

## CHAPTER 8

### THE MASTER BUILDERS ASSOCIATION OF NSW 1961 - 1975

#### SOCIETAL CHANGE AND INDUSTRIAL ANARCHY

##### Introduction

Traditional philosophies and structures of society came under enormous challenge during the 1960s and early 1970s. Australia became part of a world-wide dramatic social change. It was a time when many began to question long-held beliefs and policies, particularly in the area of civil rights and in relation to the authority of governments and of the courts. The 1960s and 1970s witnessed a public outcry against Australia's involvement in the Vietnam War and against apartheid policies of South Africa.

These social upheavals and the continued economic boom until the early 1970s impacted on the building industry. Overaward bargaining and the union defiance of the penal powers generally undermined the authority of the Australian industrial relations tribunals. There was an upsurge in industrial militancy in the building industry. In the 1960s, the structure of the award covering members of the *Building Construction Employees & Builders Labourers Federation* (ABLF) in NSW was dramatically varied and its NSW branch (NSW/ABLF) elected a militant leadership that pursued violent campaigns during the early 1970s. Through the NSW/ABLF, groups such as the Women's Liberation Movement and environmentalists used the building industry as a testing ground for their ideas.

Despite these challenges, the Master Builders Association of NSW (MBA/NSW) regained internal equilibrium through a restructuring of the association to allow a voice for key sections of its membership in formulating policy and administration. It continued to pursue both contract and industrial relations issues. Its attempts to moderate trade union behaviour during this period culminated in the cancellation of the industrial registration of the ABLF to the recalcitrance of its NSW Branch.

## The Context

By the early 1960s the positive effects of the 1950s wool boom had failed to prevent a balance-of-payments crisis.<sup>1</sup> A credit squeeze imposed on Australia's financial sector attracted angry responses from the banks who argued that they were being punished for problems beyond their control. The banks claimed the roots of Australia's economic problems were the significant fall in the price of wool, the lifting of import restrictions, and the drought in Queensland.<sup>2</sup> This event created an 'atypical' mini-recession.<sup>3</sup> Despite a problem with unemployment in 1961-62 and continuing inflation, boom conditions continued throughout the 1960s and in 1970. Bennett suggests there was 'every reason to believe that Australians would go on enjoying one of the richest and most stable economies in the world.'<sup>4</sup> The Liberal-Country Party coalition continued to dominate federal politics until 1972 and won government in NSW. In the 1965 NSW elections, Robin (later Sir Robert) Askin became Premier of NSW when the Liberal-Country Party coalition was elected to office, breaking 25 years of Labor domination of the NSW state government.<sup>5</sup>

The Liberal-Country Party coalition governments dominated Australian politics in the late 1960s but faced social unrest. In 1965 the Menzies federal Government committed Australian troops to fight in Vietnam.<sup>6</sup> Harold Holt, who succeeded Menzies as Prime Minister on his retirement in January 1966, maintained the Australian presence in Vietnam. There were violent demonstrations held at Garden Island Naval Base in Sydney and at the RAAF Base at Richmond over the departure of the first Australian conscript troops.<sup>7</sup> Street demonstrations and marches became a common form of protest during the 1960s and 1970s and often ended in violence and mass arrests. The University of Sydney became a rallying point for many movements that emerged from the mid 1960s to the early 1970s, including the Freedom Ride for Aboriginal rights in 1965 and the Women's Liberation Movement.<sup>8</sup>

<sup>1</sup> M. L. Alexander, 'Australia in the capitalist world economy', in Brian W. Head (ed.), *State and Economy in Australia*, Oxford University Press, Melbourne, 1983, p. 69.

<sup>2</sup> *Sydney Morning Herald* (hereafter *SMH*), 17.11.1960, pp 1, 2, 4.

<sup>3</sup> R. Catley, 'The politics of inflation and unemployment, 1970-82', in Head (ed.), *State and Economy*, p. 278.

