labour movement has been ameliorated by some militants within the workforce who have taken up the challenge of becoming active within their unions. However they face many hurdles including:

- the mistrust of fellow unionists who are ALP members, particularly those in the union hierarchy who are deeply involved in ALP machinations, preselections and electioneering, (and intent on containing their members aspirations to a Labor victory);
- the indifference of fellow workers who are not interested in their politics;
- the bemusement of other active unionists who try and ignore them (except when they offer useful left cover); and,
- the lack of rank-and-file structures which allow them to engage directly with workers on the job.

While the prospect for worker organisation is limited, however, out of the contradiction of master and servant (boss/worker) comes conflict. When workers take action to advance their own interests, there is an opportunity to link with other workers engaged in similar industrial disputes. We argue that as the political nature of workers' struggle emerges there is a need for new structures or organisation to take workers out of the bureaucratic framework that confines unions today. A new possibility may be realised — workers' political organisation.

Workers' political organisations (WPOs) have significant historical precedents in Queensland, inasmuch as they successfully laid the foundation of labour organisation in the early part of the 20<sup>th</sup> century. For example workers' political organisations in Rockhampton, Fitzroy and Ipswich were the vehicle for taking workers into the ALP. Similarly the women workers' political organisation, under the leadership of Emma Miller, sought political representation in state and federal parliaments, and the promotion of the interests of women in the body politic. Grass roots organisation leading up to the federal election of December 1903 were aimed at achieving these aims. Their activities included three mock elections, public meetings, distribution of leaflets and door-to-door canvassing, and visits to women in factories and workshops.<sup>93</sup>

Subsequently we have seen the formation of many organisations that might be characterised as workers' political organisations, including strike committees, union support groups and rank-and-file committees. Their role has been critical at times, and less successful at others due to circumstance and their own organisational capacity. While not necessarily consciously related they have had as a common element their focus on grass roots activity, and especially shop-floor organisation.

What would workers' political organisations look like today? We would not presume to offer formulaic prescriptions but, for what it is worth, recommend some general guiding principles, which are open to interpretation within a specific context. We argue that workers' political organisations:

- are founded in workplace organisation;
- are focused on workers themselves achieving their goals without appeals to members of the ruling elite;
- seek to extend democratic principles throughout their workplace and unions;
- aim to advance workers interests as a whole, not on a sectional or even national basis;
- cast aside the dogmatism and narrow discipline of the sect and seek an engagement with workers as human beings, not on a one-dimensional ideological basis;
- should ignore zealots, and be wary of agent provocateurs and adventurers;
- strive for unity between workers, organisers and officials of their unions. Their argument is with the boss and their lackeys; and,
- are based upon the aspirations of workers to socialism, the abolition of private property and worker control of production.

There may be other options to tackle the entrenched dominance by the captains of industry, the global moghuls and their business empires, who have for centuries inflicted misery, wars and mind-numbing propaganda on the working class. We are hopeful that this book will move the debate into a space from where we can examine all options that will help build organisations that effectively challenge the capitalist might, and usher in a truly human age.

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<sup>93</sup> Young, Pam, 1926-, *Proud to be a rebel : the life and times of Emma Miller*, University of Queensland Press, St Lucia, Qld, 1991, 286 pp.

## Political Framework of the MUA Dispute

In Australia, economic rationalism has dominated our political system and economy since the defeat of the Whitlam government in 1975. Both Labor and Liberal/National governments have subscribed to the philosophy of the free market, and overseen the deregulation of the labour market. This is really re-regulation – with institutions like the Australian Competition and Consumer Commission (ACCC) promoting free trade while saying that it is looking after the interests of everybody i.e. by prosecuting cartels. Twenty years of failure to provide full employment, growing environmental degradation, increasing insecurity at many levels, and fear of crises have brought economic rationalism into question. However, the protagonists simply say it is not working because there are still impediments to competition, such as the trade unions.

### *The Conspiracy.*

The 1998 MUA dispute was a conspiracy by the Australian government, an employer, Patricks Stevedoring, and the National Farmers Federation to rid the Australian waterfront of the Maritime Union of Australia. Significantly, Bill Kelty, the secretary of the ACTU had warned the government, if it were to take on the wharves, they would see the biggest picket lines in Australian history. The conspirators planned to sack the entire union workforce employed by Patricks and to replace them with scab labour supplied by the National Farmers Federation. Redundancy entitlements were to be provided using government funds (to be called a levy on stevedores. The repayment by the stevedores of the redundancies has been put back until 2010. The levy has been passed on as an extra charge to consumers and exporters.

The plan was disguised as an attempt to increase productivity on the waterfront. The benefit for the conspirators would be to reduce wages, conditions, and union power in a strategic industry through the introduction of non-union contract labour. This would pave the way for reduced wages and conditions across the entire workforce and hasten the demise of trade unionism in Australia. Patricks hoped to dramatically increase the price of its shares. Corrigan hoped to increase his own wealth. For the farmers it was supposed to mean lower costs. The Patricks CEO Corrigan later referred to the dispute as a conspiracy himself when he said that the dispute was an attempt to emulate what Murdoch had done to the print union workers in Fleet Street in London by setting up an alternative workforce of scab labour at Wapping.

The following events revealed the conspiracy against the MUA –

**Cairns.** In September 1997, International Purveyors, a stevedoring company in Cairns, bypassed MUA labour. At that time, only seven MUA members had permanent work in Cairns and there were 29 casuals. It was seen as a weak link in the union. The workers stood firm and picketed this employer of non-union labour. The Maritime Union of Australia sought support from the International Transport Federation (ITF) requesting a ban on a ship, the *Java Sea*, from docking at Cairns. This international action bypassed the secondary boycott provisions which have no effect outside Australia. The employer relented and an agreement was reached for MUA labour to load the ship when it arrived. The first blow had been struck. The war on the waterfront had commenced but the union had countered successfully, to the surprise of many.

**Dubai.** On December 3, 1997, the Maritime Union of Australia revealed that non-union labour was being sent to Dubai to train as wharves. The International Transport Federation (ITF) threatened to blockade Dubai and the exercise was abandoned...for the time being. On December 14, the union movement claimed a victory after the United Arab Emirates cancelled the working visas of Australian army personnel training in Dubai because 'The International Transport Worker' Federation threatened to blockade Dubai.<sup>94</sup> The second counter punch had been landed, but the dispute had intensified.

**Webb Dock.** Executives of the National Farmers' Federation set up companies including Producers & Consumers Stevedore Pty Ltd to employ and train non-union labour at Webb Dock, Melbourne. This was portrayed as a training exercise. But on January 28, 1998, Patricks Stevedores locked out 180 wharves from Webb Dock.

**Mass Sacking.** Patricks Stevedores CEO Chris Corrigan sacked his entire workforce nationwide on Tuesday, April 7, 1998.

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<sup>94</sup> The Dubai Debacle from *The War on the Waterfront* published by the MUA on its website at <http://www.mua.org.au/war/dubai.html>

The war had commenced.

The sacking of the entire Patricks workforce differed from other industrial disputes. Not because it was a lockout by the employer rather than industrial action by the workers. Not because of the use of security guards with dogs to evict the workers in the dead of night. No, because the union leadership and the ACTU knew from the outset the actions contemplated against them. Greg Combet of the ACTU commented on the superior intelligence held by the MUA leadership:

“I think we filed the first allegation of conspiracy in mid-February, had applied for an injunction. We arrived at the court the morning after everyone was sacked, had them on the defensive. It was very important...a great highlight.”<sup>95</sup>

It was this intelligence; often detailed in nature, Patricks and the Government underestimated. For example, in the Easter break of 1998, John Coombs flew to a meeting of most of the waterside workers employed by Patricks in Brisbane and many of those employed by P&O to canvass the possibility they were about to be sacked by Corrigan. In considerable detail, he outlined Corrigan’s plans to the workforce assembled at the Wynnum-Manly Junior football club. The detailed intelligence had been obtained by Coombs from ‘three defectors’.

“Three men, employed by the National Farmers’ Federation, PC Stevedores, Webb Dock operation, defected from Webb Dock in the weeks leading up to the lockout. Two, Richard Scougall and Lucas Rene (who gave sworn affidavits) exposed how the training at Webb dock was a sham.

One, Jamie Meek, warned that Patrick Stevedores would sack its entire unionised workforce by Easter - symbolically Crucifixion Day. But the plans were rushed forward when, forearmed, the MUA took pre-emptive action in the Federal Court.”<sup>96</sup>

He told them this was the hardest dispute in his memory and in the memory of the old timers who were around for the 1954 and 1956 disputes. “This is the big one,” he said. He warned of the weaknesses that could destroy the union. He said that there are different kinds of scab but the worst kind was the one sitting in that very room with his mates. He said:

“I can understand the scab who I met yesterday who said that he was just out of prison and had no prospect of a job and had a wife and kids to support, they are still fucking scum, but they aren’t nearly as bad as the scab that is in this room today.”<sup>97</sup>

He told the story of the 55 wharfies in Sydney who took their redundancy cheques to the union office for safe keeping until the last dispute with Patricks was over.

He remained unsure as to whether Corrigan would sack them first in Brisbane or Fremantle or, as it turned out, sack everyone at the same time. At this stage, he probably knew only a little less than Reith about the detail. He told the men that he was in daily contact with secretary of the ACTU, Kelty, and that they could expect ACTU support. He said that he had the support of the leader of the Federal Labor Party in opposition, Beazley. Coombs announced that they would not win the dispute in the courts, and he added that ‘win or lose’ he would be back to cop the flak. Then and there all of the officials and members pledged support.

This early meeting with the Brisbane wharfies says a lot about the dispute. The Nestles/Cobar option of sacking the entire workforce was to be invoked by employers and government.<sup>98</sup> However, for the first time, the union leadership was fully briefed. Despite Coombs’s espoused mistrust of the courts, it was in the courts the union took its first steps to defend themselves. No industrial action was called. However, Coombs said this was the first time it was necessary in the recent history of the union for them to call for support from other unions. He said there were unions with considerable funds that must be committed to the defence of the MUA. No wharfie was to cross the picket line because of want by him or his family. There was to be no one who could say that they scabbed because the union was unable to provide for his family.

This is how the dispute was fought: picket lines outside the Patricks terminal, solidarity camps, court actions in the Supreme, Federal, and High Courts.

<sup>95</sup> Under the Hook: Melbourne Waterside Workers Remember, 1990-1998 (with Tom Hills) 1982, updated 1998. Page 224 (price \$30 Book Workers Press post cheque to PO Box 1033, Hawksburn 3142).

<sup>96</sup> The Defectors from *War on the Waterfront* published by the MUA at <http://www.mua.org.au/war/defectors.html>

<sup>97</sup> Some of Coombs intelligence came from scabs employed by the NFF

<sup>98</sup> This tactic was learnt by employers from two disputes:

**Nestles.** John Button in the Hawke Labor government previously advocated the sacking of the entire unionised workforce at Nestles.

**Cobar.** With the support of the Howard government, a multinational mining company locked out all of the unionists at the Cobar mines.

## Fremantle

Fremantle pickets, at times approaching two thousand strong, prevented trucks from moving on and off Patricks wharf. An attempt by a convoy of farmers' trucks to break through the picket line only seemed to strengthen the resolve of workers and swelled the numbers of picketers. In solidarity with the Patricks workers, P&O MUA members walked off the job in protest causing the farmers to end their action.

In Western Australia the Liberal government also tried to break up the protest camp with riot police. Again, this only increased the resolve of workers and within hours the picket was reformed.

## Sydney

Sydney pickets were effective in halting movement through the wharves at Darling Harbour and at Port Botany. When police moved in to remove pickets others quickly replaced them. When those detained were later released they returned to take up their positions. Trucking companies bowed to the power of the unionists and refused to send trucks through the picket lines. The NSW government played a subdued role by keeping its police force from using violence against workers. On these picket lines building workers and miners (led by John Maitland) played significant supporting roles.

## Brisbane

In Brisbane, perhaps the weakest link in the nationwide workers' action, union leaders were reluctant to condone any action that would invoke the secondary boycott provisions of the *Trade Practices Act*. Most of the action was symbolic and it was here in Brisbane Patricks was able to display a semblance of normal operations. This weakness was exacerbated by the determination of the union leadership not to spread the dispute to the P&O wharves, again because of the risks of legal action this would entail.<sup>99</sup>

At this port Patricks were able to move trucks on and off the wharf. Within this climate, credit should be given to those determined workers, including those from other unions like the TWU (led by Hughie Williams), that showed courage in an isolated position. The lack of courage of most other union leaders to commit to action meant that the rank-and-file support was not tested, leaving only determined participants at Camp Solidarity and Camp Unity to face up to relative isolation.

Ironically the court decision was announced at a crowd of ten thousand unionists and MUA supporters at the largest political rally in Brisbane during the dispute (see May Day in Brisbane below). What would have happened had the decision not favoured the union?

