CHAPTER 5

The Special Loading Cases
and
The Accident Pay Campaign

1971-1972

Introduction

While the anomalies created by the 1970 Watson formula were able to be resolved by Justice Sheehy in the building tradesmen’s ‘Catch-up pay’ case, the enmity between building tradesmen’s unions and the NSW/BLF that arose during those disputes remained until the 1975 disbandment of the Mundey/Owens leadership.

The first section of this chapter describes the claim by the NSW/BWIU for an increase to their margins and how, in 1971, that demand was altered to a demand for a Special Loading. The second section analyses the 1971 Accident Pay Case during which the NSW/BLF maintained its ‘one-out’ stance.

The fragmented response by employer associations during the early ‘seventies led them to attempt a joint approach. An analysis of that experiment is provided in the third section of this chapter.

This chapter concludes with an analysis of the 1971 NSW/BLF application to obtain the Special Allowance awarded to NSW building tradesmens, and how this was delayed by MBA/NSW attempts to obtain, from the NSW/BLF, a Disputes Settlement Clause. The efforts, in early 1972, to encourage the NSW/BLF to acknowledge, and adopt, the disputes settlement clause that resulted from an agreed arbitration are also outlined.
The NSW Building Tradesmen’s Special Loading Case

The increase to the margins of building tradesmen granted by Mr Justice Sheehy (in the ‘Catch-up case) was not seen by tradesmen’s unions as an increase but rather an exercise which merely maintained the traditional relativities between the wages of building tradesmen and those paid to builders’ labourers. In December 1970 the NSW building tradesmen’s unions resolved to pursue a campaign in support of a $6.00 wage increase and for the introduction of Accident Pay.¹

The NSW/BLF refused to unconditionally support the tradesmen’s claims. The NSW/BLF demanded the inclusion of a claim to increase the margins of the first two ABLF award classifications to 100% of tradesmen’s margins; and, to increase the margins for all other labourers to 90% of those of building tradesmen.²

The building tradesmen’s unions responded:

These conditions cannot be accepted by the nine tradesmen unions because:-

1. We have agreed that all building workers should have an equal stake in the campaign, but the Builders Laborers (sic) Federation’s proposals would mean that the demand would be a $10.00 wage increase for members of the B.L.F. ($6.00 over the award plus $4.00 margins) and for the tradesmen $6.00 increase with accident pay for all.

2. The tradesmen unions consider that the 100% 90% formula is detrimental to the interests of our members. The tradesmen’s unions say that the disagreement that exists on a margins policy should not be a barrier to united action around issues upon which there is agreement such as the $6.00 wage increase and accident pay.³

¹ NSW Building Tradesmen's Unions, Our Stand for Unity In the Building Industry, undated, 2 page, roneoed
³ NSW Building Tradesmen's Unions, Op Cit
The NSW/BLF continued to pursue, through the Federal Commission, a flow-on of the Tradesmen’s (catch-up) $4.00 increase granted by Justice Sheehy in November 1970, and called on its membership to “—launch a vigorous campaign of direct action against employers” and deplored “the more ‘craft conscious’ building tradesmen’s unions” for opposing the 100%-90% relativity sought by builders labourers. Meanwhile, the MBA/NSW submitted an application under Section 34 of the Conciliation & Arbitration Act for the ABLF ($4.00 flow-on) application to be referred to a Full Bench of the Commission on the basis: “that the industrial behaviour of the ABLF dis-entitled (sic) it to the benefits of the Conciliation and Arbitration System”. Other employer associations supported the ‘Reference’ application, and the Commissioner adjourned the matter to enable him to confer with the President of the Federal Commission, Sir Richard Kirby.

In relation to the Tradesmen’s $6.00 over-award claim, the MBA/NSW, in the face of ‘varying degrees’ of opposition from other employer associations, suggested the re-opening of the building tradesmen’s State awards to provide an additional loading and increased hours per month for time lost due to wet weather. The MBA/NSW said that the offer did not “extend to the BLF (NSW/BLF) and no offer would be made to that union until such time as it was able to give tangible evidence of a change in its attitude to industrial relations”. This statement appears to be more ‘grandstanding’ than a tactic because the NSW/BLF had not joined the tradesmen’s $6.00 claim.

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4 At the time this ‘call’ was made to its membership, the ABLF had applied to the Federal Commission for a change in name to the Australian Building and Construction Workers’ Federation (ABCWF) and had prematurely commenced calling itself by that name. The Industrial Register of the Federal omission later rejected that name and substituted the name Australian Building Construction Employees & Builders’ Labourers’ Federation (ABCE&BLF) on 17/10/72. Commonwealth Arbitration Reports, Vol.146, pp.1052-1054.

5 NSW/ABCWF Workers’ Federation, AN URGENT CALL from Builders’ Laborers to All Workers!, Quality Press, Sydney, Undated (in early 1971)

6 MBA/NSW “Report to the Chairman-Industrial Relations Committee”, Minutes, 9 February 1971

7 Ibid

8 MBA/NSW “Report of Proceedings of a Meeting between Building Employer Organisations and the Building Trades Group on 12/2/71”, Minutes, 9 March 1971

9 Ibid
The BTG later rejected the ‘wet weather’ proposal of the MBA/NSW and altered its claim to one for a special loading of $6.00 per week as “--- the West Australian Industrial Commission had handed down a judgment which took into account the position of industries which were substantially ‘non-over award payment’ in character.” Those awards had been granted a special loading which could be absorbed by those employers making over-award payments.

The MBA/NSW would not agree to the $6.00 amount, but said it would be prepared to indicate, to the State Commission, that the sum should not be less than $3.25 - the sum associated with the MBA/NSW ‘wet weather’ proposal which the unions had rejected. The BTG however, reported that its mass meetings had adopted a resolution which “called upon the MBA to attempt to settle the matter by agreement, failure to do so would result in the unions entering into a campaign of industrial direct action”. Other employer organisations were warned by the unions that unless they “agreed to participate in fruitful negotiations they too would face industrial action involving - stoppages, bans, limitations, demonstrations etc.” All employer associations, other than the MBA/NSW, indicated they would oppose the re-opening of the Awards.

Two days later, the Federal Commission announced its rejection of the MBA/NSW application for a Full Bench in the Builders’ Labourers’ Matter and, at a conference on 1 March 1971, W.K. Fisher QC (for the ABLF) requested the matter (the $4.00 flow-on application) be adjourned indefinitely. The grounds given were, firstly, that a Carpenters’ Work Value Case was currently being conducted in the Southern States; and, secondly, that new proceedings were being

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10 MBA/NSW “Report of Proceedings of a Meeting between Employer Organisations and the BTG on 17/2/71”, Minutes, 9 March 1971
11 Ibid
13 Ibid
14 Ibid
contemplated by the building tradesmen’s unions before the NSW State Commission.15

This ABLF decision was quite a dramatic shift in strategy to that advocated by the NSW/BLF leadership who,16 in their ‘call to all workers’, a very short time previously had proudly claimed:-

The Builders Laborers’ principled approach that wage rates should be determined by the workers in each industry and not by courts, is being widely acclaimed by workers ----.17

---- the determining attitude of all union leaders and rank and file unionists, should be setting a rate for the job and not playing into the hands of the employers and their courts by allowing divisions on a craft basis to divide us, on engaging in costly, time consuming ‘work value’ exercises.18

On 18 June 1971, Justice Sheehy in the State Commission awarded a Special Loading of $4.30 to the Carpenters and Joiners and Bricklayers Construction (State) Award in recognition of the general lack of over-award payments in the building industry.19 The Special Loading was later granted by Justice Sheehy to the awards of other building tradesmen.