<sup>4</sup> Raymond Bennett, *Applied Economics and Australian Business*, M M & B Books, Sydney, 1978, p. 204. *SMH*, 11.5.1965, pp. 1, 2.

<sup>5</sup> *Ibid*, 30.4.1965, pp. 1, 4.

<sup>6</sup> *Ibid*, 20.4.1966, pp. 1, 2, 8.

<sup>7</sup> *Ibid*, 20.4.1966, pp. 1, 2, 8.

<sup>8</sup> Sam Lipski, 'Alien Son - The Dark Side of Charles Perkins', *The Bulletin*, 24.9.1966, p. 28; Sue Willis, 'The Women's Liberation Movement' in Richard Lucy (ed.), *The Pieces of Politics*, Macmillan, South Melbourne, 1983, p. 313.

The death of Joseph Stalin and the invasion of Hungary in the 1950s had a dramatic and divisive effect on the membership of the Communist Party of Australia (CPA), and led to differing interpretations of the ideology of Marx-Lenin between Moscow and Peking. A pro-Peking group within the CPA broke away in the early 1960s.<sup>9</sup> The CPA leadership denounced the Soviet Union after the armed invasion of Czechoslovakia, an act that further split the CPA membership. The leadership of the NSW Branch of the Building Workers Industrial Union of Australia (NSW/BWIU) established the Socialist Party of Australia (SPA) which remained a supporter of the Soviet Union. However, according to Tom McDonald (NSW/BWIU), the split was 'also about serious differences in industrial tactics. These industrial differences were to surface in a big way in the 1970s.'<sup>10</sup>

In 1956 the High Court held that the Arbitration Court had no power to impose penalties on those who refused to obey its orders. The federal government amended the Act and replaced the Arbitration Court with an Arbitration Commission and an Industrial Court. While this removed any doubt about the Court's authority, employers initially heeded ACTU warnings and made little use of the penal provisions. In the 1960s, employers started to more frequently use the penal provisions which provided fines for workers who went on strike and any union officials who advised them to do so. Those who refused to obey the Court's orders faced imprisonment. In 1967 the Industrial Court levied \$10,000 in fines but in the following year it fined unions almost \$100,000.<sup>11</sup>

That situation came to an abrupt end in May 1969 after Clarrie O'Shea, the secretary of the Australian Tramway and Motor Omnibus Employees' Association, was imprisoned due to his union's continued refusal to pay fines imposed on it during the one-man bus dispute between 1962 and 1969.<sup>12</sup> At his arrest, 5000 shop stewards demonstrated in Melbourne and over the next few days about a million workers stopped work around Australia. The fines were paid anonymously and Clarrie O'Shea was released from gaol. After the O'Shea affair,

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<sup>9</sup> David Plowman, 'The Victorian Trades Hall Split: A Study of Inter-Union Conflict', in Bill Ford and David Plowman (eds.), *Australian Unions*, Macmillan, South Melbourne, 1983, p. 306.

<sup>10</sup> Tom and Audrey McDonald, *Intimate Union*, Pluto Press, Australia, 1998, p. 107.

<sup>11</sup> James Hagan, *The ACTU: A Short History on the occasion of the 50<sup>th</sup> Anniversary 1927-1977*, A.H & A.W. Reed Pty Ltd, Terrey Hills, Sydney 1977, p.76

<sup>12</sup> R. C. McCallum and R. R. S. Tracey, *Case and Materials on Industrial Law in Australia*, Butterworths, Sydney, 1980, pp. 226-227.

the federal government conceded the need for revision of the penal clauses.<sup>13</sup> However, the contempt provisions fell into disuse and were virtually done away with in 1970.<sup>14</sup>

In the wake of the O'Shea Case, in 1971, the Askin Government amended the NSW Industrial Arbitration Act by strengthening the prohibition on industrial action. It was easier for unions to be prosecuted for illegal strikes. The NSW Industrial Commission could also deregister or fine a union which participated in a strike in an essential service industry. As Frazer observed:

It is not surprising ---- that the State's illegal strike provisions were infrequently used; while a handful of cases were instituted annually, it seems that they either lapsed or were withdrawn and almost no cases were pursued to a final hearing after 1972.<sup>15</sup>

On 5 December 1972, the 23 year rule of the federal Coalition government ended when the ALP led by Edward Gough Whitlam won an election. The Whitlam Government, however, faced both economic and political problems. Inflation had become a serious problem from the beginning of the 1970s and rose sharply in 1973. It increased to over 20 per cent on an annual basis for one quarter during late 1974. Unemployment rose with inflation to a post-war record of 4.5 per cent in 1975.<sup>16</sup> The Liberal-Country Party Opposition blocked the 1975 Budget by refusing supply through the conservative dominated Senate. The political crisis lasted from 16 October 1975 until just after midday on 11 November 1975 when the Governor-General handed Whitlam a notice of dismissal thus creating a constitutional crisis which ended with the dissolution of Parliament later that afternoon.<sup>17</sup> In the election that followed, the Liberal-Country Party coalition led by Malcolm Fraser won a sweeping victory.<sup>18</sup>

Within this context, as Table 8.1 below indicates, there was a dramatic growth in the construction of housing. The market for flats owned by individuals, which emerged in the 1950s, was inhibited by the inability of purchasers to obtain title for individual flats, as the only title available for blocks of flats was company title. The *Conveyancing (Strata) Titles*

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<sup>13</sup> James Hagan, *Op Cit*, pp77, 80 and 81

<sup>14</sup> McCallum and Tracey, *Case and Materials*, p. 227.

<sup>15</sup> Andrew Frazer, 'Alexander Craig Beattie: 1966-1981', in Greg Patmore (ed.), *Laying the Foundations of Industrial Justice*, Federation Press, Sydney, 2003, pp. 219-20.

<sup>16</sup> R. Catley, 'The politics of inflation', p. 278.

<sup>17</sup> Clem Lloyd, 'Edward Gough Whitlam', in Michelle Grattan (ed.), *Australian Prime Ministers*, New Holland Publishers, Sydney, 2000, p. 346.

<sup>18</sup> Paul Kelly, 'John Malcolm Fraser', in Grattan (ed.), *Australian Prime Ministers*, p. 356.

*Act*, 1961, solved that problem and led to a dramatic increase in flat ownership from 1,646 in 1957-58 to 15,991 in 1964-65.<sup>19</sup> Such flats became known as home units. The growing interest in home-unit construction had implications for the union movement. With the exception of the Housing Commission area, there is little trade union involvement in the housing sector of the building industry. The widespread and irregular pattern of such projects made organizing workers extremely difficult. On the other hand, due to the significant sizes and operations of the sub-contractors engaged to perform the works, home-unit construction had a congregation of labour and processes similar to those in commercial construction.

**TABLE 8:1**

**NEW HOUSES AND FLATS CONSTRUCTED IN NSW 1957-1969**

YEARS	VALUE	NUMBER	UNIT PRICE
1957-1958	\$161 million	26,445	6088.11
1958-1959	\$185 million	30,030	6160.51
1967-1968	\$349 million	41,378	8434.43
1968-1969	\$408 million	45,156	9035.34

Source: Commonwealth Statistician, *Building and Construction Bulletin 1966-67 no. 3*, pp. 92, 104. *Quarterly Bulletin of Building Statistics no. 86*, pp. 12, 24.

The building boom began to subside in 1973. In August the Federal Treasurer, Frank Crean, announced a credit squeeze in the form of higher interest rates and a sharp reduction in money supply.<sup>20</sup> By the end of the first quarter in the financial year 1974-1975, those initiatives had led to a 23.9 per cent fall in savings bank loans and 49.8 per cent in permanent building society loans. A release of savings bank funds for housing in 5 September 1974 was regarded by the MBA/NSW as insufficient to avert a major housing slump.<sup>21</sup>

### **Structure and Leadership**

During the 1950s the complexion of the industry and the structure of the MBA/NSW membership had changed. More large companies joined the MBA/NSW. These included A.V. Jennings Industries in 1962, Westfield Development Corporation in 1963 and Mainline Constructions in 1965. The admission to membership of Pettit, Sevitt & Partners in 1962 and

<sup>19</sup> MBA/NSW, *Minutes of Council of Management*, 9.9.1969, p. 24.