## Melbourne

The pickets on East Swanston Dock in Melbourne were a telling factor in the failure of the strategy by the government and Patricks. At the point when the NFF were most keen to get their scabs on the docks they were unable to prevent ten thousand pickets massed at the gates of the East Swanston Docks. But more than that, when the Victorian police were preparing to remove the pickets they were outmanoeuvred by the building workers who marched up behind them. The CFMEU had answered the call of the MUA in the best way possible.<sup>100</sup>

This incident became known as *The Long Night* and was the turning point of the dispute. Indeed, it was decisive. The police were unable to contain the pickets. Mass action had overwhelmed the coercive power of the state and the court system.

## Across the board

**In Fremantle**, police practised riot control measures. But that was it.

**In Brisbane**, pickets, at times, tried to stop trucks entering the wharves, with limited success.

**In Sydney**, the pickets were larger and more aggressive. Police were ineffective. The NSW Labor government was said to be responsible.

**In Melbourne**, mass action brought stevedoring to a standstill. Eventually the High Court provided a compromise resolution

## The Long Night

The tension in the room was palpable as members of different unions spoke. It was 4pm on Friday 17th April and eighty of us were sitting in a circle in the MUA headquarters in West Melbourne. Information had been gathered from workers in different unions which backed up

<sup>99</sup> See *War on the Waterfront* by Tom Bramble, Brisbane Defend Our Unions Committee, 1998, Chapter 3 *Lead in the Saddlebags* for an extensive analysis of this situation. For copy contact the author by phone (07) 3365 6233 or by email (t.bramble@business.uq.edu.au)

<sup>100</sup> *Under the Hook*



the belief that Kennett had delivered an ultimatum to police to clear Swanston Dock and open it up for Patricks.

The facts were gathered from union members and pieced together to reveal the plan. Members reported buses had been arranged to take a large number of police from a city railway station to the docks probably after midnight. Another union had been informed by their members that hundreds of warrants had been written up to expedite predicted mass arrests. No police from the local area around the docks were to be used in this operation. Then the barrister for the union revealed that the watch-house which was always chronically overcrowded had been magically emptied. The evidence was conclusive a move was to be made on East Swanston Dock that night.

I was there with women unionists as a community member to express support for the MUA and tell them that the community wanted to stand alongside the Wharfies. We recognised them as the frontline for workers. If the government could knock them off, we were all done for. Over 100 years of union struggle was not going to be wiped out. One of the male workers stood up and thanked me but said he did not want 'ladies' on the line. He felt this was men's business to which a woman unionist responded, 'This is workers' business and women are workers too and want to stand up and be counted just like the rest of you.' This finished the gender argument once and for all. The stakes were too high for division. Decisions were made fast and furious under pressure. Mobile phones interrupted with news as it came to hand.

It was agreed all unions would take turns in manning the picket. The women workers at the MUA were setting up a 24 hour phone service. They had mattresses in the office and would take turns bunking down for sleep and maintaining communication. Community Radio 3CR gave out MUA headquarters phone numbers so that any information could be forwarded quickly to where it was needed. 3CR also called up supporters to get down to the picket telling them when they were most needed. This was community radio's finest hour – a direct link to the people. We left the meeting knowing a long night was ahead of us and that we could all be arrested by morning.

The crowd swelled steadily from 7pm down at Swanston Dock. The marshals called them to practice every half hour or so and we all learnt how to link arms and interlace our fingers so that the police would have to pry us apart one by one to break this line. We agreed that we would be arrested. We were not going to make it easy for the government. Fires were keeping people warm. Their spirits were lit from within with the resolve to win this fight. There was only one toilet just inside the gate and the line was long but practicalities had to be attended to. We knew to be locked in a paddy wagon with a full bladder would be murder.

As the night wore on the crowd grew more resolved. We were now assembled in front of the gates. The marshals on the speaker system letting us know what was happening as news came to hand. At 2am lookouts reported police getting into buses in the city. We knew the time was approaching when we would be tested. Next they were marching down to the dock. It was too dark to see much but we could make out the shadowy outlines of 400 police. Then the helicopters started buzzing us with bright search lights. Back and forth for 40 minutes. It was irritating but good humour and black jokes mitigated the intended effects which were to rattle us.

As dawn was breaking the seagulls wheeled in the rosy light. The marshals on the loudspeaker kept us informed and there we stood 3000 of us facing off 400 police, both implacable. The 7am news bulletin on the ABC informed us that many of the police had removed their badge numbers. A roar of disapproval went up from the crowd. It was too dark for us to see but the journalists were close enough to take in such details.

As light broke we began to see the police more clearly. Our legs were aching after hours of standing on the cold hard bitumen. At least the unpredictable Melbourne weather was being kind – no rain.

By eight o'clock in the morning we were exhausted. The camaraderie was strong; strangers were sharing laughs, mandarins, water, and chocolates, whatever we had. We were at a stand-off when a roar started. What a sight! Builders' labourers marching down the road toward us. We waved and shouted and cheered them in. This put the police in a pickle. They were now sandwiched between weary but steadfast picketers and fresh building workers. Discipline held firm as we cheered the new recruits onto the picket line. Leigh Hubbard from Trades Hall led the police off the dock and they retreated to a Mexican wave and voices singing, 'goodbye, farewell, sad to see you go.' Like hell we were! We had won!

Tired and exhilarated we headed home to sleep leaving the picket in safe hands. This was the beginning of a remarkable period in Melbourne. Swanston Dock, which until then had been as foreign to most of us as Timbuktu, was to become as familiar as a second home over the next two weeks. Restaurants and theatres emptied as night after night Victorians gathered on the docks.

On weekends country folk came down to join their city cousins bringing sausages and chops for barbecues. All the churches were represented standing in support of the wharfies. A Buddhist shrine was erected under some bushes with 'MUA Here to Stay' across the top. Tents sprang up to feed and tend the growing community. Young environmentalists came down from the forests and cooked community meals for the picketers. A stage was erected and singers and comedians entertained the community. This was the essence of community and it started on the long night when workers and community came out in support of a group of workers who have always been the frontline defence of the Union Movement. The government thought this would be a pushover. They never dreamt that the community would rally for the wharfies. They were proved wrong on that night and in the weeks to come as the crowds swelled every night at the Peaceful Assembly on Swanston Dock chanting the familiar refrain 'Workers United, Will Never Be Defeated.' – Pamela Curr, FairWear Campaign,<sup>101</sup> 5 April 1999

### **May Day in Brisbane**

"May Day 1998 in Brisbane was the largest since the days of the Right to March campaigns of more than 20 years earlier. Those anti-Joh May Days were swelled by a huge non-union aligned 'red contingent', which over the years has dwindled into near insignificance.

In 1998, the red contingent had been reinvigorated a little, but the big increase in numbers to 10,000 was from unionists supporting the MUA. Many of these friends of the MUA had given May Day a miss in previous years.

Unions representing occupations a million kilometres from the wharves linked their fortunes on banners, signs, and floats with the Maritime Union.

As the thousands slowly swelled Albert Park, news spread that the decision of the Federal Court was being broadcast.

Mighty roars erupted as Jim Tannock, the MUA official on the May Day platform told of the MUA court victory.

Smaller pockets of cheers erupted as the news rippled through the march to those in the red contingent still arriving at the park.

As Tannock thanked everyone for their support in the struggle, his every phrase was greeted with applause, laughter, and cheering. The workers united will never be defeated, M-U-A Here-to-stay. The crowd of ten thousand was as one. As workers gathered around the stage, Jim Tannock took up the cry of victory from the crowd. His speech was a simple recount of the history of the dispute but to the workers it was a mighty shout of defiance.

The man who would be Premier, Peter Beattie, followed Tannock. Enthusiasm for what Beattie had to say evaporated when it became obvious he was trying to turn the campaign to the advantage of Labor at the upcoming election.

It was as if the amphitheatre at Albert Park was a balloon, which had been pricked.

As Beattie prattled, the air of exhilaration escaped. In the background some workers had picked up Tannock, a big man, and tossed him repeatedly in the air. Beattie droned on. Even before he finished, people shuffled off home.

During the next week MUA members all around the country marched back in through the Patricks gates." – Bernie Dowling, unionist.

### **Strategies for Union victory**

From the outset of the dispute, the MUA strategy was clear. First and foremost the union determined that it must survive. Second they would continue the struggle until all MUA members were returned to their jobs. Then the union would negotiate reforms. To meet these objectives the union actions can be divided into three components which in some respects complemented each other; in other respects they were contradictory.

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<sup>101</sup> FairWear is a campaign exposing companies who disregard the rights of their workers and outworkers and to demand that companies treat their workers ethically.

To this extent they can be ranked in order of importance as below:

- Legal,
- Industrial, and;
- Political.

### ***The Legal Strategy in the MUA Dispute – a dangerous road***

It is appropriate to consider the court action by the MUA. Notwithstanding the statements from John Coombs to the contrary, most of the union's hopes were staked upon the courts. Without significant opposition from the rank-and-file, the leadership of the union turned to lawyers for the first time in its history to save itself. John Coombs staked his future on this and in return was pledged support at many mass meetings.<sup>102</sup>

At a combined delegates' meeting of all unions, attended by many rank-and-file members of the MUA and other unions in Brisbane's City Hall, a loose coalition of socialist unionists proposed a 'Clarrie O'Shea' style campaign, including a 24 hour stoppage. The ACTU (Qld) leadership opposed the motion. The proposal did not gain broad support from the rank and file – their confidence in the leadership at this point remained unshaken.

This reliance upon the courts provided a contrast with the past history of the union, when court action was a defensive complement to the direct action of the rank-and-file.

On this occasion, court action would be given the leading role, followed by rank-and-file action to provide support and hold the ground while the courts deliberated. It was a strategy of great risk. Such strategy may well have been as risky as a straight confrontation of the laws mounted by the trade union movement. It carried the added risk of further demobilising workers at large and so preventing any recovery of the union position by rank-and-file action. It did have the short term advantage of avoiding putting the whole of the union movement on the line by direct confrontation with the government. Yet, it disregarded the long-term consequences of failing to mobilise the union movement with the strongest unions leading, a measure which might have arrested the decline of trade unionism discussed in the introduction of this book. It further encouraged other unions to follow this course with dire consequences, for example, the Construction Forestry and Mining Union representing the Gordonstone miners in their unfair dismissal case.

In February 1998 the CFMEU won an early round in their unfair dismissal case in the Federal Court. Industrial Commissioner Hodder ruled that when the mine reopened, the illegally sacked miners should have preference of employment. This was overturned by a majority decision of the Full Bench of the Industrial Commission. Because of a legal technicality arising from the *Workplace Relations Act*, the Federal Court ruled that although the Gordonstone miners were illegally dismissed and were entitled to be re-employed, the Court did not have the power to quash the decision of the Full Bench of the Industrial Commission.

Even though the technical reasoning by the Court was wrong, the miners' appeal was not upheld in the Federal Court. Justice North gave a technically correct ruling in the MUA case that a conspiracy 'may' have occurred. This led to a compromise deal, so the case was never actually tested. The unfair dismissal of the Gordonstone miners has not been resolved to this day. Fortunately, the miners union has sufficient clout to see 14 of the 16 miners have jobs elsewhere. Yet these are the dangers of pursuing the legal road. Who is to say that the MUA would have ever won its conspiracy case even if it proved the facts of the conspiracy? Workers all know the conspiracy case to be true, but that is not to say that a court would regard the case as having technical merit. In another conspiracy case brought by the MUA against two West Australian government ministers and the Geraldton Port Authority in the first week of July 1999, the union was unable to get past the first hurdle of proving the facts.

This is the crux of the weakness of legal action. Workers' futures are not only decided by political bias, they can turn on judges' interpretation of delicate points of law. For the lawyers it is the fun of the lucrative game; for workers, legal decisions can be disastrous, or frustratingly indecisive.

From the outset the dispute turned on court battles between the MUA on one side, and Patricks, the National Farmers' Federation and the Federal Government on the other. The ACTU in particular put great store in the law of the land to protect workers' rights. Picketing and mass action were to be largely support action to hold ground while the court action proceeded.<sup>103</sup> The courts became the central focus of the campaign and all else hinged on their decisions. There was something of a lottery in all this as the political standpoint of judges had a marked influence on their interpretation of the laws. The judges' early verdicts were in favour of the MUA – but they never went further than saying the union had an 'arguable' case of conspiracy. Had the union failed to obtain the temporary orders

<sup>102</sup> Ibid *Under the Hook*

<sup>103</sup> See *Under the Hook* by Wendy Lowenstein and Tom Hills at page 224, where Greg Combet expressed his confidence that court action got the conspirators 'on the defensive.'

against Patricks, the legal strategy would have been doomed. Even if the union had then gone on to win the conspiracy case, the victory would have largely been a pyrrhic one.

### ***The Legal Manoeuvres***

The Patricks stevedoring operation was a group of companies, all ultimately controlled by a corporation known as Lang Corp. In September 1997, there was an extensive financial and legal reorganisation of these companies, in preparation for the attack on the MUA. Wharfies on the Patricks wharves were employed by five different companies within the Patricks groups. These employer companies also owned assets connected with the stevedoring business, and in effect, ran the Patricks stevedoring business on the wharves.

From September 1997 onwards, these five ‘employer’ companies were divested of all their assets, which were ultimately transferred to another company in the Patricks group. This company also took over the running of the stevedoring business. To run the business, this company entered into contracts with each of the Patrick’s ‘employer’ companies which would supply the labour to work on the wharves.