An application to the Federal Commission by the ABLF for a flow on of the Special Loading was frustrated, at the preliminary hearing of the matter, by MBA/NSW opposition on the grounds of the industrial misbehaviour of the

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15 MBA/NSW “Report to the Council of Management on the activities of the Industrial Relations Committee for the period ending 4/3/71”, Minutes, 9 March 1971

16 The NSW/BWIU had applied to the State Commission for a special loading using as grounds:-

- the West Australian Industrial Commission Decision granting a special loading to awards of those industries which were ‘non over-award payment in character’;
- the NSW State Commission itself had identified the absence of over-award payments as being an element compensated for in a recent Teachers' Case; and,
- Building tradesmen employed under the NSW Crown Employees Skilled Tradesmen's Award enjoyed a special loading ($12.00) under their award.

17 NSW Branch Australian Building and Construction Workers' Federation, AN URGENT CALL from Builders' Laborers to All Workers!, Quality Press, Sydney Undated (early 1971). (The adjournment sought by Counsel for the ABLF, and the grounds given for seeking that adjournment, indicated the willingness of the ABLF to pursue its traditional approach of picking up all, or a percentage, of increases granted to the NSW/BWIU Award - thus relying on a `court determination' rather than the expectations of workers for its approach.)

18 Ibid

19 NSW Arbitration Reports, Volume (1971), pp.410-411
NSW/BLF. The manner in which that ABLF application was resolved is outlined later in this chapter.

The ‘NSW Building Tradesmen’s Special Loading Case’ aggravated, and deepened, the rift between NSW building tradesmen’s unions and the NSW/BLF that had developed during the NSW/BLF 1970 campaign for increased ‘margins’.

The Accident Pay Case

The demand for ‘Accident Pay’ had originally surfaced in 1966 as an application to the State Commission which was withdrawn the following year. The issue was later made the subject of a ‘National’ claim in 1969, and then ‘labelled’ a ‘Reserved Matter’. The first indication to NSW building employers that ‘Accident Pay’ was to become a ‘hot’ industrial issue in 1971 was advice from a BTG delegation (Boyce, BTG Secretary; Clancy, BWIU; and, Mundey, NSW/BLF) that the Building unions wanted the matter finalised during the year 1971.

This statement was issued at the time the unions made their demand for the $6.00 over-award payment. The NSW/BLF was, for some time, excluded from the Accident Pay campaign because the issue arose at the same time as the campaign by the tradesmen’s unions for a $6.00 Special Allowance. As pointed out in the previous section of this chapter, the NSW/BLF refused to join the $6.00 claim unless its 100%-90% (of tradesmen’s margins) ambitions were supported.

The MBA/NSW considered the issue of accident pay to be a matter for the Legislature and invited the BTG to participate in a joint approach to the NSW Minister for Labour and Industry “with a view to reassessing Workers’

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20 MBA/NSW “Report of Meeting of Major Contractors on 12/7/71”, Minutes, 13 July 1971
21 See Transcript of Matter No.130 of 1971, Notification under s.25A by the Master Builders’ Association of NSW re dispute with Building Workers Industrial Union of Australia, NSW Branch, and Others re Accident Pay, Industrial Commission of New South Wales, 14 May 1971, pp.22-23
22 Ibid, p.23
23 MBA/NSW “Report of meeting between Building Employer Associations and the BTG on 29/1/71”, Minutes, 9 February 1971
Compensation payments on the basis of relationship to ‘take home pay’ rather than a flat sum”. 24 The BTG tentatively agreed to that proposal. 25 An Accident Pay Working Sub-Committee was established 26 to consider the problem of obtaining quotes from Insurance Companies for Accident Pay Cover. 27

The BTG, at a later meeting, angrily rejected the ‘joint approach to Government’ suggestion when it was resurrected by the employers, reminding the MBA/NSW representative that the principal concern of his association had been the ability of employers to insure against the accident pay risk. 28 Tom McDonald (NSW/BWIU) advised that the ‘reinsurance’ problem had been overcome following union discussions with the Australian Metropolitan Life Assurance Company, which had offered to provide a $40.00 per week benefit in excess of normal Workers’ Compensation payments for 26 weeks at an annual premium of $38.10 per worker. McDonald contacted Les Ball later that day by telephone to express his concern at the change in position of the MBA/NSW which he said the unions believed was the result of pressure from the other employer associations. Mr McDonald concluded the conversation by pointing out that, in light of these developments, a forthcoming meeting of job delegates may resolve to commence a campaign of industrial action against major contractors. 29

An industrial campaign was commenced. As Les Ball advised Mr Justice Sheehy nine days later, by 22 April 1971 the Opera House and the Lakes Golf Club projects had suffered stoppages in support of demands for accident pay and by 27 April almost every major project in Sydney was on strike. 30

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24 Ibid
25 MBA/NSW “Report of meeting between Employer Associations and the BTG on 12/2/71”, Minutes, 9 March 1971
26 MBA/NSW “Report of meeting between Employer Associations and the BTG on 1/3/71”, Minutes, 9 March 1971
27 MBA/NSW “Report of meeting of Accident Pay Working Sub-Committee on 16/3/71”, Minutes, 13 April 1971
28 MBA/NSW “Report of meeting between Employer Associations and the BTG on 20/4/71”, Minutes, 11 May 1971
29 Ibid
30 See - Transcript of Matter No.130 of 1971 Notification under s.25A by the Master Builders Association of NSW Re Dispute with Building Workers Industrial Union of Australia, NSW Branch, and Others re Accident Pay, Industrial Commission of NSW, 29 April 1971, p.3
The MBA/NSW attempted to avert the building tradesmen’s industrial campaign, and frustrate their direct approaches to individual building companies, by providing each major contractor with a copy of the resolution reached by a major contractors meeting on 23 April 1971:-

The MBA is of the opinion that the question of Accident Pay is closely related to Workers’ Compensation legislation and as such, should receive the immediate attention of the State Government. To this end, the MBA has arranged an appointment with the Minister for Labour and Industry on Wednesday 28/4/71 for discussions on this matter.31

A delegation of employer associations duly met the Minister for Labour and Industry who expressed surprise at the approach. He said that, as the delegation represented such a small section of employers’ interests, he would have to consider ‘flow-on’ effects of any amendment to the Workers’ Compensation legislation. The employers left the meeting with a clear impression of great reluctance on the part of the Minister to do anything.32

Many builders at the meeting of major contractors on 23 April suggested that, in the event of a full scale campaign by building tradesmen, the immediate termination of other employees should occur and that contractors should “not attempt to carry on for any length of time “ as they had during the Builders’ Labourers’ strike the previous year.33

The stand-down of builders’ labourers did occur. The NSW/BLF recommended to a mass meeting on 7 May 1971 that the Union’s determination to restore the

32 MBA/NSW “Report of meeting between Employer Associations and the Minister for Labour and Industry on 28/4/71”, Minutes, 11 May 1971

(The MBA/NSW major contractors bore the full brunt of the accident pay campaign. While they wanted the dispute speedily resolved, they also wanted the matter dealt with through the Industrial tribunals so as to improve their chances of recovering their costs through the escalation (‘rise and fall’) provisions in their building contracts. Other employer associations involved represented a range of industries and, for that reason, shared the Minister’s fear of ‘flow-on’. Tom McDonald was, no doubt, quite correct in assuming the ‘approach to government’ proposal came from interests outside the MBA/NSW. Accident pay was such a radical proposal that the MBA/NSW felt it needed unanimous support from employer associations if it was to be ratified by the State Commission. The ‘approach to government’ was no doubt a delaying tactic on the part of other employer associations. It was however, a tactic in which the MBA/NSW was willing to join as a step along its long road to achieving employer unanimity.)
100%-90% relativity be restated, but that the issue be placed on hold so that the BTG Accident Pay Campaign can be supported by Builders’ Labourers “in the interest of united action of building workers”. It is a moot point whether the mass stand-down of builders labourers influenced that decision, as suggested by the BWIU, or whether it was due to the inability of builders labourers (in the face of the wide-spread building tradesmen’s strike) to continue working without encountering demarcation difficulties, as claimed in a well-known thesis on the subject. My assessment is that the NSW/BLF, faced with a mass stand-down of its membership, could no longer hold out for its unsustainable margins claim (which favoured the elite upper classification of builders’ labourers) and ignore the accident pay campaign which had such wide grass-roots worker support.