<sup>20</sup> Bennett, *Applied Economics and Australian Business*, p. 261.

<sup>21</sup> *Builder NSW*, September 1974, p. 378.

Lend Lease Homes Pty Ltd in 1963, the two significant housing developers, added further pressure to the membership mix. Silas (Si) Edwards was the last major contractor to serve as MBA/NSW President in 1960.

Despite the shift in the benchmark for what constituted a major builder, it is important to acknowledge three facts. Firstly, some traditional members, such as Kell & Rigby and Robert Wall & Sons, continued to be major contractors and to compete for work with the large public corporations. Secondly, whilst major builders no longer sought office within the MBA/NSW, those who did serve as President during this period were themselves substantial builders with wide community interests. Emil Joseph McMahon (1967-1968) was a director of St. George Hospital, and Peter Anderson (1971-1972) was widely respected by the Parents & Citizens movement and within the surf life-saving community. Alex Gall (1965-1966) and Ernest Morris (1969-1970) won substantial government contracts, whilst Harry Hall (1973-1975) was a substantial property developer in the northern suburbs.<sup>22</sup> Thirdly, the MBA/NSW leadership sought ways in which the major builders could determine MBA/NSW policy affecting their operations without the problem of veto by a Council of Management dominated by small to medium sized builders. For example, Ernie Morris as President in 1970 introduced meetings of major contractors and established the Industrial Policy Committee (IPC) comprising members of the Industrial Relations Committee and the Executive Committee. The major contractors meeting became a regular event during the years 1972 to 1975 to discuss issues related to the application for the deregistration of the ABLF, post-deregistration tactics, and the 1974-1975 application for a national award for building tradesmen. It was also common practice for the IPC to meet immediately following a major contractors' meeting and ratify its resolutions. The IPC, due to the inclusion of the Executive Committee, had the authority to make decisions between meetings of the Council of Management which, despite an occasional expression of protest, invariably ratified its decisions. During the industrially volatile period from 1972 to 1975 the incumbent presidents, Peter Anderson (1971-1972) and Harry Hall (1973-1975), invited the heads of major building companies to advise the Executive Committee on specific industrial issues. Through that pragmatic strategy, the large builders retained leadership of the MBA/NSW in matters that really affected them.<sup>23</sup>

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<sup>22</sup> J.R. Elder, *Diary Notes*, MBA/NSW, 1972, 1973, 1974.

<sup>23</sup> J.R. Elder, *Diary Notes*, MBA/NSW, 1972, 1973; MBA/NSW, 'Report of Meeting between the Major Contractors Committee and the Executive Committee', *Council of Management Minutes*, 9.10.1973.

Every metropolitan and many country divisions of the MBA/NSW held their own executive, administrative and general meetings as well as annual social events. The country divisions included Wollongong, Blue Mountains, Central Coast and the Hunter District. Some MBA/NSW staff acted as divisional secretaries. In that way the MBA/NSW provided its heterogeneous membership with peer forums at which local and operational issues could be discussed. The annual dinners and other social events hosted by each division were important forums. It was also a means by which internal equilibrium was achieved by the MBA/NSW.