The companies which employed the wharfies were thus turned into labour hire companies which supplied labour to another company in the Patrick’s group, which now owned and ran the stevedoring business. The reason behind Corrigan’s strategy is explained by the MUA:

“The labour hire agreements gave Patrick Operations the right to terminate their employment agreements without notice and permitted them to hire employees from elsewhere.”<sup>104</sup>

The ‘employer’ companies no longer had any significant assets. The only income that the ‘employer’ companies received came from the labour hire contracts with another company in the Patrick’s group.

In early April 1998, the MUA received ‘intelligence’ that Patricks was about to act and dismiss its workforce. The union’s first response was to commence legal proceedings, trying to obtain an injunction to prevent MUA members from being sacked. The union filed these proceedings on 6 April 1998 in the Federal Court, but the Court would only be hearing the matter on 8 April.

On 7 April 1998, the Patricks company which controlled the business, cancelled its labour supply contracts with the Patricks ‘employer’ companies. The same day, the company entered into new contracts to obtain a new workforce comprised of non-union labour. The wharfies had not yet been sacked, but the ‘employer’ companies had all lost their only source of income. In theory, the Patricks ‘employer’ companies no longer had any work for their employees to do, and no money with which to pay them wages. The ‘employer’ companies were instantly insolvent – broke. These companies were not insolvent because the stevedoring business was losing money or because the waterfront was inefficient. They were broke because of the machinations of those who controlled Patricks. Patricks deliberately took steps to make sure that their own companies supplying MUA labour went broke.

Not the first time a modern capitalist like Corrigan had set up phoenix companies; new companies, unencumbered by debt, rise from the ashes of the old. This is the stock-in-trade of the merchant banker: frustrate your creditors. In this new world the wharfies had become Corrigan’s creditors through their unpaid wages, leave entitlements and superannuation, not to mention future redundancy money. The workers had entered the dog-eat-dog world of their employer, as creditors not as employees.

On this same day, 7 April 1998, Patricks appointed administrators to run the ‘employer’ companies. Administrators are appointed to an insolvent business as a first stage in the eventual winding up of that business.

On 8 April 1998, the Federal Court granted a temporary injunction preventing the administrators of the Patricks ‘employer’ companies (the newly created labour hire firm) from sacking any wharfies until the Court could begin hearing the union’s case on 15 April. The hearing commenced on 15 April before Justice North. On 21 April, the Court essentially granted the MUA the interim orders it had applied for. These orders basically required Patricks to return the employment arrangements on the wharf to the status quo prior to 7 April 1998, until such time as the main legal action could be heard.

The MUA took legal action against all of the various Patricks companies, claiming that Patricks was conspiring to replace union labour with non-union labour on the waterfront. The union was relying upon a claim that Patricks was guilty of an illegal conspiracy and breaching the ‘freedom of association’ provisions of the *Workplace Relations Act*. One effect of these provisions is to make it illegal for an employer to (financially) injure or prejudice an employee simply because that worker is a member of a union.

However, the MUA’s claims of conspiracy and breach of the ‘freedom of association’ laws were never actually decided by the Courts. The hearings in the Federal Court of Australia were only preliminary hearings about procedural matters. The MUA applied for the Federal Court to make interim (temporary)

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<sup>104</sup> ‘Sweet Justice’ in *War on the Waterfront* at <http://www.mua.org.au/war/Judgement.html>

orders until the Court could conduct a full hearing of the union's case. The union applied for orders requiring Patricks to continue to use only MUA labour on the wharves up until the conspiracy/freedom of association claims could be heard by the Court. The court cases in April 1998 dealt only with the legal issue of whether the courts should make these temporary orders.

While the MUA received the interim orders it applied for, this was no guarantee that the MUA would have succeeded in the main legal proceedings. The MUA and Patricks arrived at a compromise deal before the main legal proceedings came before the courts.

We have analysed the judgements of Justice North in the Federal Court, looked at the preliminary comments by the Full Federal Court, and read the judgements of the High Court in giving the administrators power to order a return to work. Contrary to what has been said by the courts themselves, many of the judges' political views played a role in the decisions.

### ***The Court Decisions***

The decision of Justice North was confined to the issues to be heard – his judgement was the least political.

By contrast, the Full Federal Court made the following statement at the outset that was clearly political, extra-legal and unnecessary:

“As individuals, each member of the Bench, like all sensible Australians, is in favour of an efficient waterfront. Export income is the economic life blood of our nation. Most of our exports depart by sea, many through container terminals. It is obviously important to ensure that the operation of container terminals is as efficient and economical as reasonably possible....Just as it is not unknown in human affairs for a noble objective to be pursued by ignoble means, **so it sometimes happens that desirable ends are pursued by unlawful means.** If the point is taken before them, courts have to rule on the legality of means, whatever view individual judges may have about the desirability of the end. This is one aspect of the rule of law, a societal value that is at the heart of our system of government. It follows that this judgement should be seen only as a judgement about legal issues, not a view about the social, economic and political arguments concerning waterfront management that have dominated the media during the last couple of weeks...”[emphasis added].

The Full Court obviously felt the need to apologise for upholding the MUA's legal arguments.

Place the court's statement above alongside the following report from Drewry Stevedoring Consultants which appeared in the media at the same time and the emphasis placed on waterfront reform by the judges can be brought into question.

“The report, by Drewry Stevedoring Consultants, says the slow crane rates in Australia compared with other countries' ports are due to ships unloading less cargo at each dock here. The report says that this slows the average crane rate. Drewry claims that when this is taken into account, Australian ports have a relatively high level of productivity. Patrick Stevedores has declined to comment.”

We can only conclude that the MUA lawyers were very lucky indeed to get before Justice North rather than one of the judges of the Full Federal Court. They were also lucky to be supplied with the information (through ALP sources, no doubt) that gave them the exact nature of the conspiracy against them by Patricks, Reith, and the Australian government.<sup>105</sup>

Not surprisingly, it was the government propaganda that the High Court judges and others swallowed.

### ***The High Court***

This is the most politicised court in the land where appointments are made depending on which political party is in power. For example, the Coalition government has further shifted the balance of the Court against workers through the appointment of a conservative Chief Justice and a judge who was a Queensland National Party barrister during the Joh years. The MUA should consider themselves lucky not to have fronted these judges at the outset of their court appearances. Under a legal strategy, at the end of lengthy court proceedings, the MUA would always face a conservative court. This means that the MUA case may never have been proven. Thus the conspiracy case against Patricks, the banks, and the government, could only supplement a political struggle. In effect, the legal process was more likely to

<sup>105</sup> One interesting sidelight is that Howard, Reith & Co (‘the Australian government’) were represented by a Melbourne barrister by the name of Tony Pagone. He made the case for the Commissioner of Taxation against the elaborate tax avoidance schemes in Spotless. It was this kind of advocate needed to defend such a conspiracy. See North J's judgement:

“This (the sacking of the entire Patricks workforce) was the result of the effects of a complex transaction (by Patricks) which occurred in September 1997. As a result of the transaction, the administrators had a workforce but no work. The applicants (the MUA) only learned of this transaction on 8 April 1998.”

assist in electoral success for the ALP than the reinstatement of the wharfies. Note the plight of the sacked SEQEB workers in Queensland which ended up in the High Court with no reinstatement or damages. In the following year the Goss Labor government was elected and it never reinstated the linesmen and never repealed the changes made to the Transport Act made by the National Party government to prevent picketing of essential services.<sup>106</sup>

It took 20 years for an ALP government under pressure from business consumers facing summer blackouts to start replacing the linesmen who were lost as a result of the sacking of 1100 men by Bjelke-Petersen.

The MUA lawyers were forced from the more comfortable (and for unionists, familiar) arena of the Industrial Commission because of the *Workplace Relations Act*. Their strategy was to take on the government and Patricks in the arena of corporations law – an arena where workers rank last, behind other creditors and the banks. Take, for example, the voluntary administration of Patricks' labour hire companies. The secured creditors, the banks, rank first in any deed of arrangement between the employer, the banks, and workers.<sup>107</sup> The workers rank last because the vote for the terms of the deed of arrangement in the creditors meeting is not based on numbers of people; it is based upon the amount of debt. As with this case, the banks almost always rank first in such arrangements because they carry the most debt. So the banks's vote was crucial to any arrangement for the companies to continue trading. Under voluntary administration, the most likely outcome was that the labour hire companies would go into liquidation and all of the wharfies would lose their jobs for a second time.

The MUA benefited to some extent by the tactics used by Corrigan because he took the extreme option on every occasion through:

- The artificial scheme of setting up the labour hire companies for insolvency;
- The premature winding up of the labour hire companies by withdrawal of funds to the parent company, Lang Corp;
- The sacking of the entire workforce in one hit rather than port-by-port sackings;
- The requirement by the parties to the conspiracy that the government pass legislation to fund the redundancy payments to the wharfies; and,
- The application in the Federal Court by Corrigan for the deregistration of the MUA despite the fact that it enjoyed the support of the ACTU. This gambit usually only works when the ACTU and the ALP betray a union as Hawke and Kelty did when the BLF was deregistered.

The courts are for the corporations, the employer, and the parliament. When the parliament passed the Redundancy Bill in order to attempt to bribe the wharfies to break with their union, no lawyer or court was ever going to say it is illegal to pay unionists to give up their union.

When Patricks sacked the 55 wharfies in Sydney in 1994, was it the courts that ordered the money to be given back? No – it was the wharfies who took the redundancy cheques to their union to be put in the union safe. And later when the 55 were reinstated after a national stoppage it was the union officials who took the plastic bag full of the cheques and dumped them on Corrigan's desk. Alas, history was not to repeat itself.

In 1998 there was to be no public burning of the redundancy cheques with wharfies refusing any compromise as had happened in the 1928 timberworkers' strike where the workers burned the ballot papers they had been given by the timber companies to conduct a secret ballot on industrial action.

The fact that courts – and the laws that they enforce – exist to protect corporate interests leads to the greatest inherent weakness in the union giving pre-eminence to a legal strategy. Pursuing first and foremost a legal strategy commits the union at the outset to making a compromise with the employer's agenda. Union leaderships (including that of the MUA) are well aware that our legal system is weighted heavily against their interests, that laws, law makers, and judges are ideologically committed to ensuring that capitalism functions smoothly and efficiently – to the detriment of working people.

As noted earlier, the so called 'legal victory' of the MUA only granted them a temporary reprieve, requiring the employer to use MUA labour until there could be a full hearing of the MUA's claim of a conspiracy by Corrigan and his cohorts. The courts decided that the MUA had, at least on the surface, a strong case, but there are no guarantees in the court system – especially not for unions or unionists. Had the MUA lost the main legal action, the consequences for the union and the dispute would have been catastrophic. The loss of the legal action would have undermined the political/media campaign conducted by the union, which relied heavily upon assertions that Patricks had acted illegally or unlawfully. Given the relatively minor role played by industrial action in the MUA campaign, it seems

<sup>106</sup> Allegations that the Qld ALP used the sacked workers' strike fund in a subsequent Federal election campaign have never been adequately refuted.

<sup>107</sup> A deed of arrangement is a contract between all the parties so that the companies can trade out of financial difficulties. This is the end result that Corrigan left when he set up the deal with the government to sack the wharfies.

doubtful that the union could have suddenly propelled an industrial campaign to the forefront in the aftermath of such a legal defeat.

For these reasons, it was always unlikely the MUA would have pursued the legal action to a final hearing. Its leadership understood the stakes involved. Of course, there were risks for Patricks in the courts also. Therefore, the union's legal manoeuvres were primarily about forcing the employer back to the negotiating table, where a compromise could be reached. The temporary orders requiring Patricks to employ MUA labour meant that Patricks could not ignore the union as it could when MUA members were locked out.

It is not denied that there were risks associated with whatever type of campaign was mounted by the MUA. But focussing on a legal strategy was the weakest option, because the best result that could be achieved from such a strategy was a compromise which conceded at least part of Patricks' 'waterfront reform' agenda. A more aggressive focus on industrial action or a real political campaign (challenging anti-union laws, not merely attempting to bolster ALP electoral prospects) would have required greater organisation and effort, but would also have provided greater options for the MUA. Successful industrial action could have halted completely Patricks' (anti-worker) agenda for 'reform' of the waterfront. If a combined industrial-political campaign had undermined the trade practices laws, the results would have been a boost to the trade union movement throughout the country. None of these alternatives precluded the union pursuing legal action as a means of keeping the 'compromise' option open.

No doubt there may be occasions when, despite its weaknesses, circumstances dictate the pursuit of a legal strategy. However, allowing a legal strategy to become the standard response to an industrial dispute guarantees the long term decline and defeat of the union movement. The risks, costs and other exigencies of court action all exert pressures that point in the direction of compromise and gradual concessions to the employer. To forgo real industrial and political struggle in favour of the courts is to accept that each new dispute will produce not the advancement of working class interests, but a reversal. Such reverses may sometimes be minor, perhaps less than the reversal that the employer wanted to inflict upon its workers. But, with each new dispute, there emerges a new compromise, in which some further concession is made. The employer is able to erode away, piecemeal, the conditions that working class solidarity has won for workers in the past. Indeed, the foregoing is perhaps an apt description of the history of the decline of the Australian trade union movement over the last forty or fifty years.