On the day the NSW/BLF declared its support for the accident pay campaign (7 May 1971), a group of women who introduced themselves as the BTG Ladies Committee visited the MBA/NSW to petition the association to withdraw its current opposition to accident pay. To the chagrin of the MBA/NSW Public Relations Committee, television camera units which had followed the delegation were admitted to the MBA/NSW premises and the event received wide publicity.

Members of the Committee expressed their outrage over the “venomous, one-sided reporting by the Sydney Morning Herald (on 8 May 1971)”. Adopting most prominent roles in the delegation were wives of the NSW/BLF leadership and wives of NSW/PGEU activists.

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33 Ibid
34 NSW/BLF, Recommendation to Mass Meeting, 7 May 1971, one page, roneoed
35 Building Industry Branch of the Socialist Party of Australia, Six Turbulent Years, Sydney, undated, published 1975/76, p.21
36 (This booklet claimed that “The BLF leaders refused to join the [accident pay] strike, but after some 7,000 builders labourers had been stood down, they changed their mind and decided to participate”)
38 MBA/NSW “Report of meeting of Public Relations Committee on 11/5/71”, Minutes, 11 May 1971
39 Ibid
40 Interview: L.R. Ball, MBA/NSW Senior Industrial Officer 1955-1973, 13 October 1992
The BTG soon reminded employers that they were now united since “the BLF had joined the struggle for Accident Pay and the $6.00” Special Loading. Tom McDonald (NSW/BWIU) warned employer representatives that workers were prepared to “fight to the finish” and that any settlement must embrace Accident Pay.

The MBA/NSW IRC recommended to the MBA/NSW Council that no further negotiations be held over accident pay. The MBA/NSW IRC also recommended, somewhat petulantly, a further approach to the NSW Government so that the Government could be reminded that it paid accident pay to some of its own employees and therefore it had been part cause of the claim. It was also proposed to ask “what steps would the Government take to protect the industry from the unions?” There is no evidence that such meeting occurred, or that it was even pursued.

A mass meeting called by all building unions, at Sydney’s Wentworth Park on the 13 May 1971, resolved to continue the strike. The meeting then formed a ‘march’ which proceeded to the offices of the MBA/NSW in Newtown. Some of the participants were in wheelchairs and banners in various languages were displayed. One of the English language banners proclaimed:

UNITY CAN WIN OUR JUST CLAIM...FULL PAY WHEN INJURED
$40 A WEEK INCREASE.

The widespread strike continued with NSW/BLF vigilantes joining those who had previously been referred to as ‘groups of strikers’ or ‘Picketers’. The vigilantes that had pursued the ‘Amenities’ campaign had also included some members of the NSW/PGEU who were either CPA members or sympathisers. The behaviour

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41 Ibid
42 Ibid
43 Sydney Morning Herald, 14 May 1971
44 Diary notes - Conversations with W.J. Glover in 1973 when I first started recording anecdotes of that era.
of the 1971 ‘Accident Pay’ vigilantes was, in the main, somewhat moderated by the involvement of building tradesmen who wanted no truck with the tactics of the 1970 Margins Campaign and the 1971 Amenities Campaign. Violent incidents did occur when those within a group were outnumbered by NSW/BLF vigilantes. Those incidents appeared to be more associated with the Summary Offences Act, as a ‘back-door’ attempt to broaden the agenda of the campaign so as to involve the union movement in the NSW/BLF campaign of opposition to the Summary Offences Act. Further, the violent actions of the NSW/BLF during the accident pay campaign were against the policy decided upon by the BTG and, according to the NSW/BWIU, the NSW/BLF leadership “secretly planned and implemented their policy of violence against property”.

The behaviour of the NSW/BLF vigilantes appeared to become more reckless as the dispute continued. During the last days of the dispute, vigilantes wilfully stripped off 20 courses of newly laid textured bricks from a cottage at Bunnerong, and smashed windows, tore out window frames and poured concrete into plumbing at a Glebe projects where flats were being constructed.

On the same day, 18 May 1971, Justice Sheehy suggested to a Compulsory Conference he had convened over the matter that a pay loading could provide a solution to the dispute. Whether the possible resolution of the dispute was a factor in the violence that occurred the following day is obviously impossible to determine, but the orgy of violence towards property unfortunately, and predictably, got out of hand. On the 19 May 1971 ‘roving gangs of strikers continued to damage buildings and harass men working at Sydney building sites’. A man was bashed unconscious with an iron bar by ‘one of a gang of 50 strikers’.

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45 Ibid (See also “Editorial”, *Sydney Morning Herald*, 21 May 1971, p.6)
48 “Strike gangs smash house, flat”, *Sydney Morning Herald*, 19 May 1971, p.1
49 *Sydney Morning Herald*, 19 May 1971, p.2
50 “New raids by roving gangs of strikers”, *Sydney Morning Herald*, 20 May 1971, p.1
Immediately after the BTG announced, on 20 May 1971, that mass meetings of building workers had resolved by a ‘2-1 vote’ to end the strike, Justice Sheehy of the State Commission announced that he would be prepared to hear the unions’ case for accident pay the following day and, further, that he would hand down a decision at the conclusion of that hearing.\(^51\) He also stated that, while he would not grant the unions’ original claim (for an unlimited payment of the benefit), he would look favourably to making an award which, in some form, would provide accident pay benefits.\(^52\)

NSW/BLF officials criticised the BTG interpretation of the voting results of the mass meetings and encouraged militant workers in their ‘belief’ that a “sell-out” had occurred.\(^53\) The NSW/BLF’s policy of violence, declared by Jack Mundey in an interview in 1970,\(^54\) while commencing with the intimidation of employers, progressively led to the intimidation of any building worker who disagreed with the vigilante groups or who appeared to ignore the dictates of the NSW/BLF leadership. It was inevitable that this uncontrolled, but orchestrated, policy of violence should at some time become directed at the leadership of other unions. The volatile situation fostered by the NSW/BLF on the afternoon of the mass meetings (on 20 May 1971) came to a head that evening at the weekly meeting of the Labor Council of NSW. Fred Wells, reporting on the incident, wrote:-

> The builders’ labourers carried their campaign of violence to the NSW Labor Council last night, breaking up the council’s weekly meeting.\(^55\)

A group of builders’ labourers had intruded the meeting and, in an effort to ‘keep the peace’, the President of the Labor Council had allowed them to remain in the

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\(^{51}\) *Sydney Morning Herald*, 21 May 1971, p.1

\(^{52}\) MBA/NYS “Report on the activities of the Industrial Relations Committee for the period ending 3/6/71”, *Minutes*, 8 June 1971

\(^{53}\) Meredith Burgmann, *Op Cit*, p.132

\(^{54}\) “Towards New Union Militancy”, *Australian Left Review*, No. 26, August-September 1970, at p.6
visitors’ section. At 8.40 pm Labor Council Secretary, Ralph Marsh, read out correspondence from the building tradesmen’s unions and was interrupted by the ‘burly intruders’ calling out such insults as “You sold us out, you ---”. A vicious brawl erupted when an ‘elderly man’ was ‘punched full in the face after asking one of the intruders to ‘be quiet’. The meeting resumed after a number of the intruding builders labourers were arrested, and a motion ‘to suspend the BLF’ was adopted. Mundey, who had arrived at the meeting after the fighting was over, was greeted by John Ducker, the Labor Council’s Assistant Secretary, with the accusation: “Mundey does not come here with clean hands”.

