

The waterfront war

the Australian dockworkers' struggle

In the dead of the night on 7 April 1998, Patrick, one of Australia's two major stevedoring companies, made a decisive move with direct government support: the company dismissed its entire, 2 000-strong unionised workforce. Workers were replaced by non-union labour that included people previously employed by the Australian Defence Force.

War

War is defined as a state of open hostility, a conflict conducted by force, where ordinary law is suspended. In their determination to break union power swiftly, government and employers suspended the rules of democratic industrial relations. They adopted entirely new rules. This new form of intervention would test the strength of the trade union movement and the power of Australia's democratic institutions.

The shift to a warlike approach arose out of government and employer frustration with a more indirect attack on unionism and collective bargaining rights through the introduction of the 1996 Workplace Relations Act. This Act promotes a system of individual contracts in the workplace, in preference to union bargained agreements. The government and certain employers are not happy with the fact that the take-up rate of individual contracts has been uneven. The government wanted to force the pace. ..

The war which the Australian government and a major stevedoring company is waging against dockworkers is a blatant attempt to break union power. Rob Lambert reports.

The plan

The federal government prepared a game plan to break the Maritime Union of Australia (MUA) as meticulously as did Thatcher with the miners in the 1980s. In early 1997 a secret plan to de-unionise the Australian waterfront was prepared by government paid consultants. The attack was justified by the argument that the introduction of non-union labour was essential to Australia's international competitiveness.¹ The plan included an assessment of legal issues surrounding such action. Over the past year, the Prime Minister has repeatedly vowed to 'break' the MUA.²

The army

Secret documents reveal that plans were developed as early as March 1997 to train a non-union workforce to take over, following the engineering of mass dismissals. The document states,



pic Chris Gosfield MUA

"Overpaid, lazy, unproductive dockworkers" – Patrick management.

"Stevedores would need to activate well-prepared strategies to dismiss their workforce and replace them with another, quickly, in a way that limited the prospect, for example, of the commission (Australian Industrial Relations Commission) ordering reinstatement".²

In early December 1997, the MUA discovered and exposed a secret operation to train new stevedores in Dubai, a free trade zone where foreign workers predominate and where trade unions are outlawed. The 70 trainees were from the Australian Defence Force. Two former Special Armed Services (SAS) commandos were put in charge of the operation. The group was sent to Dubai to participate in an estimated A\$30-million project. When the scheme was exposed, the International Transport Workers Federation (ITF) threatened to blockade Dubai. The trade dependent Dubai government immediately caved in and cancelled the trainees' visas. The project was abandoned on 14 December.

The operation then moved to

Melbourne. An SAS member explained to a meeting in Melbourne organised by a Commando Association that plans had been formulated to trigger "a major waterfront dispute" in April. Fynwest, a company established by the SAS leaders, entered into arrangements with another company that had been recently established by the National Farmers Federation (NFF) called P and C Stevedores Ltd. The latter had secured a \$20-million 'war chest' from business donors. The companies were granted a two-year lease of Melbourne's Webb Dock from Patrick.

On the night of 28 January, Patrick cancelled the evening and midnight shift at Webb Dock. A battalion of security guards, armed with riot gear, shields and batons obtained from the Victorian Prisons Department, were sent in to secure the wharf. They took control of the massive portainer cranes and locked out the MUA workforce. The P and C trainees included ex-army personnel and persons brought in from New Zealand.

The MUA responded with strike action against Patrick in Melbourne and Sydney. Patrick claimed it had lost \$10-million since January 1997 and was close to bankruptcy as a result of the actions. This was a mere prelude to the main event – the dismissal of Patrick's entire workforce on the evening of 7 April.

Around 11pm on 7 April, Patrick imposed a lock-out of the unionised workforce. Almost simultaneously and under cover of darkness, the company moved security guards, clad in black and holding German Shepherd dogs, capsicum spray and batons, into all the major port terminals. The struggle for the future of trade unionism in Australia had begun.

As news of these events broke, the government stated that it was determined to achieve waterfront 'reform'. A news commentator noted,

"Margaret Thatcher took on the coalminers and won; Ronald Reagan sacked air traffic controllers and won; and John Howard (the Australian Prime Minister) picked a fight with the warfies and...watch this space".³

Howard's Industrial Relations Minister, Reith, hailed the action as "a decisive turning point in the history of the waterfront".⁴

The director of Patrick, Chris Corrigan, stated, "We will move forward with a new workforce which, like most Australians, wants to do a fair day's work for a fair day's pay. This initiative will improve dramatically Australia's international competitiveness and open the nation's gateways to the world's best practice".⁵

There were four principle elements to the strategy adopted by the government and the company: a capital strike, a propaganda war, redundancy and legal sanctions against local and international solidarity.