There is little doubt that the leadership of the union turned to court action in order to relieve itself of risks of a direct confrontation with the secondary boycott provisions. To this extent Employment and Industrial Relations Minister Reith was correct when he took solace from the fact that the strike did not spread to other wharf companies or lead to action from other unions. It seems clear, despite noises to the contrary, that neither the union movement in general nor the MUA in particular was prepared for the risks this strategy entailed. They had not undertaken the preparatory actions that corporations always do to put a legal veil around their entities or place funds overseas to escape Australian laws.

As direct action recedes further into history, the question arises whether future union leaders, nurtured on law and media PR, will even be able to effectively co-ordinate a rank-and-file campaign.

ACTU secretary Bill Kelty was aware of the resources that the government could put at the disposal of Patricks. He had seen at close hand how a Labor government under Hawke had destroyed the Pilots' Federation in 1989. Hawke made available the resources of the Office of the Prime Minister to the Director of Ansett, Sir Peter Abeles. About \$100 million of public money was made available to the airlines through a moratorium on aircraft landing charges and airlines being undercharged for the use of military aircraft. None of this money was the subject of a parliamentary appropriation bill.

Hawke declared a 'national emergency' on 23 August 1989 to justify the use of military aircraft to break the pilots' strike and then Sir Peter Abeles brought in the scabs.<sup>108</sup> The strategy of Reith and Corrigan to train army personnel in Dubai was not that much different to the strategy Hawke and Abeles used against the pilots by having the air force provide essential passenger services and scabs to do the rest. Also Reith as Minister for Industrial Relations persuaded the government to fund the redundancies. The proposal was that the exporters would pay it back through a levy. Seven years later it remains unclear whether the redundancy money was actually recovered. Stevedoring costs were never lowered as promised by Patricks and the government.

The unions did not undertake any major political campaign in their own right, as in the 1950s, to confront the legislation to render secondary boycott legislation ineffective. This was so notwithstanding the fact that the legislation had been around for quite a period before the dispute and mirrored similar unjust legislation in other countries such as the UK where it had been used to great effect.

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<sup>108</sup> A Pilot's Perspective of the Australian Pilots' Dispute of 1989 by Alex Paterson @ [http://www.vision.net.au/~apaterson/aviation/pd89\\_introduction.htm](http://www.vision.net.au/~apaterson/aviation/pd89_introduction.htm).

The risk of undertaking secondary boycotts without a legal veil was bankruptcy of the union, its leaders, and members. This was precisely why the legislation was set up – to diminish trade union rights. The unions, because of their recent history in Australia under a long period of social contract, had demobilised the rank-and-file. Rank-and-file unionists under the burden of Labor's social contract had become compliant. So even if the MUA leaders were confident of their own members, they were unsure of obtaining the necessary support from the ACTU and the rest of the union movement. The rank-and-file was not putting significant pressure on their leadership and the leadership responded accordingly by not expecting strong action from the rank-and-file. It represents a political failure in the sense that without an effective militancy to reinvigorate the union movement it fell back on the options offered to it by the capitalist system – compromise through the courts. The quid pro quo to the unions for their survival was reduced power and poorer conditions for workers. In return, the system recognised that though it could deliver punishing blows to workers and their unions, it could not deliver the knockout. There had to be a compromise and the compromise was to be this: if the union accepted the supremacy of the courts and the law, union coverage on the waterfront could continue but only if reform (read: loss of jobs and workers' conditions) was allowed.

For the union, success in the courts would allow continuation of MUA coverage of the waterfront and the reinstatement of the workers, but it could never prevent the redundancy push by Corrigan and the government. Further it could not prevent a worsening of work conditions for all MUA members. Only union power could stop this.

The courts then, while not supporting Corrigan's methods, were supporting his aims. Effectively, they ruled that workers should be allowed to continue in the union and the employer must pay the redundancies prescribed by law. They did not accept Corrigan's unfettered right to increase his profits but placed some limits on him. The court's position was portrayed as the middle ground – a theme taken up by the media. But a middle ground which meant that workers were always going to lose conditions and many would lose their jobs, albeit with some union input as to who would lose their jobs and into the size of the redundancy payouts.

Within this view of the courts is the belief, formed as a result of exposure to conservative propaganda, that the commercial success of industry is synonymous with the national interest and well-being of society. For example, in 1990, Margaret Thatcher and the port bosses made use of this conservative view to assist in the de-unionisation and casualisation of jobs at UK ports. Nicholas Finney, then director of the National Association of Port Employers, described how this was done in a speech to the Australian economic rationalist group, the H. R. Nicholls Society:

“We commissioned economic studies. One particularly important economic study was to try to prove that getting rid of the dock labour scheme (a scheme that guaranteed a union presence) you actually create many more jobs than you lose.

Benefits from this approach... (were) to make sure we could drive a wedge home to isolate dockers and describe them as a selfish, small group of workers who were actually stopping people from gaining jobs in unemployment blackspots.”<sup>109</sup>

This being so, anything which detracts from industry's striving to enhance its commercial position must, therefore, detract from the national interest and the well being of society. Because the MUA's resistance to such 'enlightened' management strategies as redundancies, twelve hour shifts (if not longer), non-union labour on the wharves etc., the union is portrayed as acting against the national interest. No one should be in any doubt about the grudging attitude of the court to the irritating fact of workers insisting that they have rights which they are not prepared to relinquish simply to enable corporations to operate in a 'more commercial manner'. It was only with a great reluctance the judges were prepared to concede that 'export income' and 'efficient container terminals' were not such wonderfully desirable things as to be pursued by 'ignoble and unlawful means.'

### **Industrial Campaign**

The focus of the industrial campaign was with pickets formed at Patricks-run ports around the country. In the international arena the International Transport Federation indicated its support. Members of the MUA and many supporters, particularly in Melbourne and Sydney, formed the pickets. In those cities they effectively closed down Patricks' operations. In Brisbane, police moved the pickets back from the Patricks' gates, a measure demanded by the Port of Brisbane Authority. Thus, the Patricks' terminals kept operating at a reduced level until put on hold by the High Court's decision. Workers around Australia supported the pickets through donations, and with symbolic shows of support. In Brisbane, the MUA effectively abandoned an industrial strategy, with picketing essentially a symbolic, political gesture. More generally, however, steep penalties associated with secondary boycott provisions of the *Trade Practices Act* caused the union movement and particularly the ACTU leadership to shy clear of mass industrial action.

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<sup>109</sup> From MUA *Here to Stay!* – a Democratic Socialist Party pamphlet, at p.17.



In Brisbane an action by picketers on Tuesday, 21 April 1998, was not an indication of a broad-based determined campaign to close Patricks. Many workers were frustrated by their inability to shut down Patricks. The mass arrests may have given some credibility and moral high ground for those involved but they did not signal a campaign of mass civil disobedience, nor offer a significant impediment to the operation of the port. At the time of these arrests, scab drivers on scab trucks backed up by security guards, video surveillance and police intervention were driving past the pickets at the other Patricks' facility at Hamilton Wharf in Brisbane. The only impediment to the truckies crossing the picket line was a brief stop to listen to the abuse of the wharfies and their supporters. The charade was even orchestrated by the police allowing the state secretary of the Transport Workers Union, Hughie Williams, to speak with the driver for a few minutes prior to the truck being waved on by the police. The strategy of breaking the law near one of the Patricks' terminals was not part of a wider campaign of confrontation in Queensland.

Industrial action played a minimal role in the campaign following the union lead. As the dispute continued and rank-and-file determination increased, the leadership could have shown flexibility by returning to mass meetings for direction from the rank-and-file. The time was right to go back to the membership and consider a different strategy. The union found new confidence in the success of the pickets, particularly in Melbourne. Despite the threat of punitive government action, the union could have pushed for a better settlement. The lawyers could have been forgotten and the courts placed in a secondary role. The tired policies of the ALP disregarded, a popular industrial campaign could have been used to turn the dispute around. It was a time to shift the issue from crane rates and waterfront reform to confronting a government with its bad laws.

The Union leadership showed no flexibility. It held firm to the course it adopted at the beginning of the campaign and which had been endorsed by its rank-and-file. A strong socialist movement would have been telling at this point in its ability to give workers and unions confidence. Such a movement did not appear, because it is simply non-existent. Though tensions and doubt had grown between the rank-and-file and the leadership, the success of actions taken were sufficient to provide confidence in the union leadership. The workers continued to accept picketing as the secondary role to court action. There was no change from the original strategy.

Was the union movement ready for such a change in strategy and for its consequences? If it was not, and this is likely, why? Was it because the rank-and-file worker still hoped for the benefit of the social contract? Was it because the leadership had contained the movement? Were those who had dissolved the Communist Party contributors to this weakness? Were the lack of unity and ineffectiveness of the remaining socialist forces contributors? The answer lies in all of these.

The leadership of the union certainly showed inflexibility. Australian workers have in recent years lost sight of their collective responsibilities. However, the pertinent question is: who could the rank-and-file have turned to as an alternative leadership without the existence of a coherent and united socialist movement?

As stated earlier, a proposal to confront the secondary boycott legislation was not accepted by the rank-and-file at a Brisbane meeting early in the dispute. No doubt it was put forward in some form or other at other meetings throughout the campaign. The rank-and-file, however, without a clear alternative offered by a coherent socialist movement, was never going to toss aside its leadership or even demand its leadership to follow such a difficult course.

Was an alternative leadership able to step forward as John Coombs had done and state they would be back to accept the consequences of their campaign strategy? Certainly the failure of any new strategy, now that the stakes had been raised so high by Corrigan and the Government was going to have disastrous consequences for ordinary workers. Workers' lives would be shattered like the lives of the SEQEB workers had been in Queensland in 1985 or the lives of many meatworkers since the defeat at Mudginberri. Remember that the MUA dispute was driven by many of the players from those earlier conflicts.

To adopt a strategy put forward by a loose coalition who were not involved in day-to-day union activity within the MUA and represented a weakened political force in society at large has its own problems. Nowhere was this group able to show it had developed political strength through united and effective organisation such that it would inspire the confidence of rank-and-file workers. As such, the criticisms correctly levelled at the current leadership in pamphlets like *War on the Waterfront*<sup>110</sup> while accurate, are simply not telling, as the socialist movement could not really provide an alternative to that leadership. In a sense it was largely a call for the existing union leadership to change its ways. Why should the union leadership have considered these criticisms and ideas ahead of the legal and political advice of Labor Party politicians?

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<sup>110</sup> Written by Tom Bramble and published by the Trade Union Support Group after the 1998 MUA Dispute

Socialist critics of current union leadership should accept that rank-and-file workers will not stand up and change union leadership when the socialist movement that proposes such changes is weak, divided, and ineffective.

This is not, in our view, an argument in favour of the (reformed) CPA criticism of those who dared to challenge the union leadership. Rather, it is a recognition that part of the problem lies with the socialist movement. If the socialist movement does not put its own house in order to return to past successes achieved by the communists, we will continue to see Tom Bramble's lead in the saddlebags, characterised by a reliance on the courts, a deference to the ALP and unions with top down leadership. It is naivety to think that rank-and-file pressure alone, without a political focus, will turn this around (even if it were allowed to flourish, unchecked by existing union leaderships). Current union leaderships are simply not under pressure from their rank-and-file to change. In fact, rather than strengthening unions, workers are allowing them to decline.

Neither the courts nor industrial action alone should be relied upon to defend workers' rights. It is the workers' political struggle which must lead the way.

### **Political Campaign**

The political campaign conducted by the MUA was unimaginative. It was largely conducted through the media. It pandered to suburban TV audiences; Coombs was painted as a folk hero. Therefore it was inherently conservative, no different from a normal ALP political campaign. But for the union it was not a sausage sizzle, as Coombs said from the outset, this was the 'big one'. The union was drawn in by the lure of the simplistic argument over crane rates. The MUA was drawn away from the real argument. The government reduced the argument to that of individual work performance; i.e. crane rates, downplaying the real attack on workers' collective rights. The failure to recognise the Government's ploy early on in the dispute was one of the problems of the union leadership. The union allowed Patricks and the government to dictate the terms of the political debate, forgoing the opportunity to identify broader issues that could have widened the dispute into a general political campaign.

The actual political campaign centred on the parliamentary processes, the divide between Labor and Liberal. The minor parties and independents receded into the background during the dispute, even though all political parties were strongly lobbied by a delegation of MUA officials and rank-and-file delegates in early March 1998 (when the lockout appeared imminent). Not surprisingly, from the outset, the Labor Party pursued its own interests, that is, election to government, while not facing up to their previous failures while in office. It was opportune to side with the workers because of their mass support, but as the history of the Labor Party shows, it is perfectly capable of turning on workers in different circumstances. The levels of popular support for the wharfies put a bit of backbone into the Labor Party, but the preference for them was to resolve the dispute at a negotiating table.<sup>111</sup> They were the 'peace makers'. For them the outcome was secondary. They wanted to be 'statesmen' and win government down the track.