During the 1960s the MBA/NSW engaged more specialist staff and, in providing diverse areas of service, assumed a bureaucratic structure. Henry Raymond Woodward became the first MBA/NSW Contracts Officer in 1962. An Administrative Officer and a Field Officer were hired by the MBA/NSW in 1964.<sup>24</sup> In the following year a Contracts Officer was appointed to assist Woodward.<sup>25</sup> Ford, the MBA/NSW General Secretary, resigned in 1968, and the role and duties of the General Secretary were considered to have altered to an extent that an Executive Director was sought to succeed Ford.<sup>26</sup> On 10 September 1968 John David Martin was appointed MBA/NSW Executive Director,<sup>27</sup> and in 1969 Walter James Glover commenced as Industrial Officer and a Housing Officer was appointed. John Wilson Twyford, a lawyer, replaced the Housing Officer in 1970 under the title of Legal/Research Officer.<sup>28</sup>

In 1972, a third Industrial Officer, John Richard Elder, was appointed and the MBA/NSW journal, *Builder NSW*, commenced publication thereby ending the relationship between the MBA/NSW and *Construction*.<sup>29</sup> In 1973, Les Ball resigned and was succeeded as Manager of the Industrial Relations Department by Walter Glover.<sup>30</sup> In 1974 John Martin, Executive Director, resigned and was succeeded by Raymond Leslie Rocher, the MBA/NSW Deputy President,<sup>31</sup> who was the first builder to so serve since William Dalton Banks served as Honorary Secretary in 1893-1894.

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<sup>24</sup> MBA/NSW, 'President's Report', *Annual Report 1964*, Building Publishing Co., Sydney, 1964,

<sup>25</sup> MBA/NSW, 'Report of Administration Committee', *Annual General Meeting*, 5.12.1967.

<sup>26</sup> MBA/NSW, *Proceedings of the Executive Committee*, 20.5.1968.

<sup>27</sup> MBA/NSW, *Annual Report*, Building Publishing Co., Sydney, 1968.

<sup>28</sup> MBA/NSW, *Minutes of Executive Committee*, 12.8.1969, 11.8.1970.

<sup>29</sup> MBA/NSW, *Annual Report*, Building Publishing Co., Sydney, 1972.

<sup>30</sup> MBA/NSW, *Annual Report*, Building Publishing Co., Sydney, 1973.

<sup>31</sup> MBA/NSW, *Annual Report*, Building Publishing Co., Sydney, 1974.

### Regulation, Trade and Tendering Problems

This period saw the achievement by the MBA/NSW of its long-standing demand for builders' licensing. In 1962 the MBA/NSW produced a paper identifying the housing sector as the largest source of building works attracting the least skilled operative builders. To protect homebuyers against inferior workmanship and defaulting builders, it proposed minimum requirements in training and experience.<sup>32</sup> MBA/NSW housing members unsuccessfully asked the association for stickers showing their file numbers as some form of guarantee of quality and reliability. Having disbanded its Complaints Committee 'due to the volume of work getting out of hand',<sup>33</sup> it conducted a survey of membership views on 'internal regulation of builders and guarantee schemes for both domestic and commercial builders.'<sup>34</sup> The MBA/NSW pursued the issue through the press,<sup>35</sup> and established a special sub-committee to oversee the process.<sup>36</sup> Housing members expressed concern at the increasing status of the Housing Industry Association (HIA) and a vacuum in MBA/NSW housing policy.<sup>37</sup> The MBA/NSW lobbied the NSW Government and the Opposition and conducted a successful publicity campaign generating support for a Select Committee,<sup>38</sup> that began hearings in December 1969. John Twyford (Legal/Research Officer) attended each day of the proceedings, and provided regular reports so the MBA/NSW could plan its strategy.<sup>39</sup> The Select Committee adopted MBA/NSW recommendation for licensing of *all* builders.<sup>40</sup> However, the *Builders' Licensing Act* that was proclaimed in July 1971 applied only to domestic building. The Builders' Licensing Board (BLB) was established by the end of that year, and the insurance provisions of the Act became operative on 2 April 1973. By the end of that year the BLB had prosecuted a number of builders for poor quality workmanship, and one builder was prosecuted in Hornsby Court of Petty Sessions (as it was then known) for building without a licence.<sup>41</sup>

<sup>32</sup> MBA/NSW, *Minutes of Council of Management*, 2.5.1962.