Capital strike

On 23 September 1997, without the workforce recognising the implication of the change, 2 100 workers employed by Patrick Stevedore Holdings were transferred to four new subsidiaries, National Stevedore Tasmania and Patrick Stevedore No 1, 2 and 3. These subsidiaries were labour hire companies that employed workers and on-sold employment services to a company especially established to purchase these services, Patrick Stevedore Operations 2. This company was owned by Patrick Stevedore Holdings, which is, in turn, owned by Lang Corporation.

Prior to this date, each of these subsidiaries owned assets and the business of the stevedoring operation at particular ports as well as employing the labour for that operation. On 23 September, the subsidiaries sold the assets and the business agreements to Patrick Stevedore Operations 2 under a Business Purchase Agreement (BPA). These labour hire companies were stripped of \$300-million, which was used in new share deals and the repayment of debt. Consequently, the labour hire companies had no assets.

Under the BPA, Patrick Stevedore Operations 2 owed between \$14-million and \$16-million to the subsidiaries. Each of the subsidiaries entered into a Labour Service Agreement (LSA) with Patrick Stevedore Operations. Clause 2.3(h) of each LSA stated: "The contractor will ensure that the performance of the services are not interfered with or delayed or hindered for any reason." The agreement went on to state that, should this provision be breached, a 'rectification notice' would be issued to the contractor. If the breach was not rectified within 30 days, the LSA could be immediately terminated.

Clearly, the LSA gave Patrick the power to strip the labour hire companies of their only remaining asset - labour. This would render the subsidiaries insolvent, and as a consequence, allow Patrick to claim that the workforce had not been dismissed but had in fact been rendered redundant. Patrick believed that Australian Corporations law placed them in an unassailable position, because holding companies are not necessarily liable for the debts or decisions of a subsidiary. Since the subsidiaries had no assets, creditors, including unpaid workers, would find it impossible to launch legal action to retrieve money or their jobs.



pic: Chris Gosford, MUA

Ready for attack.

When the entire workforce was locked out, Patrick claimed that they had not been dismissed but that the labour hire companies had become insolvent and had been placed under an administrator. On 7 April, Patrick entered into a new set of labour hire arrangements with the farmers' PCS Resources who agreed to provide 353 workers under three-month contracts. They also entered into a three-year maintenance contract with Genelect Engineering Services Pty Ltd.

14 In the long history of conflict between capital and labour, capital strikes are not uncommon. Capital has often withdrawn funds from businesses and, in some

instances, entire industries, in the face of worker demands and the need to drive the rate of profit higher. Globalization has facilitated the process of transfer between nations and regions.

Patrick's action is, however, one of those rare instances where the providers of capital hope to immediately continue operating in the same locations, under the same name, but with a new, dramatically cheaper, workforce.

Financial analysts have calculated that, as a result of the mass sackings, Patrick could reduce its wage bill by 62% (from \$112-million a year for the unionised workers to a mere \$42-million for the

contract workers).⁶ This will enable the company to achieve a pre-tax profit rate on investment of 11%, which the institutional investors argue is still not high enough. Company accounts reveal an increasing level of profit. Patrick made a profit of \$10,9-million in the 1995 financial year. This doubled in 1996, coming in at \$20,4-million. Patrick's problem, however, is its massive debt leverage. This is the main reason the company is pursuing high rates of return on investment.

This strategy shows how financial and economic de-regulation have transformed the nature of capital itself. These policies have created a highly mobile capital and accelerated the internationalisation of corporations. This has enhanced the power of companies to act against trade unions, through capital movements from nations where strong unions exist, to nations where unions are repressed.

The current dispute reveals ways in which the globalization ideology has empowered companies to take more direct action. Patrick did not have to enter into a chase around the globe for union-free ports where they could try to achieve higher profit rates. They used corporate law in Australia to challenge union rights.

The banks

Patrick is not a 'traditional' stevedoring company, prepared to give and take, but essentially live with the union. Rather, the company represents the 'fast money' of the 1980s and 1990s, when financial engineering designed to empower relatively small investments with massive leverage dazzled the marketplace of the day.

Corrigan and Scanlon bought Patrick in 1993 with one aim only: to reduce the number of stevedores and then to make

money out of the business.⁷ High gearing meant a high indebtedness to the banks and other financial institutions. These institutions are impatient with social institutions such as trade unions, which may constrain the 'quick money' path in some way. Their aggressive, short-term focus is a product of globalization.

Propaganda

The Australian government and Patrick launched an intensive propaganda war against the MUA. Dockworkers were portrayed as overpaid, lazy, unproductive people. Using the anti-union language of liberal economics, both claimed that this situation had arisen because of the 'monopoly' control of the MUA. In the language of globalization, efficiency is equated with flexibility, which is equated with union-free workplaces.