The fortunes of the Labor Party are often tied to defeats in the industrial arena. Historically, the formation of the Labor Party was a direct result of the union defeats in 1890s and consolidated with the massive defeat of the workers in the 1912 Tramways Dispute. The Goss Government in Queensland came to power on the back of the defeat of the SEQEB workers in 1985 and ruled from 1989 to 1996. Within the Labor Party, there is a belief that workers cannot win in the industrial arena, only in the political arena. And the Labor Party believes that it offers the best deal by working out arrangements between labour and capital for the efficient functioning of capitalism.

A defeat in the courts may have brought attention back to the industrial and popular struggle. This would have required the leadership look hard at ways of circumventing the secondary boycott laws and using the most powerful weapon at their disposal, the withdrawing of labour. The flaw in pursuing a narrow political strategy focussing upon mobilising public support for the Labor Party is the same flaw inherent in a legal strategy: such methods put the fate of workers into the hands of people (judges, ALP politicians) whose interests are different to those of workers. Industrial action and broad working class political action have the important advantage of enabling workers to maintain control over their futures, rather than becoming dependent upon the assistance of institutions whose basic function is to protect capitalist enterprises from workers' demands.

A compromise was always the best option for the ALP. Coombs hinted at the strategic use of the strike weapon to determine the outcome early in the dispute. The problem for the leadership was how to use this weapon without it backfiring and bringing down repression through court orders, injunctions, fines and police actions. One possibility was to marry the industrial campaign to a political campaign to circumvent the *Trade Practices Act*, a political campaign directed against the very laws that prevented the wharfies and other Australian workers from advancing their interests.

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<sup>111</sup> There is speculation that there were mediators between Coombs and Corrigan at the end of the dispute. It is likely that one of them was a prominent ALP figure like Hawke.

Socialist groups were barely in the equation, still recoiling from the dissolution of the Communist Party and unable to break the isolation caused by the collapse of the Soviet Union. They had few members, lacked unity, had little influence and low credibility among both the rank-and-file and the leadership of the MUA dispute. This was a big turnaround in the leadership of the wharfies. In the past, communists have had both influence and credibility in this union. After the dispute was over, the reformed CPA<sup>112</sup> and the International Socialist Organisation (ISO) conducted ‘we were right – you were wrong’ in their respective newspapers. Yet, both groups were so marginal to the dispute this went largely unnoticed.

## Afterword

### *A lesson to the 1998 MUA dispute from the 1954 WWF dispute – an industrial and political campaign*

#### **The 1954 Dispute.**

By contrast, under communist leadership, the recruitment dispute of November 1954 was the most decisive industrial action ever taken by the WWF.<sup>113</sup> The national strike ran from 2nd – 15th November and involved 27,000 wharfies in 60 ports, including members of the AWU. The Menzies government through its Minister for Labour and National Service, Harold Holt, wished to recruit non-union labour because of ‘slow turnaround times and slow loading rates’. The Federation asserted that there was a conspiracy between the government and the Australian and overseas shipowners. The WWF obtained the support of the leader of the ALP, Dr Evatt, and the ACTU. On the 4th November 1954, the entire Australian waterfront was idle and Menzies made an address to the nation-

“The laws are to be made, not by your elected representatives, but by the Communist-led Waterside Workers Federation. This is more than a challenge to employers. This is a challenge to Parliament and the whole conception of parliamentary democracy – a precious thing which does not exist in Moscow but is passionately believed in here.”

No bluff about crane rates here. Menzies attacked the leadership head on. The WWF was not cowed by the rhetoric. They put their faith in the workers’ ability to win the strike. The union was well prepared for the strike. The union branches around the country set up committees with responsibility for picketing, publicity, relief and entertainment (to ease hardship and to foster camaraderie). Solidarity flourished as rank-and-file members and their supporters were drawn into these activities. Speakers went to factories to put the union’s side of the issue, thousands of leaflets were distributed, and donations and support flowed from other unions.

When Holt called a conference of shipowners, the ACTU and WWF in February 1955 to draw up a new agreement on recruiting, it was an admission of defeat. The wharves would be unworkable unless the WWF maintained the right to recruit labour. The WWF Film Unit named its documentary on the strike, *November Victory*. Under the headline, ‘Costly Defeat on the Waterfront’ the Sydney Morning Herald chided Holt for mishandling the dispute. The paper printed the following indictment –

“For the time being the Government has no option but to retreat, but nothing can conceal the humiliating terms of the surrender. The Government’s handling of this matter must count as one of the worst blunders of the Menzies Government.”

This failure did not prevent Holt from becoming Prime Minister and taking Australia all the way with LBJ into Vietnam, using conscription.<sup>114</sup>

#### **The 1998 Dispute.**

The MUA has succeeded in holding on against the aims of the government to get rid of the union, at least till the time of writing this book. However its legal strategy was at best brinkmanship and never guaranteed success. The union won the legal battle because of the power of the demonstrations in favour of the MUA in Sydney and Melbourne and the quality of the intelligence that was fed to it. Nevertheless, the conservative nature of the judges, the financial cost, and the ultimate wearing down of the rank-and-file support made a legal strategy high risk.

Political and industrial strategies waged alongside each other may have produced a more favourable result as in the 1954 recruitment dispute. For legal strategies to continue to be given the primary focus by the industrial and political support groups increases the risk that disputes may either be lost completely or be won at a price too high to pay. We may well ask if the waterfront redundancies were too high a price.

<sup>112</sup> The Communist Party of Australia liquidated itself in the early 1990s after the fall of the Soviet Union. This made the name available to the group (the Socialist Party of Australia) that had split from the CPA in 1971. The word reformed does not suggest a political reformation merely the taking of the name by the Socialist Party of Australia.

<sup>113</sup> The Waterside Workers Federation (WWF), together with the Seamen’s Union of Australia, is the precursor to the Maritime Union of Australia (MUA).

<sup>114</sup> *Beasley, Margo Wharfies – The History of the Waterside Workers Federation Halstead Press, Sydney: 1996, pp.168-175*

Nevertheless, running an industrial/political strategy at the forefront has its own dangers. The trade union movement's struggles against the Penal Powers provisions of industrial legislation in the 1950s and 1960s showed the financial cost against the unions could be enormous. Union officials involved will be held in contempt of court and the financial penalties awarded against them as individuals could be considerable.

Finally, those people who were filmed by Patricks and police while picketing the wharves in the 1998 dispute could have had fines brought against them under Reith's industrial relations legislation in the same way members of the Transport Workers Union have faced such charges in their own industrial campaigns.<sup>115</sup>

The agreement between Capital and Labour can never be just. The only social force possessed by the workers is numerical strength. This force, however, is impaired by the absence of unity. The lack of unity among workers is caused by the inevitable competition among ourselves, and is maintained by it. Trade unions were established to bring unity to labour, or at least to improve it. Unions are our day to day defence against Capital. And it is for this reason we must defend our unions.

It is important to defend our unions but it is not enough to merely shut out criticism. Constructive effort must be made to strengthen all levels of union organisation starting with worker solidarity.

Our criticism does not target any one group within unions to blame for their decline. We hope what will happen is that we will see an end to bureaucratic style unionism and a return to shop floor unionism and the growth of workers' political organisations.

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<sup>115</sup> S45D & E of the *Trade Practices Act* (the secondary boycott legislation) has been used against the Transport Workers Union and two rank-and-file members of the same union have faced Federal Court action under the *Workplace Relations Act*. (B. Dowling in *Big Rigs* published by Queensland Times on 1 May 1998)

## What We Face — Threats to Union Solidarity

Since the end of the Second World War Australian Governments have placed restrictions on the right to strike and have attempted to defeat worker solidarity. After the war, left-led unions prepared to fight for collective bargaining in preference to arbitration and conciliation courts. The weapon they used was collective action which is the direct confrontation with employers by workers and their union representatives — never to be confused with the tactics used in enterprise bargaining.

The main threats attacking union solidarity that have been introduced by Australian parliaments are:

1. The Penal Provisions of the *Conciliation and Arbitration Act*
2. The secondary boycott provisions of the *Trade Practices Act*
3. The *Workplace Relations Act 1996*
4. *WorkChoices* legislation 2006
5. *Building and Construction Industry Improvement Act 2006*
6. Other laws restricting the right to organise i.e. anti-picketing laws, laws opposing public assembly, so called anti-terrorism laws, laws of contempt, criminal and quasi-criminal laws against industrial action.

Although these are some of the most conspicuous restrictions placed on unions, there are other legal restrictions that have been used against workers and their unions. For example in Queensland Essential Services Legislation was used against SEQEB power workers in 1985. This legislation made it illegal both to strike and to conduct effective pickets outside SEQEB depots against the use of scab labour.

Another example is the ability of an employer to sue a union and its officials for damages under common law in the same way as a company. Damages awarded against unions in legal action have been both large and crippling. One example was the damages and legal bills of over \$5 million charged against the Meatworkers Union in the Mudginberri dispute. The union was bankrupted. While initially unions attempted to deny that they were legal entities like corporations, this was soon rejected by the courts.

Finally, laws against conspiracy have been used against unions and their officials. The Waterside Workers Federation (WWF) was taken to court for civil conspiracy in 1956 when it imposed bans on two wharfies, the Hurseys. They were members of the Democratic Labor party (DLP) dominated by the Catholic Church and had refused to pay union dues. These dues were used to fund ALP electioneering and the rival DLP was opposed to this use of funds. The High Court found that the members of the WWF who imposed the bans on the Hurseys were part of an unlawful conspiracy and the court awarded damages against the union.

There follows a summary of struggles in relation to each of the main threats listed above.

### 1. *Penal Provisions (1950s – late 1960s)*

Penal Provisions were the original laws to penalise the use of secondary boycotts and other forms of union solidarity by unions in the 1950s and 1960s.

#### **Threat to Union Solidarity**

The conservative Menzies Government in the 1950s extended the penal powers of the Conciliation and Arbitration Act. The ACTU and the ALP-in-opposition declared themselves against these powers alongside the Communist Party of Australia.

#### **History/Legislation used**

In June 1949, the Chifley Labor government introduced special emergency legislation to prevent the use of union funds to assist miners in a general strike they had commenced. Under this legislation seven union officials were sentenced to twelve months imprisonment, one to six months, five other union officials were each fined £100, two unions were each fined £2000 and one was fined £1000.

#### **Resistance where threat has been applied**

In 1969, the union movement confronted the penal provisions when Clarrie O'Shea, secretary of the Victorian Tramways Union was jailed for contempt of court. He had refused a court order to produce

the tramway financial accounts. These accounts would have shown the union's sources of funds, including funds from other unions.

One million workers around Australia took strike action. Under pressure of the workers action, a mysterious benefactor paid the fine the following day. Following Clarrie O'Shea's release, the penal provisions were not invoked for another 20 years. They had been rendered ineffectual by mass action

## 2. Secondary Boycotts (1970s – 1990s)

The use of the weapon of secondary boycotts against employers and governments is a trade union and workers political right.

### Threat to Union Solidarity

Secondary boycotts normally occur when one group of trade unions, not directly involved in a dispute, take industrial action in support of other trade unionists. This action can take the form of strikes, go slows, picketing, bans etc.

Governments and employers have always resisted the basic union right of secondary boycott.

### History/Legislation used

There are various ways in which union boycotts have been attacked. Governments have used the common law of torts to attack union right of secondary boycott. However in 1976 the Trade Practices Review Committee (known as the Swanson Committee) set up by the Fraser government recommended that union boycotts be subject to the *Trade Practices Act 1974 (Trade Practices Act)*.

Underlying the recommendation of the Swanson Committee was a view that the industrial torts were dead letters in practice and that remedies should be provided to businesses affected by secondary boycotts. As a result, 1977 saw the introduction of s 45D to the *Trade Practices Act* which prohibited secondary boycotts.<sup>116</sup>

Secondary boycott provisions contained in the *Trade Practices Act* are modern equivalents of penal powers fought against by the workers' movement in the 1950s and 1960s. The penal provisions applied a system of bans on union activity. If these bans were ignored by unions they would be found in contempt of court and large fines would issue. In the case of the *Trade Practices Act* the penal provisions took the form of injunctions followed by awards for damages and penalties.<sup>117</sup>

### Injunctions.

The sections banning secondary boycotts are s45D and s45E of the *Trade Practices Act*. Sections 80 and 82 of the Act allow employers to take injunctions against unions, officials and union members. Since then injunctions have been widely used.