Mundey unsuccessfully challenged the ‘suspension’ motion, describing it as “embittered” and “emotional”, and later attempted to disassociate his union from the activities of those vigilantes on the ground that they were neither, ‘delegates’, ‘members of the union’s management committee’, nor ‘union officials’. The NSW/BLF criticism of the ‘6 months’ (26 weeks) aspect of the Sheehy decision appears unsustainable on two grounds. First, the six months limit had been accepted by the BTG on the basis of achievability. The unions’ arrangement with the Australian Metropolitan Life Assurance Company was for “$40 in excess of normal workers’ compensation payments for 26 weeks at an annual premium of $38.10 per worker”. That works out at 73.26 cents per week (or approximately 75 cents). Second, the unions campaigned for the 26 weeks cover. During their ‘Accident Pay’ march one of the English language banners proclaimed ‘$40 per week increase’ which is the figure arranged by the unions the Insurance Company.

The building tradesmen’s unions and the NSW/BLF produced a dramatic poster during the campaign featuring the photograph of the 13 May ‘Accident Pay’

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55 Fred Wells, “Strike is over but violence renewed”, *Sydney Morning Herald*, 21 May 1971, p.1
56 Ibid
57 Ibid
58 Ibid
59 R.A. Pringle and J.B. Mundey, (Open) Letter to the President, Secretary and members of Labor Council of N.S.W to the members of the Committee of Inquiry into the events of 20th May, 1971 to the delegates of all unions affiliated to the Council, NSW/BLF, Sydney, 10 June 1971, one page roneod
March that had been appeared in the Sydney Morning Herald article the following day. That poster included the statement:

- 23 in every 100 building workers are injured every year.
- For a paltry 75 cents per worker per week bosses can guarantee full wages to those injured when off work.60

Following Justice Sheehy’s hearing and determination of the Accident Pay Case on 21 May 1971, the MBA/NSW immediately obtained from Justice Isaacs of the Supreme Court of NSW, a Stay Order which was issued at 5:00 pm that day.61

The MBA/NSW argued, at the Appeal hearings before the Supreme Court on 28 May and 31 May 1971 that the issue was not an ‘industrial matter’ and therefore it was beyond the jurisdiction of Justice Sheehy to have made such a decision. The Supreme Court found against that argument in its Decision of 4 June 1971.62

Faced with defeat, the MBA/NSW decided to ‘get on with the job’ of making the Accident Pay scheme work and not pursue any more appeal action,63 and agreed with Building Tradesmen’ Unions on a scheme designed to implement the intent of the Sheehy Decision.64 Other employer associations pursued an Appeal against Justice Sheehy’s Decision before the State Commission sitting in Court Session.65

60 BWIU, Plumbers, Plasterers, Painters, Bridge & Wharf Carpenters, Roof Tilers, Stonemasons, Wall Tilers, ASC&J, and the Builder Laborers’ Federation, STRIKE! Workers and their Families against the Big Building Bosses, Quality Press, Sydney, Undated
61 MBA/NSW “Report to Council of Management on activities of Industrial Relations Committee for period ending 8/6/71”, Minutes, 8 June 1971 (This provides another example of the difficulties facing the MBA/NSW in its efforts to represent a broad-based constituency. Most major contractors would have been able to recover the two cents per hour that were ultimately added to the tradesmen’s hourly rate (for accident pay) through the escalation clauses in their current building contracts. To the vast majority of MBA/NSW members, however, it was merely an impost they would have to initially carry themselves, a fact that would have influenced the Executive committee members - who had the ‘numbers’ -on the MBA/NSW IPC.)
62 Ibid
63 MBA/NSW “Report on meeting between Employer Associations and Building Tradesmen's Unions on 11/6/71”, Minutes, 13 July 1971
64 MBA/NSW “Report on meeting between MBA Representatives and the Trade Union Workers' Compensation Committee on 2/7/71”, Minutes, 13 July 1971
65 MBA/NSW “Report of meeting between Employer Associations and Building Tradesmen's Unions on 11/6/71”, Minutes, 13 July 1971
The Building Trades - Injuries Award was established on 22 October 1971 and was produced as a Schedule attached to the Full Bench Decision entitled “Further Judgment of the Commission”, which the Full Bench had foreshadowed its judgment dismissing the Appeal of the Employers’ Federation of NSW and other employer associations.66

The Accident Pay Case served to further isolate the NSW/BLF from the NSW Building tradesmen’s unions. The obstructive actions of the ABLF to the attempts of its NSW Branch to lift its suspension from the NSW Labor Council,67 also increased the rift that had developed between officials of the NSW/BLF and those of the ABLF. That Gallagher played an opportunist’s role in the events that followed the Labor Council fracas is unquestionable. He grabbed the chance to embarrass Mundey further and to cultivate some allies within the NSW rank and file. At least one of the ‘Labor Council intruders’ became an organiser when Gallagher took control of the NSW Branch in late 1974.68

The Employers attempt a Joint Approach

The fragmented responses of employers to the various demands of Unions, led the MBA/NSW to convene a meeting of executives of all employer associations with an interest in the NSW building industry. That meeting identified the unions’ tactic of “picking off” individual contractors and particular sections of the building industry as a serious threat which should be met by employers presenting an united front. The meeting also identified the need for a more consultative and broader-based approach to industrial relations policy making and to determining employer responses to union demands.69 Those conclusions led to

66 “Further Judgment of the Commission” No. 251 of 1971, Building Trades Dispute re Pay of Injured Workers, Industrial Commission of NSW in Court Session, 22 October 1971
67 Meredith Burgmann, Op Cit, pp.141-142
68 Diary Notes: Dick Keenan one of those involved was a prominent ‘Gallagher man’ during the years 1974-1977
69 MBA/NSW “Report on meeting with executives of other employer groups on 24/2/71”, Minutes, 9 March 1971
the formation of the NSW Construction Industry Industrial Policy Committee (CI/IPC).  

The CI/IPC to some degree achieved its first objective - *To ensure liaison between all employers in the construction industry on claims and logs of claims and on proposed changes of award in any particular sector of the industry.* That it failed to achieve its second objective - *To determine industry policy and make decisions on the bases for negotiations with unions when necessary on matters of common interest, keeping in mind a regard for relativities within the industry* - was probably due to the vanguard industrial position occupied by MBA/NSW members which had led that Association to establish an Industrial Policy Committee (MBA/NSW IPC).

The MBA/NSW IPC comprised members of the MBA/NSW Industrial Relations Committee and MBA/NSW Executive Committee, and was given the authority to make decisions between meetings of the MBA/NSW Council of Management. This enabled the MBA/NSW to achieve policy decisions related to industrial relations’ matters speedily and it, therefore, often pre-empted the more ponderous joint-decisions making processes of the CI/IPC. Another reason can be found in the fact that any CI/IPC decisions had to be unanimous - this inevitably meant that very few, if any, decisions were made.