The government and Patrick also believed that they could win the day by buying out the unionised workforce. The government offered to directly finance redundancies in the hope that workers would quickly accept the cash. In its initial announcement, the government stated that it was advancing \$250-million for redundancies, and that workers would receive up to \$250 000 each. However, the MUA quickly revealed that this was a distortion. The actual redundancies being offered were in the region of \$70 000. The government also warned that any international solidarity action would be met with the full force of the new industrial laws, which imposed huge penalties against parties involved in organising trade boycotts. They launched immediate High Court action against the ITF in London.

Trial of strength

The government and Patrick were of the view that, with the forces that their

combined power represented, their pre-emptive strike would achieve a swift and clean transition to a new industrial order on Australia's waterfront. Confidence resided in the notion that trade unions were essentially a spent force. There might be 'a last gasp' but this was not likely to derail the bold, decisive action taken.

The government and Patrick seriously miscalculated in three fundamental areas.

- They miscalculated the resilience and the wider popular appeal of trade unionism in Australia. This is not to say that a majority of Australians supported the MUA. The action against the MUA created deep divisions with the population. When the union organised pickets at every Patrick terminal across Australia, however, union members received widespread community support. As was the case in Eastern Europe in the late 1980s, the events revealed the potential of a people's movement in the face of even the most determined strategy. There were numerous moments when the police concentrated themselves in large numbers in a determined effort to break the pickets and force a pathway for the heavy-duty trucks. With few exceptions they failed simply because the vast numbers of people on the line far outweighed police resources. Forcibly breaking up lines involving thousands of people and bundling them into police vehicles appeared to be something neither the government nor the police had the political will to carry through. Many people who joined the picket lines had never done so before.
- They miscalculated the international trade union reaction to the events and the power of their secondary boycott laws to prevent international solidarity action. They sought to muzzle the ITF

through successfully taking out a High Court injunction in London against the federation organising international boycott action. However, the government lost an appeal against the ruling. Unions as far afield as South Africa, Japan and the United States put plans in place to boycott any Australian shipping load by non-union labour. Australian produce was also a target. Five hundred protesters from the International Longshore and Warehouse Union prevented the Columbus Matson from being unloaded when it docked in Los Angeles on 9 May. The ship was carrying perishable farm products. The American unionists forced the ship back to New Zealand. A special national shopsteward council of TGWU and SARHWU in South Africa decided on an indefinite boycott of all Australian shipping and Australian goods. They sent a solidarity message, which was read out at all picket lines across Australia. The message was read at a time when the action against the pickets was most intense - police helicopters with searchlights overhead, water cannon trucks and a mass mobilisation of police. The commitment of the South African workers was warmly received from a workforce and community fighting for its life. The deep ties that exist between organised workers in both countries were further deepened and are likely to develop further in the years to come.

- They made some severe legal miscalculations. Section 298K(1) of the Workplace Relations Act protects the right of workers to belong to a union. The MUA succeeded in gaining an injunction against Patrick. The company will have to reinstate the sacked workers until the outcome of a

court case brought by the union claiming unlawful dismissals. The company took appeals against this decision to a full bench and then to the High Court, but the ruling was upheld. As a result of the court orders, the administrator of the Patrick labour hire companies has been forced to remove the P and S workers and re-employ the unionised workforce. The MUA is, however, still in a tenuous position, given the fact that the labour hire companies have been stripped of their assets. The government and Patrick have warned that unless the MUA agrees to significant changes the labour hire companies will go into liquidation.

Settlement

The MUA is presently negotiating a settlement with Patrick in which it will agree to drop its \$500-million conspiracy case against the government and Patrick in return for the secure employment of MUA members in real companies, not fake labour hire arrangements.

There is every likelihood that the MUA will succeed in this demand. The government and Patrick have suffered a humiliating defeat in their attempt to break the MUA. There is a cost to victory, however.

The union has had to accept redundancies, a reduction in wages and has had to give up certain rights in terms of organising work rosters on the docks.

In one sense, the logic of free market globalization has been challenged. The notion

of flexible labour markets uninhibited by unionisation has been completely defeated. In another sense, the challenge remains partial. The logic of work intensity, lower wages and conditions, managements' absolute right to manage without interference from unions - all in the name of global efficiency - still remains a powerful force that unions have to find a way of constraining. ★

Footnotes

- 1 *The Australian Financial Review*, 15/8/97.
- 2 *From the MUA document, War on the Waterfront*, p 7, published on 8 April 1998. Also available on the internet: <http://mua.tcp.net.au/Pages/war.html>
- 3 *The Australian*, 9/4/98.
- 4 *The West Australian*, 8/4/98.
- 5 *The Australian*, 8/4/98.
- 6 *The Australian Financial Review*, 9/4/98.
- 7 *Comments by Mark Westfield, The Australian Financial Review*, 9/4/98.

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