**Damages** may also be awarded against a union and its members for trade lost as a result of secondary boycotts. The only award of damages under these provisions was in the Mudginberri dispute in the 1980s where the plaintiff was awarded approximately \$1.5 million in damages.<sup>118</sup>

In other cases unions have returned to the negotiation table before damages could be awarded. In one case the Building Workers' Industrial Union of Australia (BWIU) paid \$130,000 damages to Odco Pty Ltd in an out-of-court settlement in 1991.<sup>119</sup>

In another the Australian Competition and Consumer Commission (ACCC) settled its litigation with the Transport Workers' Union (TWU) before the Federal Court in Queensland. The TWU was engaging in secondary boycotts against transport companies whose drivers were not financial members of the TWU. The basis of the settlement reached between the ACCC and the TWU involved injunctions requiring the TWU not to engage in similar secondary boycotts for two years. The TWU retained the right to ascertain whether drivers are members of the union and to talk to them about becoming members. The TWU was forced into a trade practices compliance program and had to contribute to the cost of the proceedings in the Federal Court.<sup>120</sup>

**Penalties** can also be awarded against unions. Currently penalties can be sought by the Australian Consumer Competition Commission (ACCC) in the Federal Court. Under Federal Labour governments

<sup>116</sup> *The Law Relating to Industrial Action* prepared by the Faculty of Law at Monash University for the Royal Commission into the Building and Construction Industry (2002) at page 55.

<sup>117</sup> For example s45D & E of the Trade Practices Act (the secondary boycott legislation was used against the Transport Workers Union and at the same time two rank-and-file members of the same union were facing Federal Court action under the Workplace Relations Act. (B. Dowling in *Big Rigs* published by Queensland Times on May 1 1998)

<sup>118</sup> *AMIEU v Mudginberri Station Pty Ltd* (1987) 74 ALR 7.

<sup>119</sup> *Building Workers' Industrial Union of Australia v Odco Pty Ltd* (1991) 29 FCR 104.

<sup>120</sup> Australian Competition and Consumer Commission website @ <http://www.accc.gov.au/content/index.phtml/itemId/87244/fromItemId/378006>.

of the 1980s and 1990s the Industrial Relations Court of Australia had jurisdiction over enforcement of penalties for secondary boycott activity by unions.<sup>121</sup>

### Resistance where threat has been applied.

The first major use of the secondary boycotts provisions was against the Meatworkers Employees and Industrial Union (AMIEU) in the Live Sheep Export dispute of 1978.

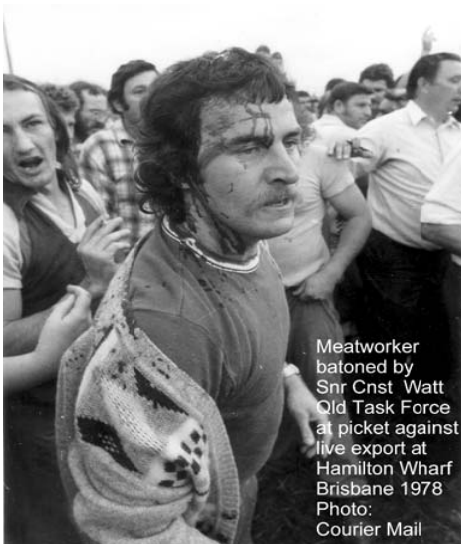
In 1978 meatworkers tried to prevent live export of sheep to the Middle East by pastoralists in South Australia. Live export meant loss of jobs in an industry where meatworkers were already at the mercy of the market, drought and competition in the capitalist economy.

Elders (an exporting pastoral company) together with the Federal Government took action against the union in the federal court and one gained an injunction under the *Trade Practices Act*. This meant that if the meatworkers continued to picket, the union would be placed in contempt of court.<sup>122</sup>

Meatworkers defied the injunction and continued to picket. Elders tried to move the sheep but were unsuccessful.

Farmers did not rely solely on the court to defeat the meatworkers. The exporters moved ships to another port where there were no pickets and farmers loaded the sheep onto the ships themselves.

Meanwhile in Queensland the state government placed 600 police on Brisbane's Hamilton wharf to remove meatworkers and their supporters picketing against live export of cattle. Under orders from the then Premier of Queensland, Bjelke-Petersen, police aided by the special branch arrested 45 picketing meatworkers while truckloads of cattle were driven onto the wharves.<sup>123</sup> Pickets were arrested while farmers stood ready to load cattle on that grey, wet day in 1978. In that case meatworkers and their union took direct action against the loading of the live cattle. One meatworker had his head broken open when he was batoned by Senior Constable John Watt.



Meatworker batoned by Snr Cnst Watt Old Task Force at picket against live export at Hamilton Wharf Brisbane 1978 Photo: Courier Mail

Eyewitnesses say that the baton may have been meant for another, Norm Hughes<sup>124</sup>. One comrade said that if Norm Hughes had gone down, all hell would have broken loose. Norm Hughes was well known and one of the most respected unionists in the district. Senior Constable John Watt with his usual crazy venom could not have calculated for meatworkers armed with their tools of trade sticking by their fallen comrade as he jumped on the roof of a nearby car and attacked the worker pictured.

Police were lucky the worker Watt did hit was young and fit and got to his feet soon after the blow was struck (shown).

The picket was described in the following way by a meatworker present:

#### **"Export the Pigs" says Meatworkers.**

The rallying slogan of the meatworkers at the Brisbane waterfront on October 17th. was "export the pigs", referring to the police. The media played down this political slogan, or

in most cases didn't even report it. Why you may ask? Because as the system goes into further crisis and the working class takes up real class conscious slogans, not empty harmless ones, the capitalist media senses its impending end.

600 militant meatworkers from all sheds within a few hours' drive of Brisbane picketed Brisbane waterfront, in an attempt to stop the export of live cattle to Japan. The police were out in well organised force and perpetrated violence that even by their own standards was of an unexpected degree.

<sup>121</sup> *The Law Relating to Industrial Action* prepared by the Faculty of Law at Monash University for the Royal Commission into the Building and Construction Industry (2002) at page 31.

<sup>122</sup> For the bosses account of the strategy used against the meatworkers in South Australia see *The Industrial Significance of the Live Sheep Export Dispute* by David Trebeck published by the HR Nicholls Society.

<sup>123</sup> From recorded report by Howard Sacre Channel 0 Eyewitness News, October 1977.

<sup>124</sup> For a workers account of the live export dispute: "Norm Hughes was Bothwicks shed president (Bothwicks is a meatworks at Murarrie in Brisbane). He was the state treasurer of the meatworkers union i.e. on the executive. Norm was a boner on the job too. Norm understood workers and knew how to iron out anomalies. This rare ability came out of Norm's long meat industry experience. Even the bosses knew it! Commissioner Gough (from the Arbitration Commission) knew it! In fact it was Gough who advised the bosses whenever they had bottle neck to bring in Comrade Hughes at the bosses' expense to try to resolve the problems." — taken from notes by comrade Jim Sharp, retired rank-and-file meatworker and unionist, Brisbane, 2007.

But meatworkers were undaunted by the bosses' pigs and have recorded in history a lesson in how the working class is not going to stand idly by and allow itself to be terrorised by the capitalist state machine (in this case, the pigs). Every time the pigs used violence, the workers taunted them with the vocal slogan "export the pigs". This drove the pigs into a frenzy, as the workers clearly understood which class the pigs were serving.

## POLICE TACTICS

First of all, they only arrested youths of both sexes and workers of small stature. But as their violence became an uncontrollable frenzy, they got somewhat braver, and arrested a few larger workers. Their tactic of using five pigs to one worker didn't change, one to each arm and leg and one to thump the helpless worker. The heroic resistance of meatworkers, before being rendered helpless showed that when we get organised the pigs, and the capitalist state they uphold are nothing but paper tigers, strong in appearance, weak in essence.

Another tactic was not to arrest any union officials, paid or unpaid. But most importantly they left alone most workers who are vocal at meetings. From this you can see how the police state has penetrated the workers' ranks with police spies. Rank-and-file waterside workers walked off the job for four hours. However, they were bound by their Federal Executive not to support the meatworkers unless their executive had prior agreement with our union. In an attempt to bring their executive in line with other workers who were struggling for their jobs, the waterside workers stopped work. They stopped work because the pigs were at the wharf gate, but then they were directed to load the cattle. Meatworkers and wharfies both felt let down by the mess their respective "leaders" had got them into, particularly as the battle was raging. These "leaders" played into the hands of the bosses who took advantage of antagonism between the union bureaucrats.

At one of the Brisbane main meatworks the following morning, 500 workers voted to stay out on strike for a further 24 hours as a protest at the arrest of our comrades. There was a very angry mood at this meeting and one worker stated that for 40 years he had been a militant at job level, believing that was as far as he should take it. He had never been to a rally or a demonstration before. This time he had been to the picket and had personally witnessed, not on T.V. but for real, the police in action. He stated that if the ALP was elected tomorrow, and didn't shoot the pigs, they would certainly live to regret it (instant thunderous applause). It may not be a very scientific way of expressing it, but the class sentiment was there.

The inter-union antagonisms were also reflected in the fact that the transport drivers were instructed by their union leadership to drive through the picket lines. Some drivers did this very fast, thus causing worker to fight worker, e.g. smashing the truck windows.<sup>125</sup>

## The Mudginberri Dispute

The Australasian Meatworkers Union (AMIEU) was made bankrupt through use of secondary boycott provisions in the *Trade Practices Act*.

In 1984-85, Mudginberri Station Pty Ltd, the owner of an abattoir in the Northern Territory run by Jay Pendarvis and backed by the National Farmers Federation sued the Meatworkers union (AMIEU) for damages under s45D of the *Trade Practices Act*.

Mudginberri workers had negotiated their own employment contracts with Pendarvis without union involvement. It was claimed that the Mudginberri workers were happy with their contracts and refused to support the picket. The union was concerned that wages and conditions at Mudginberri did not comply with standard award entitlements such as minimum pay, sick pay, annual leave and workers' compensation.

Union officials used pickets to prevent access to Mudginberri station. When Commonwealth meat inspectors refused to cross the picket line, production ceased. Pendarvis sued the union.

The union was fined \$144,000 plus costs. Punitive damages of \$1.458M were awarded by the court under s82 of the *Trade Practices Act* for lost export earnings.<sup>126</sup>



The original article as it appeared in a 1978 edition of the *Vanguard* the national newspaper of the Communist Party of Australia – Marxist-Leninist.

<sup>125</sup> Thanks to Jim Sharp, a retired rank-and-file member of the AMIEU, for the Vanguard article reproduced here.

<sup>126</sup> *Labour Law – an introduction* by Creighton and Stewart Federation Press 2000 3rd Edition at p422 in [13.100]



The union movement does its best to avoid the damages that could be awarded under the *Trade Practices Act*. ‘...damages have been awarded and assessed by the Court on only one occasion’ that was the Mudginberri Dispute.<sup>127</sup>

Nevertheless injunctions and cost of litigating actions under the *Trade Practices Act* have been common since bans on secondary boycotts were introduced in 1976.

Actions by employers against secondary boycotts can be taken under other laws with provisions similar to the *Trade Practices Act*. Some examples were injunctions taken against Ansett Airline Pilots in 1986, against workers at Dollar Sweets dispute in 1985. Court actions were taken against the MUA West Australian Division in 1998 when wharfies had blocked access to Patricks premises on North Quay at Fremantle Harbour.<sup>128</sup>

### **New measures to prevent Secondary Boycotts**

The Federal Coalition Government proposes to introduce legislation to strengthen the secondary boycott provisions of the Trade Practices Act 1974 (TPA). This move by the government will have a major impact preventing attempts by environmentalists to blockade loggers and picketing of Spotlight by workers when this company tried to introduce Australian Workplace Agreements.

The proposed amendments to the Trade Practices Act is aimed at stopping community groups from supporting unions as occurred during the 1998 MUA dispute.

The defeat of these types of laws is just as important as the defeat of industrial relations legislation such as Work Choices.

Costello said the amendment to the TPA would allow the Australian Competition and Consumer Commission (ACCC) to bring representative actions for breaches of the Act's secondary boycott provisions.

The move will give the ACCC unprecedented powers to stop boycott action by unions and other organisations, including community groups.

The Government says the aim is to help small businesses damaged by boycott conduct but lacking financial resources to initiate private litigation.

Mr Costello said the Government had also been consulting on a separate bill to strengthen the misuse of market power and unconscionable conduct provisions of the Trade Practices Act. These amendments would be introduced into parliament in the near future in a separate bill.<sup>129</sup>

### **3. The Workplace Relations Act (1996 to 2006)**

Prior to the introduction of the *Workplace Relations Act* wages and conditions were set under Industrial Relations Acts. This legislation regulated wages under awards that had been fixed centrally in the 1970s. Gradually under the Accord between the Federal Labor government and the unions in the 1980s enterprise bargaining was introduced. Under the Accord in the early 1990s the old awards were stripped of all but minimum wages and conditions and replaced in part by enterprise bargaining agreements between unions and individual employers.

#### **Threat to Union Solidarity**

The Federal Government first introduced the Workplace Relations legislation in 1996 to further curb unions' ability to collectively bargain.

State Governments followed with legislation that largely mirrored the federal legislation. The main difference was the Federal Government placed an emphasis on individual agreements called Australian Workplace Agreements. These agreements have remained at the margins of the industrial relations system because the main bargaining model during this period has been a hybrid of the old award system and enterprise based bargaining referred to above.

#### **History/Legislation used**

The main objective of the *Workplace Relations Act* was to restrict the right of unions to organise.

This was done in a number of ways.

For example the legislation reduced the number of ‘allowable matters’ that could form the basis of ‘protected’ industrial action or the ‘no disadvantage test’. This means that the issues on which workers could bargain or strike were limited.