The NSW/BLF Special Allowance and Disputes Settlement Procedures Case

While the Builders’ Labourers Award was varied for accident pay with the support of the MBA/NSW due to the impracticality of having two levels of

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70 MBA/NSW “Report of meeting of the Construction Industry of NSW Industrial Policy Committee on 29/6/71”, *Minutes*, 13 July 1971
71 Ibid
72 Ibid
73 Master Builders Association of NSW, *Minutes*, 9 March 1971
74 MBA/NSW “Report of Meeting of the Construction Industry of NSW Industrial Policy Committee on 29/6/71”, *Minutes*, 13 July 1971
insurance benefits operating in tandem, the position with the ABLF’s application for the special loading was very different. In that matter the MBA/NSW was resolved to take all steps possible to prevent NSW/BLF from receiving any benefits from the Conciliation and Arbitration system, until it displayed a ‘positive’ change in its industrial behaviour. The ABLF had withdrawn its application before the Federal Commission for the $4.00 increase to margins that the NSW tradesmen had been granted by Justice Sheehy in November 1970 and, following the ‘special loading’ increase granted to tradesmen’s awards, had applied to the Federal Commission for a benefit in the same terms. The MBA/NSW had opposed the ABLF $4.00 application due to the ‘industrial misbehaviour’ of the NSW/BLF, and resolved to oppose the ‘Special Loading’ application for the same reason. This was conveyed to Commissioner Watson at the preliminary hearing of the matter.

The MBA/NSW was advised of attempts by Jack Mundey (NSW/BLF) to ‘encourage’ some major contractors to ‘influence a change in the association’s attitude to the claim’. A request by Mundey to the MBA/NSW to address a meeting of major contractors was declined. James Macken, the barrister representing the MBA/NSW, advised Commissioner Watson that the MBA/NSW believed that, prior to the NSW/BLF being granted any ‘Special Loading’ increase, the Union should provide ‘unmistakable’ and ‘unqualified’ evidence of a change in its industrial behaviour and attitude.

The hearing was adjourned into Conference at which Mr Fisher QC, for the ABLF, reminded employers that the $4.00 ‘Margins’ claim could quite easily be restored to the ‘Court’s List’ on application by the ABLF, and referred to the

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75 MBA/NSW “Report of meeting of Industrial Policy Committee on 7/7/71”, Minutes, 13 July 1971
(See also - “Report to Council of Management of activities of the Industrial Relations Committee for period ending 14/12/71”, Minutes, 14 December 1971
76 MBA/NSW “Report of meeting of Industrial Policy Committee on 28/6/71”, Minutes, 13 July 1971
77 MBA/NSW “Report of meeting of Major Contractors on 12/7/71”, Minutes, 13 July 1971
78 Ibid
79 Ibid
80 MBA/NSW “Report of meeting of Industrial Relations Committee on 21/7/71”, Minutes, 10 August 1971
nexus between the NSW carpenters’ award and the builders labourers award since 1956.  

Mr Fisher also pointed out that the 1970 ‘Watson Formula’ Decision had placed the ‘Rigger’ classification in the Builders Labourers’ Award some 10 cents behind the Carpenter, and this position had deteriorated to a shortfall in that relativity of nearly $10.00 due to the increases since granted to all building tradesmen. Mr Fisher further stated that the Federal Management Committee of the union was prepared to give undertakings designed to ‘wipe the slate clean’. The ABLF, suggested Mr Fisher, also believed that employers had contributed to the unfortunate industrial climate due to their poor response to amenities and to financial unionism. The ABLF, Mr Fisher claimed, would be prepared to consider a Disputes Settlement Clause in its Award, and that any agreement reached would be “utterly binding on all office bearers of the Federation”; and, that the Union would publicise and circularise any settlement reached and spell out the union’s obligations to its membership. It was stressed by Mr Fisher that the Federal officers would accept responsibility for the behaviour of the officials of the NSW Branch - the NSW/BLF.

Mr Macken, in reply, referred to five current disputes initiated by the NSW/BLF and stressed one dispute in particular, and said it would be quite ludicrous to suggest that the MBA/NSW would consider any terms of settlement prior to those disputes being resolved. The union adjourned for a short while, and on their return advised that the dispute could be regarded as settled and there would be a recommendation for an immediate resumption of work. Both Mr. Ball and Mr Macken left the meeting with the Union on 20 July 1971 in the clear

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81 Ibid  
82 Ibid  
83 Ibid  
84 Ibid  
85 Ibid  
86 Ibid  
87 Ibid
belief that the Federal officials (those of the ABLF) were ‘now fully aware of the NSW position and were concerned about it’.  

Some members of the MBA/NSW IPC doubted the ability of the ABLF to control its NSW branch leadership due to the overt animus between the respective officials of the ABLF and the NSW/BLF. Other members of the MBA/NSW IPC believed that the resolution of the disputes was merely a tactical move designed to remove MBA/NSW opposition to the current applications to vary the Award and could not be regarded as an indication of a change in the Union’s behaviour. All members of the MBA/NSW IPC, however, doubted the likelihood of the NSW/BLF adhering to any undertakings given on its behalf by the ABLF.

Mr Macken suggested that in the event of “any breach of ABLF undertakings by NSW/BLF officers a very good case could be made to the Australian Industrial Court for the cancellation of the registration of the ABLF on the basis of the misbehaviour of its NSW Branch (the NSW/BLF)”. Mr Macken further suggested that the Australian Industrial Court, ‘if circumstances demanded that such an application be made’, may indicate to the ABLF ‘that its continued registration would depend on its ability to use such powers necessary under its Rules to control its NSW Branch’.

It was pointed out by a number of MBA/NSW members that any Disputes Settlement Procedure had limited value unless it was underpinned by a climate in which labourers recognised the right of employers to deploy them to duties other than those they regarded as their normal responsibilities. This problem particularly occurred with dogmen. This was conveyed to the ABLF and NSW/BLF at a meeting on 30 July 1971 at which the union again agreed to a Disputes Settlement Procedure.

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88 Ibid
89 MBA/NSW “Report of meeting of meeting of Industrial Policy Committee on 26/7/71”, Minutes, 10 August 1971
90 Ibid
91 Ibid
92 Ibid
93 Ibid
Clause being written into the Award. While the details of such clause was yet to be finalised, the union advised that the Federal and NSW Branch Committees of Management had met and were prepared to give assurances that any undertakings would be honoured and that no further claims would be made until the expiration of the current award - in October 1972.95

The union accepted that the Disputes Settlement Clause would include recognition that builders’ labourers were required under their award to perform work other than their normal duties when directed to do so by their employer.96

The ABLF produced a draft circular, to be jointly signed by Gallagher and Mundey, that the union proposed to send to its NSW membership. Excerpts from the proposed circular contained such phrases as :-

Because relations in the recent past have not been harmonious, this arrangement has involved both parties agreeing to ‘wipe the slate clean’, to make a fresh start and to make arrangements so that much of the industrial friction and stoppages in the past can be avoided. In particular, the Union has promised that it will make a genuine attempt to stand by any promises that it makes. One of these promises is to the effect that the Union will use every endeavour to stabilise the industry and avoid stoppages until at least October 1972 when it is expected that wages and conditions will be again revised.97

To that circular was to be attached a copy of the Disputes Settling Agreement in its final agreed form.98 In light of the union’s apparent acceptance of the need for an ‘arrangement’ to overcome the stoppages of the past, the MBA/NSW on 23 August 1971 advised the ABLF that it would be advising the Federal Commission that it believed the Builders’ Labourers Award should be varied by:-

* increasing the Total Wage
* introducing a $3.50 Special Allowance (the Special Loading)

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94 Ibid
95 MBA/NSW “Report of meeting between Employer Associations and the ABLF on 30/7/71”, Minutes, 10 August 1971
96 Ibid
97 N.L. Gallagher, “Proposed Circular to Union Members”, Attachment to: Letter to L.R. Ball (MBA/NSW), 9 August 1971
98 Ibid
providing for fully paid Public Holidays

The MBA/NSW also said it expected the Union to take “steps to withdraw the current demand which exists on some jobs that there should be two Dogmen for every Crane”. The Association referred to the fact that a meeting of dogmen had rejected those provisions of the agreement which required dogmen to do other than dogmen’s work.99

The NSW/BLF quickly responded to the offer, on 26 August 1971, by accepting the money terms but suggesting retrospectivity of two months. The NSW/BLF, however, rejected outright the Disputes Settlement Clause which was described as a ‘No Strike’ clause. The response expressed the resentment of members of the NSW Branch of the Union to the “accusation that this Branch doesn’t keep its word”, but concluded that “this Branch is prepared to agree, as the other NSW building unions have, to the non-movement of wages until October 1972”.100

Gallagher confirmed the decision of the union’s NSW Branch and suggested a meeting in Melbourne on 2 September 1971 ‘to seek another agreement around the Disputes Settlement Procedure’.101 At that Melbourne meeting, Les Ball (MBA/NSW) was asked whether an alternative set of dispute settling procedures based on the Victorian Building Industry Agreement (VBIA)102 would be acceptable.

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99 J.D. Martin (MBA/NSW), Letter to N.L. Gallagher - ABLF, 23 August 1971  
100 J.B. Mundey (NSW/BLF), Letter to J.D. Martin (MBA/NSW), 26 August 1971  
101 N.L. Gallagher, Letter to J.D. Martin (MBA/NSW), 26 August, 1971  
102 The VBIA provision, upon which Gallagher had suggested basing an alternative disputes settling procedure, precluded direct action by unions until a seven day cooling off period had been observed. The cooling off period was `calculated from the time when the dispute or matter is referred to representatives of both the Trades Hall Council and the Employer Association by the Union's Secretary or the Employer involved in the dispute`. “Clause 17. Disputes - Cooling Off Period”, Building Industry Agreement, Melbourne, Victoria. 1970-1972
Mr Ball asked Mr Gallagher, who was accompanied by Jack Mundey, to furnish him with a copy of his VBIA proposal by 7 September so that it could be considered by the MBA/NSW IRC which was to meet on that day.\(^{103}\)

On the day prior to the meeting of the MBA/NSW IRC, Gallagher advised Les Ball by telephone that there was no point in him (Gallagher) writing to Les Ball setting out his VBIA proposal as ‘the NSW Executive had met the previous day and decided not to accept a Dispute Settlement Clause in any shape or form and would be putting that recommendation to meetings of builders’ labourers to be held that day simultaneously in Sydney, Newcastle and Wollongong’.\(^{104}\) At the mass meetings, to which the ABLF (VBIA) proposal ‘was not even put’,\(^{105}\) Builders’ labourers in Sydney and Newcastle decided to take strike action until 10 September 1971. The mass meeting of builders’ labourers in Wollongong resolved to resume work and reconsider their position at the next mass meeting on 10 September.\(^{106}\)

The BTG had requested a meeting with the MBA/NSW to discuss the builders’ labourers situation and the MBA/NSW IRC directed Mr. Ball to hold those discussions the following day. The MBA/NSW IRC also recommended to the MBA/NSW Council:-

THAT the Association immediately commence proceedings in the Commonwealth Industrial Court to cancel the registration of the Australian Builders’ Labourers’ Federation.\(^{107}\)

The BTG at the meeting on 8 September, at which the NSW/BLF was represented, advised that it had asked for the meeting due to a request for assistance by the

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\(^{103}\) MBA/NSW “Report of meeting of Industrial Relations Committee on 7/9/71”, Minutes, 14 September 1971

\(^{104}\) Affidavit of Leslie Roy Ball, Exhibit 6N, - See Transcript of Proceedings, in matters B.No.40 of 1972 and B.No.73 of 1973, Australian Industrial Court, 1 May 1974, pp.692-736

\(^{105}\) MBA/NSW “Report of meeting of Industrial Relations Committee on 7/9/71”, Minutes, 14 September 1971

\(^{106}\) Ibid

\(^{107}\) Ibid
The meeting progressed over two days and, after ‘discussions and counter-discussions’, it was made ‘very clear to the Group and the Federation that the Association was quite adamant that in some form or other a Disputes Settlement Clause was going to have to be accepted’. Mr Ball also advised the BTG, and reminded the NSW/BLF, that any resolution included the two important requirements: - First that the Union would not support the demand for two dogmen to every crane; and, second, that builders labourers would perform alternative work if the management so required. After having its preliminary proposal, which it had put forward early on the second day of the discussions, rejected ‘out of hand’ by the MBA/NSW, the BTG tendered a three clause proposal which after suggesting some amendments Mr. Ball said he would refer to a meeting of the MBA/NSW IRC on 13 September. It was also agreed that the NSW/BLF would put the proposal to its mass meetings planned for 10 September 1971. At the close of the meeting the BTG wanted an assurance that any agreement over a Disputes Settlement Clause would not be used as a precedent against other Building Unions involved in the discussions, and asked the MBA/NSW to delay proceeding with its deregistration application until the proposals discussed that day could be considered by the parties concerned.

The MBA/NSW Council never considered the BTG proposal because the mass meetings of builders labourers, on Friday 10 September 1971, carried a resolution calling on the MBA/NSW to “completely withdraw its ‘no strike’ clause” and to agree to retrospectivity to 8 June 1971 of the Special Loading. The resolution also determined that, should deregistration proceedings be pursued by the MBA/NSW, the ACTU be called upon for its support.
Mr. Ball advised members of the MBA/NSW IRC of a telephone conversation with ‘certain people in the Trade Union movement’ who indicated that the NSW/BLF was ‘on its own’ due to the belief that much of the builders labourers mass meetings had been ‘devoted to villification (sic) of certain other union officials’ by NSW/BLF Officials.114 The MBA/NSW Council endorsed the recommendations of the MBA/NSW IRC that the Association remain firm on its demands for a Dispute Settlement Clause and for other concessions; that the money offer and the Associations demands are inseparable; and that the MBA/NSW resume its preparations for an application to deregister the ABLF.115

The strike by builders’ labourers continued and Commissioner Watson called a Compulsory Conference in the Federal Commission for 17 September 1971 which resulted in an agreement by the MBA/NSW representatives to put ‘on hold’ their Association’s application to deregister the ABLF, and to recommend to the Association acceptance of the Union’s suggested (and much watered-down) Dispute Settlement Clause. In return, the NSW/BLF undertook to convene a mass meeting of builders’ labourers on 21 September 1971 and to recommend a resumption of work.116

The “conciliatory attitude adopted by the Association representatives” was criticised by a number of MBA/NSW members117 who directed Mr. Ball to adhere to the MBA/NSW Council resolution of 14 September and continue to demand a more effective Disputes Settlement Clause underpinned by a NSW/BLF undertaking to withdraw demands for two dogmen on each crane and to encourage its membership to deploy to any labouring work within their competency when so directed by their employer.118

Prior to the close of the MBA/NSW General Meeting on 20 September, at which these matters were discussed, the Executive Director outlined the

114 Ibid
115 MBA/NSW Council of Management, Minutes, 14 September 1971
116 MBA/NSW “Minutes of General Meeting of members on 20/9/71”, Minutes, 12 October 1971
117 Ibid
118 Ibid
background to the (ultimately unsuccessful) demand of the MBA/NSW for a Royal Commission to investigate allegations of extortion against the NSW/BLF which first became public on 17 September 1971 when a newspaper broke the story and claimed Mundey had threatened to ‘close’ the company, Pedy Concrete, ‘down for good if the Newspaper printed the article.\footnote{Daily Telegraph, 17 September 1971} The union denied the amount paid ($1500) was the result of an union-imposed fine, but rather an offer made by the company. The manager of Pedy Concrete, understandably, refused to comment on any suggestion that it had submitted to ‘industrial blackmail’, and merely referred to its “harmonious relationship with the union”.\footnote{The Australian, 18 September 1971}