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<sup>127</sup> Ibid Labour Law

<sup>128</sup> Ibid *The Law Relating to Industrial Action* at page 16.

<sup>129</sup> Treasurer Peter Costello: Government amendments to the *Trade Practices Act* 1974 from National Institute of Accountants *Technical Advantage Magazine* 16 March 2007

Another was the restriction placed on who could take strike action prior to or during negotiations over an enterprise bargaining agreement.

A secondary boycott is not a 'protected' strike under the *Workplace Relations Act* as s170mm of the *Workplace Relations Act 1996* prohibits secondary boycotts. It states that Industrial action must not involve secondary boycott and such action 'is not protected action.'

Generally speaking the *Workplace Relations Act* enables employers going to the Australian Industrial Relations Commission to obtain return to work orders before conciliation can commence. This is designed to defeat the purpose of industrial action and to take the pressure off an employer engaged in Enterprise Bargaining with a union.

The secondary boycott provisions of both the *Trade Practices Act* and the *Workplace Relations Act* place penalties on the solidarity actions of other workers.

### **Resistance where threat has been applied.**

In February 1998 Gordonstone miners were illegally dismissed and were entitled to be re-employed. The Federal Court did not have the power to quash the decision of the Industrial Commission's Full Bench under the *Workplace Relations Act 1996*.

The CFMEU won an early round in their unfair dismissal case in the Federal Court. Industrial Commissioner Hodder ruled that when the mine reopened the illegally sacked miners should have preference of employment.

This was overturned by a majority Full Bench decision of the Industrial Commission because of a legal technicality arising from the *Workplace Relations Act*. Six years later in 2004 the case remained unresolved. [Note: In 2004, only 42 workers from over 8000 cases for unfair dismissal were re-instated by the AIRC under the *Workplace Relations Act 1996*.]

The AWU made a legal challenge against Electrolux to obtain compulsory negotiating fees from non union members under the WRA 1996. The High Court rejected the application. It also placed further restrictions on the right to strike under the WRA 1996 (see Electrolux case 2005).<sup>130</sup>

Electrical Trades Union Victorian secretary Dean Mighell, who initiated the use of bargaining agents' fees, said:

"We think that the bargaining agent's fee is real and, certainly with a change of government, will be back in town."

He said many agreements negotiated by the ETU contained such clauses although they had not been activated due to a high level of union membership at workplaces.<sup>131</sup>

Australian Workers Union (AWU) South Australian branch secretary Wayne Hanson said a fundamental right of workers to advance their interests had been removed.

"The High Court has confirmed what the unions have known for a long time, that is that John Howard's industrial relations regime is so restrictive it is now unworkable.

It has removed any space to negotiate in the broad arena on IR matters."<sup>132</sup>

## **4. WorkChoices<sup>133</sup>**

This legislation is designed to enable employers to take control of the workplace out of the hands of workers and their unions. The legislation is designed to centralise the award system federally and leave the State Industrial Relations Commissions with a limited role. The High Court may make some further pronouncements as to the extent of this centralisation which is lawful.

### **Threat to Union Solidarity**

Some state governments have made a high court challenge against centralisation of their industrial relations regimes. The challenge was based on state's rights and the extent of the use of the corporations' law by the Commonwealth.

Under the legislation the High Court has ruled that state industrial commissions may be forced to relinquish their regulation of workers by the Federal Government exercising its corporations' power in the constitution.

<sup>130</sup> *Electrolux Home Products Pty Ltd v Australian Workers' Union* [2004] HCA 40 2 September 2004

<sup>131</sup> These are fees paid to unions (in this case) for negotiating an enterprise agreement. It was proposed by Mighell that non-union members should paid these fees before getting the benefit of such union negotiations.

<sup>132</sup> *Union loses fight to charge non-union workers* Sydney Morning Herald September 2, 2004

<sup>133</sup> The WorkChoices legislation was announced by the Australian Government in October 2005 and enacted in March 2006. This summary of the WorkChoices legislation is taken from *Awards, Minimum Standards and bargaining after WorkChoices* - a presentation given by Margaret Lee at the *Workers or Slaves: Strategies of Resistance against Work Choices* at a Brisbane Labour History (BLHA) Conference on 25 February 2006.

Only those workers not employed by a company or not employed by a Federal Government agency would come within the jurisdiction of the state industrial commissions. Current estimates are that about 85% of workers may come under the new federal system.

### History/Legislation used

The *WorkChoices* legislation amends the *Workplace Relations Act 1996*. It is called the *Workplace Relations Amendment (WorkChoices) Act 2005* No. 153, 2005 - An Act to amend the law relating to workplace relations, and for related purposes. It is an attempt to further reduce the right of unions to organise.

Some of its features include:

- i) A Fair Pay Commission would take away the role of wage fixing away from the Australian Industrial Relations Commission (AIRC).
- ii) Combined with this is the abolition of the 'no disadvantage test' (NDT) in the setting of wages and a further reduction in the number of 'allowable matters' that can be the subject of the NDT.<sup>134</sup>
- iii) A further reduction of the number of 'allowable matters' that can be the subject of a lawful industrial dispute or be the subject of the no disadvantage test. The new allowable matters under the *WorkChoices* legislation are:
  - a. 38 ordinary hours per week
    - i. plus reasonable additional hours
    - ii. includes authorised leave
    - iii. averaged over 12 months
  - b. Four weeks annual leave
  - c. 10 days personal/carer's leave + 2 days compassionate leave
  - d. 52 weeks unpaid parental leave
  - e. Classifications and minimum rates of pay
  - f. Above conditions cannot be included in awards except for hours of work.

Streamlining and enforcing procedures to increase the numbers of individual agreements (Australian Workplace Agreements) around Australia thus shutting out union negotiated agreements.

There will be restriction of the right of entry of a union into a workplace.

The Commonwealth Employment Advocate and AIRC to oversee secret ballots of union members prior to industrial action. It may take up to six weeks to jump through all the hoops to have a protected action.

A relaxation of the existing employment laws to permit employers to hire independent contractors on non-union individual agreements that do not provide for sick pay, superannuation, long service leave or worker's compensation.

### Resistance where threat has been applied.

There are three strategies proposed to resist the legislation:

1. Accept the laws and wait for change of government. This is the ALP strategy which is sometimes cloaked in rhetoric about a legal, media, industrial and political strategy.
2. Defy the legislation in a piecemeal way. This includes taking industrial action in a selected dispute to test the laws. ACTU secretary Greg Combet foreshadowed that this approach may be adopted. However few details have been given.
3. Defy the laws in a concerted way. This is a response organised centrally and with co-ordinated response across the union movement.

Another strategy has been to have EBAs certified prior to the introduction of the legislation.<sup>135</sup>

<sup>134</sup> After her presentation at the above BLHA conference given by Margaret Lee provided the following notes: 'Under the earlier *Workplace Relations Act 1996* there was provision, in theory at least, that unions could always bargain upwards from the wages and conditions set by existing awards which are now regarded as a safety net. Interestingly there was never any test case in the AIRC that defined exactly how the NDT was to be applied. Was no worker to be worse off or were the conditions for workers across the board not to be undercut. In practice there were trade-offs where some conditions were improved at the expense of others despite the power of the AIRC to refuse to certify an EBA where workers would be disadvantaged by the loss of those conditions traded off. During the nine years of its operation under the WRA 1996 AIRC took a conservative stance preferring to stay on side with government and employer than to support the rights of workers.'

<sup>135</sup> The advantages and disadvantages of each strategy are analysed in Chapter 5 "Courses of Action".

## 5. Building and Construction Industry Improvement Act 2006 [BCII Act 2006]

Historian Humphrey McQueen said that:

“...globalising capital needs the IR laws (*WorkChoices* legislation). At the core will be its need to discipline labour-time for the maximisation of surplus value. The state is organising the bosses and disorganising the workers. Clarity on what our class enemies are up to is essential for the success of any fightback.”<sup>136</sup>

### Threat to Union Solidarity

The Building Industry Unions (CFMEU, BLF, ETU and Plumbers Unions) are a target of this special legislation introduced in 2005 after the Cole Royal Commission into the building industry. This legislation is called the Building & Construction Industry Improvement Act 2005 (BCII Act 2005).

### History/Legislation used

Broadly, this legislation attacks:

- The right to strike
- The right to organise
- The right to collectively bargain
- The right to freely associate

The BCII Act 2005 included a wide definition of ‘building work’, specifically made ‘building industrial action’ unlawful, introduced huge fines, unlimited compensation and injunctive relief to hit parties engaged in unprotected industrial action, expanded the circumstances in which unions would be liable for the conduct of its members, provided for the establishment of the Australian Building & Construction Commission (ABCC) and the office of the Federal Safety Commissioner.

Pattern bargaining used so much by the building unions since 1996 would be banned by the legislation. Pattern Bargaining is broadly defined and made illegal. Under the legislation union attempts to negotiate the same conditions for their members using similar agreements with different employers will be regarded as pattern bargaining.

The government will impose large fines against the union, its organisers and individual members for striking.

Also the Building & Construction Industry Improvement Act 2005 (BCII Act 2005) gives the new head, the ABCC Commissioner, great coercive powers:

1. If the ABCC Commissioner exercises his/her powers to require a person to submit to an interview, they must do so. Penalty is 6 months imprisonment.
2. In addition, there’s the removal of the privilege against self-incrimination in interviews
3. There is also an express removal of any right to refuse to speak on the grounds that to do so would be against the public interest.<sup>137</sup>
4. The BCII Act 2005 quasi-criminalises industrial action (other than protected action). The law specifies:
5. Fines are up to \$110,000 for corporate entities, \$22,000 for individuals
6. Anyone who is ‘involved’ can be fined
7. Also expressly provides for, injunctions, orders for compensation (i.e. damages), and sequestration of assets.
8. Work Place Relations Act ‘no costs’ provision does not appear to apply to BCII actions.

### Resistance where threat has been applied.

The strategies discussed for the *WorkChoices* legislation also apply here.

**Industrial Strategy.** 107 members of the CFMEU went on strike in Western Australia to get reinstatement of their union delegate. He had been sacked by Leighton Kumagai (LKJV) when the workers and their union tried to fix long-standing safety concerns and excessive working hours issues on the trouble-plagued MetroRail project near Perth.

Their strategy was to take industrial action.

<sup>136</sup> *POISONOUS CAPITAL—the ‘boon’ of the Eight-hour day: 150 years on* — a presentation at AHIMSA house in Brisbane on 3 March 2006

<sup>137</sup> Destruction of labour rights Changes to industrial action and right of entry laws Terri Butler BLHA Conference, 25 February 2006

In addition to this strategy some construction unions have attempted to protect union assets that may be confiscated under this legislation.

### **6. Other laws restricting the right to organise (1940s – 2006)**

These laws include anti-picketing laws, powers to stop, question, search and detain, laws opposing public assembly, anti-terrorism laws, sedition, laws of contempt, laws restricting use of finances by unions, criminal and quasi-criminal laws against industrial action.

Most of these laws have been around for over 100 years in one form or another. They have restricted the unions' right to organise especially on the streets and on the picket lines.

In Queensland they have a long history of use against workers of rights to assembly, march, hand out leaflets, posters and the right to picket.

Political marches were banned in Queensland in 1977 when uranium shipments were blocked on Brisbane wharves by anti-uranium activists and the Waterside Workers Federation.

Rights to strike and to defend the workplace from the use of scabs by employers (picketing) were outlawed in 1985 by the Bjelke-Petersen Government under Essential Services legislation.

Similar legislation has been used by both Labor and liberal governments since the second world war against Miners in 1948 (Labor government); Railway workers in Queensland in 1948 (Labor government); Mt Isa miners in 1964 (country party government); all workers in street marches 1977-79 (liberal/national party government); Latrobe Valley power workers in 1978 (Labor government); SEQEB workers (national party government), Waterside workers in 1998 (liberal/national party government).

These laws have often been policed by secret government organisations like ASIO or special branches set up by state police services by various governments. In Queensland the Special Branch worked for years using such laws against union members. They often engaged the assistance of police thugs known as Task Force and the riot squad who went by the official title of public order squad.

A brief summary of the laws and workers response are set out in the following table. Only recent examples have been given because an analysis of all the disputes mentioned above are beyond the scope of this chapter and this book. There are a number of pamphlets, oral histories and books that describe some of these threats to union solidarity. Some examples are: *Storm in the Tropics* – a story of the Mt Isa Mines dispute of 1964; *Under the Hook* by Wendy Lowenstein (a writer) and Tom Hills (a wharfie); *Not Guilty* and *Guilt by Association* were pamphlets by LeftPress Printing Society that dealt with political and legal defence to charges laid against workers during the repression of the Bjelke-Petersen Government. More recently an article titled *Not Guilty* outlines how political activist defence was conducted in practice.<sup>138</sup>

#### **Threat to Union Solidarity**

- Anti-picketing laws
- Powers to stop, question, search and detain
- Laws opposing public assembly
- Anti-terrorism laws, sedition
- Laws of contempt
- Laws restricting use flow of finances by unions.
- Criminal and quasi-criminal laws against industrial action such as resist arrest, hinder police, abusive language, assault, and wilful damage to property

#### **History/Legislation used**

These are laws that appear in a variety of legislation that include:

- Crimes Act 1914
- Criminal Code Act 1995
- Migration Act 1958
- Surveillance Devices Act 2004
- Customs Act 1901
- Anti-Terrorism Act 2005
- Queensland Peaceful Assembly Act 1992

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<sup>138</sup> BushTelegraph @ <http://busstelegraph.wordpress.com/2006/10/28/not-guilty>.