These events further strengthened the resolve of MBA/NSW members attending the General Meeting to demand an effective and stringent set of procedures for settling disputes with the NSW/BLF.\footnote{MBA/NSW “Minutes of General Meeting of members on 20/9/71”, Minutes, 12 October 1971} The MBA/NSW IRC directed those who were to represent the MBA/NSW, at a meeting with officers of the ABLF and of the NSW/BLF, to insist that as part of any Dispute Settlement process “work would continue normally” and “Dogmen and Labourers would carry out alternate work”.\footnote{MBA/NSW “Report of Proceedings of a meeting of the Industrial Relations Committee on 21/9/71”, Minutes, 12 October 1971}

Mr. Gallagher replied that “the Federation had no alternative but to remain firm with the NSW Branch in their demand that (the MBA/NSW) views on a Dispute Settlement Clause be rejected”.\footnote{MBA/NSW “Report of Proceedings of a Conference between Representatives of the ABLF and the MBA on 22/9/71”, Minutes, 12 October 1971} A twenty four hour adjournment, at the request of the ABLF, to enable the MBA/NSW to reconsider its position saw no change in the situation for members of the MBA/NSW Executive Committee, in a telephone poll, reaffirmed the Association’s position.\footnote{Ibid} No further discussions seemed of any value, particularly in light of a direction from Commissioner Watson to appear before him on 24 September.\footnote{Ibid}
Pat Clancy was given leave to intervene, on behalf of the BTG, at the Compulsory Conference before Commissioner Watson on 24 September at which the ABLF and NSW/BLF officials accused the MBA/NSW of a “Double Cross”. The MBA/NSW officials claimed they had carried out their part of the 17 September deal; however, the Association membership regarded the Union’s Dispute Settlement proposals as failing to address many serious underlying problems. The Commissioner was handed a copy of the formal position determined by the Association’s Industrial Relations Committee, on 21 September, in line with the resolution of a General Meeting of members held the previous day.\textsuperscript{126}

Mr Clancy for the BTG, supported the NSW/BLF in its rejection of, and opposition to, a “No Strike” clause ‘because this was part and parcel of Trade Union Policy’. Mr Clancy said an explosive situation was developing which could get completely out of hand and pointed to current (and separate) disputes involving lofty crane drivers, concrete weigh batchers, and transport drivers in the ready-mixed concrete industry, all of which he suggested should be the subject of a round table conference convened by the Labor Council of NSW.\textsuperscript{127}

The ABLF said it would be prepared to discuss amendments to the 17 September proposal but not to the extent demanded by the MBA/NSW. The union asked for an early hearing of its Special Loading claims and stated it would request the Labor Council to convene a Conference of all parties in the NSW Building industry to discuss all matters in dispute in the industry.\textsuperscript{128} The MBA/NSW stated it would oppose any move to hear the Union’s application until agreement had been reached in the terms of the MBA/NSW document tabled. Mr Ball advised he would convene a special meeting of the MBA/NSW IRC to report on the day’s proceedings and to consider the proposed Labour Council conference.\textsuperscript{129}

\textsuperscript{126} MBA/NSW “Report of proceedings of a Compulsory Conference held before Commissioner Watson on Friday 24/9/71”, Minutes, 12 October 1971
\textsuperscript{127} Ibid
\textsuperscript{128} Ibid
\textsuperscript{129} Ibid
In closing the Compulsory Conference the Commissioner recommended ‘that the MBA seriously reconsider its proposed Disputes Settlement Clause procedure’. The MBA/NSW IRC was highly critical of the Commissioner’s recommendation which was regarded as ‘ignoring the anarchy on sites’ and ‘seeking peace at any price’, and resolved to promote its own acceptable version of a Disputes Settlement Clause.

The meeting convened by the Labour Council of NSW provided no breakthrough except that it formed a series of joint working parties to address the current issues in dispute throughout the building industry. The NSW/BLF, predictably, capitalised on those events and denounced the MBA/NSW for its ‘about face’ in regard to the Disputes Settlement Clause, and linking the Askin Liberal Government’s ‘Law and Order’ campaign with the MBA/NSW decision to ‘renege on the agreement’ and pursue a ‘No-Strike’ clause. As an answer to the impasse that existed, it was finally agreed to let Commissioner Watson decide the matter at the hearing of the Union’s wage application on 11 October, 1971. At that time the MBA/NSW would put a case in support of the Disputes Settlement Clause determined by the Industrial Relations Committee on 21/9/71; and, the NSW/BLF would put its preferred clause (which was the BTG proposal of 8/9/71 which the NSW/BLF had not put to its mass meetings on the 10 September 1971).

Commissioner Watson varied the Builders’ Labourers’ Award by awarding $3.50 of the Tradesmen’s $4.30 Special Allowance from 22 September 1971 (the date on which there had been a general resumption of work). The Commissioner, after hearing argument from both parties in relation to the Disputes Settlement Clause

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130 Ibid
131 MBA/NSW “Report of proceedings of a meeting of the Industrial Relations Committee - 27/9/71”, Minutes, 12 October 1971
132 MBA/NSW “Report of proceedings at meeting held at the Trades and Labour Council on Thursday 30/9/71”, Minutes, 12 October 1971
133 NSW/BLF, Builders Laborers’ Dispute, one page roneoed, 27 September 1971
134 MBA/NSW “Report of meetings between the Industrial Relations Committee and the ABLF on 5 an 7 October 1971”, Minutes, 12 October 1971
135 Commonwealth Arbitration Reports, Vol. 140, pp.777-778
Clause, reserved his decision until 14 October 1971.\textsuperscript{136} The Decision handed down by Commissioner Watson on 14 October 1971, according to the MBA/NSW, “rather avoided the issue by directing the parties into further conference when the matter had already been debated before him and he had been asked to make a decision”.\textsuperscript{137}

Discussions with the NSW/BLF over certain aspects of the Watson Decision in relation to dispute settlement continued throughout November and December 1971,\textsuperscript{138} and on 22 December 1971 the Commissioner formally handed down a decision settling the matter. The Union had agreed to circularise its membership details of the new clause but this had been deferred by Jack Mundey ‘until after he returned from holidays towards the middle of January 1972’.\textsuperscript{139} During Mundey’s absence, shortly after 18 January 1972, Les Ball received a telephone call from Commissioner Watson who said:-

I have been told by Joe Owens that the NSW Branch of the ABLF has held a meeting in Mundey’s absence and resolved to reject the Disputes Settlement Clause.\textsuperscript{140}

Les Ball replied that the Clause had been accepted by the State Secretary of the Union and therefore, “notwithstanding the rejection by the Branch meeting--we expect it to be honoured”.\textsuperscript{141}

A deputation from the NSW/BLF visited the MBA/NSW on 3 February 1972 and requested further talks with the Association over certain aspects of the Disputes Settlement Procedure. The Union was advised that, setting aside any reluctance to ‘tinker’ with the Clause, the Association would be unlikely to agree

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\textsuperscript{136} Ibid \\
\textsuperscript{137} MBA/NSW “Report of proceedings of a meeting of the Industrial Relations Committee held on 25/10/71”, Minutes, 9 November 1971 \\
\textsuperscript{138} MBA/NSW, Minutes, 9 November and 14 December 1971 \\
\textsuperscript{139} MBA/NSW “Report to the Council of Management on the activities of the Industrial Relations Committee for the period ending 13/1/72”, Minutes, 18 January 1972 \\
\textsuperscript{140} L.R. Ball, Affidavit, Op Cit \\
\textsuperscript{141} Ibid
\end{flushleft}
to such discussions ‘in the current industrial climate’. Mundey requested a resumption of discussions in a letter which commenced rather humorously: “Though we generally correspond through the letters column of the Sydney Morning Herald --.”

The MBA/NSW resolved to hold no discussions with the NSW/BLF over the Disputes Settlement Clause unless there was an immediate resumption of work on those jobs that were on strike, and provided the Union displayed some evidence of good faith by circularising its membership in the manner it had agreed. The resolution concluded by suggesting a meeting on 6 March 1972 should those conditions be met.

No meeting was ever held over the issue and the Union “continued to breach the Clause handed down by an arbitrated decision they had jointly sought with the MBA/NSW”. The union also ignored its undertakings not to seek any movement in wages until the expiration of the Builders Labourers Award in October 1972, by calling a half-day stoppage on 7 March 1972 ‘for the purpose of discussing claims for the new award’. As Ken Cohen QC concluded, when outlining these events to the Full Bench of the Australian Industrial Court:-

It was an arbitration made expressly and sought by both parties. It was one that each party agreed to be bound by - these people have got their ends, got their money, got all the advantages, put that in their pockets and the very thing that was the consideration for so doing, and clearly that was so in every way in having this dispute settlement system to settle this anarchy that was going on in the jobs and provide for a speedy settlement, was torn up.

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142 MBA/NSW “Report of proceedings of a meeting of the Industrial Relations Committee on 7/2/72”, Minutes, 8 February 1972
143 J.B. Mundey, Letter to J.D. Martin (MBA/NSW), 10 February 1972.
144 L.R. Ball, Affidavit, Op Cit
145 Ibid
146 Ibid
147 Transcript of Proceedings, Matters B.No.40 of 1972 and B.No.73 of 1973, Australian Industrial Court, 1 May 1974, p.721
Conclusion

The militant industrial campaigns during 1970 and 1971 revealed the structural problems encountered by employers in reaching decisions - decisions that were formerly made within a reasonably stable industrial relations environment. The absence of an authoritative industrial tribunal deprived members of the MBA/NSW of an important element of their managerial strategy. This was compounded by the uncertain responses of police to the vigilantes’ activities during the 1970 NSW/BLF ‘margins’ campaign.

The broad-based membership of the MBA/NSW made it difficult for major contractors to achieve the decisions they sought, and their problems were exacerbated by the involvement in such decision-making processes of other employer associations, some of whom had multi-industry memberships and whose responses were tempered by fears of flow-on to those other industries.

The MBA/NSW in the face of an aggressive campaign over the poor standard of amenities in the building industry was exposed to have lacked the authority, and ability, to force its membership to comply with standards required at law.

This chapter has focused on events that provided tangible evidence that the NSW/BLF had indeed adopted the policy of violence that Mundey had outlined in mid-1970. Both Mundey and Jack Cambourne, the NSW/FEDFA secretary, supported the new ultra-left approach announced by Aarons, in late 1969, on behalf of the Communist Party of Australia (CPA). That approach abandoned the united front concept in favour of vanguard action by small groups. They pursued what some within the trade union described as “One-out” unionism.\(^{148}\)

The 1970 and 1971 NSW/BLF disputes were not, this thesis concludes, solely designed to achieve industrial ends. The way in which NSW/BLF claims were pursued had another purpose - to promote the ideological objectives of the

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\(^{148}\) For example: The Building Industry Branch of the Socialist Party of Australia, *Op Cit*, pp.6-8
CPA and to demonstrate the superior effectiveness of the CPA approach. Some writers, Cleghorn for example, regarded the ‘violent’ Margins campaign as ‘Competitive Militancy’, as an exercise designed to prove the viability of Aaron’s CPA policy and to embarrass his opponents within the CPA.\textsuperscript{149} In Chapter 3, reference was made to the ultra-left policies adopted by the CPA promoting tactics, some suggested, based on Trotskyism.\textsuperscript{150}

Others however, such as Frenkel and Coolican suggest that the Aarons/CPA line was based on polycentric principles and strategies similar to those adopted by the Italian Communist Party.\textsuperscript{151} In embracing the CPA policies, and translating it to his role as union leader, Mundey allowed the vigilante groups, which became the trademark of the NSW/BLF, to virtually run amok, appearing to many within the MBA/NSW to be ‘the Mundey version of de-centralised power and decision-making’.\textsuperscript{152} Such decentralised power, however, appeared to be available only to activists within the NSW/BLF, and unavailable to those who pursued a moderate course.\textsuperscript{153}

It is important to recall that the term ‘Rank and File’ when used by the NSW/BLF could refer to the myriad of rank and file committees that existed on worksites throughout the building industry; or, it could, and usually did, refer to the centralised ‘Rank and File’ Committee established during the 1960s to ‘field a team’ in the union elections - which was ultimately successful. The latter, ‘the


\textsuperscript{150} Building Industry Branch of the Socialist Party of Australia, \textit{Op Cit}, p.7

\textsuperscript{151} Stephen J. Frenkel and Alice Coolican, \textit{Unions Against Capitalism - A sociological comparison of the Australian Building and Metal Workers' Union}, Allen & Unwin Australia Pty. Ltd., North Sydney, 1984, p.113

\textsuperscript{152} Diary Notes

\textsuperscript{153} This was my personal view which was shared by other MBA/NSW officers. In 1973 a NSW/BLF organiser said he had been criticised by his superiors for resolving disputes rather than creating a stir. At his request, I complained to the union about his behaviour and his position as an organiser, so he told me, became more secure - Diary Notes. This should not be confused with the (different) circumstances that led Rimmer to the view that workplace organisation was ‘able only to express and direct rank and file discontent rather than to resolve it’. Malcolm Rimmer, “Union Shop floor Organisation”, in Ford and Plowman (eds), \textit{Australian Unions}, MacMillan, Melbourne, 1983, p.138
Rank and File Committee’, became institutionalised within the union hierarchy. To quote a NSW/BLF publication:-

But, though the initial aim of the rank-and-file committee was thus achieved, the committee did not fade from the scene---but now-unlike the situation in the 1950s-in accord with the leadership---publishes its own bulletin, “Hoist”, ---got its own centre.154

Burgmann referred to the ‘rank-and-filers’ involvement in vigilante activity and to its involvement in formulating recommendations for the NSW/BLF Executive to make to mass meetings.155

Burgmann wrote:

From the beginning the Executive organised ‘activists meetings’ but these soon took a life of their own -- and became the informal policy making body during the (margins) strike.”156

In considering the power accorded ‘activists’, it is difficult to understand how the ordinary NSW/BLF member could have identified with his, or her, union’s objectives. Those management processes certainly call into question Mundey’s claim “the union leadership and the members are as one”, 157 Voting at his ‘democratic mass meetings’ was conducted in the same manner as at most unions’ mass meetings, by a show of hands. Some unionists claimed that a free vote was not available in an environment dominated by rhetoric and the ubiquitous vigilantes.158 The Webbs, of course, claimed that mass meetings were ‘public expediency of government’ and at the mercy of orators,159 while Frenkel and

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155 Meredith Burgmann, *Op Cit*, p.57
156 Ibid
158 Diary Notes
Coolican point to the inadequacy of member participation generally in union affairs.160

Another factor that inhibited the participation of the ‘ordinary’ NSW/BLF member was the involvement in such mass meetings of activists from outside the NSW/BLF Membership.161 Many of those ‘outsider’ activists were involved in the protest movements of the time. Some of those protest movements had close links with the NSW/BLF and these will be the subject of the next Chapter.

160 S. Frenkel and Alice Coolican, “Organisation and Decision-making in two unions”, in Ford and Plowman (eds), Op Cit, p.176
161 By mid-May 1971, MBA/NSW members were airing their concerns over complaints, from some builders' labourers on their workforce, at the influence exerted at NSW/BLF meetings by “militant plumbers, wharfies, and students” MBA/NSW, “Report on the activities of the Industrial Relations Committee for the period ending 3/6/71”, Minutes, 8 June 1971