- Common types of secondary boycotts in the building and construction industry

The following examples may involve a secondary boycott under the WRA or the TPA:

### **Picketing**<sup>139</sup>

Picketing may be lawful or unlawful, depending on the nature of the demonstration. However, it often involves unlawful activity, such as preventing or hindering employees, suppliers, or customers from entering a worksite. Where the conduct of the picketers (who are not employees) hinders goods or services being provided to or acquired from the employer by outside parties, there may be an unlawful secondary boycott. The Federal coalition government is to introduce legislation in early 2007 to strengthen the secondary boycott provisions of the *Trade Practices Act 1974* (TPA). The new amendments will restrict workers picketing firms like *Spotlight* when it tried to introduce Australian Workplace Agreements (AWAs). It is also aimed at preventing community groups from supporting unions as occurred during the 1998 MUA dispute. Community pickets have been a tactic used by unions in the campaign to defeat *WorkChoices*. The new legislation will give the Australian Consumer and Competition Commission the power to take actions against workers and their unions on behalf of businesses.

### **Black-banning**<sup>140</sup>

A black-ban is a limitation or restriction on a person working, or a limitation or restriction of the performance of work at a designated worksite. It may involve harassment or ostracism of the person black-banned or of a person attempting to enter a 'black' site. As with picketing, where this conduct hinders goods or services being acquired from or provided to the employer by outside parties, there may be an unlawful secondary boycott.

In 2005 two union officials were charged under laws that restrict the right to organise.

Under militant leadership, pattern bargaining became one tool for improving wages and conditions for strong unions like the CFMEU, AMWU and ETU in Victoria and elsewhere.

### **Resistance where threat has been applied.**

Martin Kingham (CFMEU) was charged with contempt of the Cole Royal Commission into the building and construction industry. He secured ALP support, and was acquitted.

Craig Johnston who was jailed for defending the jobs of locked out AMWU members. Johnston, without ALP support, ended up in jail. Yet five thousand workers stood outside the court with placards claiming Johnston's innocence while inside his lawyers were pleading guilty to charges of affray.<sup>141</sup> Such a plea resulted in temporary mercy from the court through a plea bargain with the prosecution. However the lawyers underestimated the resolve of the employers and the establishment in Victoria. They were determined to make an example of him. He was sentenced to two years and nine months' jail, with nine months to be served prior to parole.

### **Conclusion**

These laws are aimed at boosting profit within the constraints of the Australian economy.

The *WorkChoices* legislation is designed primarily to assist employers assert control of the workplace. *WorkChoices* legislation is not merely designed to reduce wages.

Better wages and conditions may flow to workers by their unions asserting control in the workplace. This is especially so in periods of economic growth. In recent years the Australian economy has maintained growth through high employment and increasing working hours. Workers have been unable to resist this increase in working hours. However it is only partly due to the anti-union laws. Employers too have been successful in reducing industrial action. The increased casualisation of jobs has assisted employers in reducing the effectiveness of unions.

At the time of writing the unions' strategy has been to fight for rights at work through public rallies rather than through an industrial campaign. On 30 November 2006 at mass rallies the ACTU even changed its 'Your Rights at Work' slogan from 'worth fighting for' and added 'worth voting for'.

In doing so, the union leadership signalled its purpose to take the campaign from workers fighting for their rights in the workplace to combating anti-union legislation at protest rallies and through election campaigns.

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<sup>139</sup> From Building industry taskforce's publication on *Secondary Boycotts in The Building And Construction Industry*

<sup>140</sup> Ibid

<sup>141</sup> Affray is a charge where there is unlawful fighting or unlawful violence used by one or more person against another, or there was an unlawful display of force by one or more person without actual violence.

This led to a decrease in the numbers attending the protest rallies because rights at work is what most workers want. This is how one union delegate put it in an email to his organiser after the 30 November 2006 protest rallies:

“To put it bluntly, in most situations, workers hate the boss because of the nature of the power dynamics in a work place.

This is the way it is and always has been.

There is an understanding that the government has provided the conditions for employers to attack workers’ rights, and workers hate Howard for this.

It is primarily the employers who do this and it is this that workers have first-hand understanding.”

The *WorkChoices* legislation should be seen as only part of a long history of anti-worker legislation from Labor and Liberal Parties.

During the past twenty-five years many restrictions have been placed on unions. The new legislation should be seen in that light. These changes should not be viewed as some legislative Armageddon which will wipe out unions forever.

Legislation cannot turn the tide of history while the attack is against all unions. History is with the workers. If the attack shifts to one union like the BLF then the result depends on the support that it gets from other unions. It is unlikely that the ACTU will try to save it; the ACTU cast the BLF adrift in the 1980s and may do so again. The ALP has already signalled that it stands with the electorate against unions like the BLF. Yet at May Day in Brisbane in 2005, the current ACTU president Sharan Burrow promised to support the BLF (CFMEU) to the hilt against government attacks.

Will unions make that promise come back to haunt her? Probably not.

The mining division of the CFMEU are happy with the growth in their industry driven by Chinese demand for coal and metals. They feel secure under the existing growth in commodity prices. The Queensland state secretary of the miners union, Andrew Vickers, said:

“the mining sector of the economy is going gang-busters at the moment...the multinationals engaged in mining in Queensland may not like the proposed attack on unions...they may have some disagreement with Howard over the timing of the legislation when skilled labour is needed in the mines because of the high demand for coking coal.”<sup>142</sup>

The fact is so much damage has been exacted over the past twenty years that many unions, already weakened by repression, are no longer true to the principles of solidarity. Much of the leadership have given up and it is left to rank-and-file workers to carry the fight.

It should be remembered that these weapons are only laws that are a fraud upon workers. Such laws that have been overcome through struggle and solidarity.

### Use of laws in economic crisis

The *WorkChoices* legislation is designed for times of economic recession. Australia has had growth in certain sectors of the economy (i.e. in mining, property and construction) during the coalition government of 1996-2007. The legislation is designed for a downturn and a boom. The coalition government has given business the ability to employ workers on AWAs (sometimes with lower conditions and at lower pay) rather than sack them outright. Under *WorkChoices* when the boom ends the employers can lower wages and conditions or sack workers outright. It will be more difficult to organise workers in times of economic recession. The militant minority movement discovered that during the Great Depression of the 1930s.

Unions embraced economic rationalism as a self-perceived survival mechanism. This turned out to be self-defeating. It is easy to see the period 1980-2005 as the worst years for the union movement since the 1890s. The list of defeats is considerable. The table below shows some examples:

Industrial Dispute	Union Involved	Description of Union Defeat	Year
SEQEB (Qld)	Qld Electrical Trades Union (ETU)	Mass sacking of SEQEB linesmen by the Bjelke-Petersen Government. . Loss of the right to picket. Employment of scab labour under contract. State owned electricity utility run down in preparation for privatisation.	1985

<sup>142</sup> QLD CFMEU State secretary (Mining division), Andrew Vickers at the Brisbane Labour History Association conference 12 March 2005.

Industrial Dispute	Union Involved	Description of Union Defeat	Year
Mudginberri (NT)	Australasian Meatworkers Union (AMIEU)	Meatworkers Union made bankrupt through secondary boycott legislation. An abattoir owner backed by the National Farmers Federation sued for damages under s45D of the <i>Trade Practices Act</i> . The AMIEU was bankrupted by the court order for damages and costs.	1986
BLF deregistration (National)	Builders Labourers Federation (BLF)	BLF lost access to Industrial Relations Commission. Hawke Labor government sought the de-registration of the union. Labor Senator George Georges resigned from the ALP in protest.	1986
Dollar Sweets dispute (Vic)	Confectionery Workers & Food Preservers Union of Australia	A common law action, to recover the damages done to a business, was used by the employer against the union in the Victorian Dollar Sweets action. Dollar Sweets sued the union after it led a strike in support of a pay claim; damages of \$175,000 were awarded against the union. <sup>143</sup>	1988
Airline Pilots' Dispute (National)	Australian Federation of Airline Pilots	Airline pilots sought a 30% wage increase. Hawke Labor government. Used military aircraft to break the pilots strike. Damages of \$6.48M awarded against the leaders of the Australia Federation of Air Pilots by the Victorian Supreme Court. The ACTU refused to support the Pilots' Federation.	1989
Nestlé's (Vic)	AMWU	Melbourne factory was shut and workers were locked out and told if they didn't accept a new enterprise agreement, the plant would be closed and chocolate would be imported from Britain. The national secretary of the union, Doug Cameron, advised the workers to accept the deal. <sup>144</sup>	1996
Cobar (NSW)	Rural Workers Union	250 miners were sacked in Cobar, NSW when the company closed its mine. This became known as the 'Cobar option', as the company made its employing arm insolvent to prevent its workers from getting their entitlements. Patricks used a similar ploy in the 1998 MUA dispute.	1997
Gordonstone (Qld)	Construction Forestry Mining and Energy Union (CFMEU)	ARCO illegally sacked 312 CFMEU members at Gordonstone. Miners lost jobs and entitlements. The workers have maintained a picket line at the mine for a record period in coal mining disputes to no avail. ARCO sold the mine to Rio Tinto which employs non-union labour.	October 1997
Patricks (National)	Maritime Union of Australia (MUA)	MUA members lost conditions and jobs through redundancies. Labour hire firms were made insolvent by their parent company, Lang Corp.	1998

<sup>143</sup> *Understanding Australian Industrial Relations* by Robyn Alexander and John Lewer, Harcourt Brace Jovanovich, Sydney, 2nd edition 1992

<sup>144</sup> *Victorian AMWU stewards unanimously back leaders* at <http://www.greenleft.org.au/2002/506/27611> (URL checked 31 December 2006) and *What is Workers First?* at <http://www.wsws.org/articles/2000/jun2000/wf-j30.shtml> (URL Checked 31 December 2006)



Industrial Dispute	Union Involved	Description of Union Defeat	Year
Skilled Engineering(Vic)	AMWU	Workers lost their jobs at Johnson Tiles, replaced by scab labour from Skilled Engineering. Many were charged with criminal offences arising out of a picket and subsequent destruction of property. Craig Johnston, state secretary of AMWU, was jailed in 2004 for nine months.	2003
Boeing Australia at Williamstown (NSW)	Australian Workers Union (AWU)	Maintenance engineers denied the right to collectively bargain by the employer, the courts and the government	2005

## Glossary

### **Unions**

ACTU — Australian Council of Trade Unions  
AMIEU — Australasian Meatworkers Union  
AMWU — Australian Manufacturing Workers Union  
ASU — Australian Services Union  
AWU — Australian Workers Union  
BLF — Builders Labourers Federation  
BWIU — Building Workers Industrial Union  
CEPU — Communications Electrical and Plumbers Union  
CFMEU — Construction Forestry Mining and Energy Union  
CPSU — Community and Public Sector Union  
ETU — Electrical Trades Union  
LHMWU — Liquor Hospitality and Miscellaneous Workers Union  
MEAA — Media Entertainment and Arts Alliance  
MUA — Maritime Union of Australia  
NTEU — National Tertiary Education Union  
NUW — National Union of Workers  
QCU — Queensland Council of Unions  
QPSU — Queensland Public Sector Union  
SUA — Seamen's Union of Australia  
TCFU — Textile Clothing and Footwear Union  
TLC — Trades and Labor Council  
TWU — Transport Workers Union  
VTHC — Victorian Trades Hall Council  
WWF — Waterside Workers Federation

### **Political Organisations**

ALP — Australian Labor Party  
CPA — Communist Party of Australia  
DLP — Democratic Labor Party (distinguished from the ALP by the greater influence of Catholic Church)  
ISO — International Socialist Organisation  
Labor — Australian Labor Party (The ALP took the 'u' out of 'labour')  
SA — Socialist Alliance  
WPO — workers' political organisation

### **Government Agencies**

ACCC — Australian Competition and Consumer Commission  
AIRC — Australian Industrial Relations Commission  
ASIO — Australian Security Intelligence Organisation  
CES — Commonwealth Employment Service  
DEWR — Commonwealth Department of Employment and Workplace Relations

### **Other Organisations**

BLHA — Brisbane Labour History Association  
3CR — Community Radio Station in Melbourne

*Workers First* — A militant section of the AMWU in the 1990s and early 2000s

**Other Terms**

AWA — Australian Workplace Agreement

BCII — Building and Construction Industry Improvement Act

CA — Certified Agreement

EBA — Enterprise Bargaining Agreement

NDT — No Disadvantage Test

TPA — *Trades Practices Act 1974*

WorkChoices — *Australian Workplace Relations Amendment (Work Choices) Act 2005*.

WRA — *Australian Workplace Relations Act 1996*