<sup>33</sup> MBA/NSW, 'Report of Complaints Committee', *Annual Report*, Action Printers, Sydney, 1960.

<sup>34</sup> MBA/NSW, *Minutes of Council of Management*, 8.12.1964.

<sup>35</sup> MBA/NSW, *Minutes of Executive Committee*, 15.1.1969.

<sup>36</sup> MBA/NSW, 'List of 1969 Committees', *Minutes of Council of Management*, 21.1.1969.

<sup>37</sup> MBA/NSW, *Minutes of Council of Management*, 13.5.1969.

<sup>38</sup> MBA/NSW, *Minutes of Council of Management*, 10.6.1968, 14.5.1968; MBA/NSW, *Minutes of Executive Committee*, 21.7.1969.

<sup>39</sup> J. W. Twyford, *Report of Proceedings before Parliamentary Select Committee*, 9.12.1969.

<sup>40</sup> NSW Parliamentary Select Committee, *Report upon the Building Industry*, October 1970, pp. 12- 17.

<sup>41</sup> MBA/NSW, *Annual Reports*, 1970-73.



Major trade and tendering issues during this period arose from demands for an escalation clause in all contracts over a certain value, and from the introduction of trade practices legislation. In 1961 the association implemented a policy by which members were required to include rise and fall (escalation) provisions in all tenders for work exceeding \$50,000 in value.<sup>42</sup> Following problems with private building proprietors, architects and the NSW Public Works Director, the policy was amended so as to apply to tenders for projects lasting longer than twelve months and to enable members to negotiate a ceiling figure for rises payable under an escalation clause.<sup>43</sup> Those variations, however, did not affect the general principle behind the policy and those who tendered for works that fell within the new parameters, qualified their tenders in the original terms designed in 1961:

This tender is made on the basis also that a 'Rise and Fall' clause will be inserted in the contract in the terms of the MBA Circular No.7/61, a copy of which is attached.<sup>44</sup>

In 1961, the formula for the MBA/NSW 'Rise and Fall' was related to movements that occurred within the life of the contract to the average weekly wage, and was calculated by averaging the wages of the carpenter, bricklayer, painter, plumber and plasterer with the average of the four classifications for builders' labourers. The formula was then applied to the value of the uncompleted portion of the contract at the time wage movements occurred. It was a formula adopted by the NSW Department of Works in 1959 and was regarded by some as inadequate as it did not consider other employment costs.<sup>45</sup> After 1970 there were two 'Rise and Fall' formulae in common use in the NSW building industry: the second formula was the product of the Building Industry Advisory Council (BIAC) of which the MBA/NSW was an influential member.<sup>46</sup> The BIAC formula was regarded as more beneficial to the builder as it was adjusted by the actual cost to the contractor and included variations to annual leave provisions.<sup>47</sup>

The MBA/NSW also faced the challenges of trade practices legislation. Since its formation in 1873, the MBA/NSW implemented policies related to conditions of contract and

<sup>42</sup> MBA/NSW, *Minutes of Council of Management*, 11.7.1961.

<sup>43</sup> MBA/NSW, 'Report of Escalation Clause Committee', *Annual Report*, 1961.

<sup>44</sup> MBA/NSW, *Unilever, North Rocks, Tender*, Limited Circular, 5 June 1963.

<sup>45</sup> H.R. Woodward, *Special Contracts Etc*, University of NSW, roneoed, July 1974, p. 4.

<sup>46</sup> BIAC, which was established in 1964, credits its origins to a survey conducted by the engineering profession in 1960, which identified a significant communications gap between builders and designers.

Interview with Peter Tyler (Dr), Executive Director of BACC (formerly BIAC), 30 November 2004.

<sup>47</sup> P.J. Bryant, *Contracts: Application of Rise and Fall*, MBA/NSW, Newtown, 1972.

to tendering. Its Executive Committee would summon tenderers to a meeting and the tender and contractual conditions for that specific project would be decided in accordance with MBA/NSW policies and enforced by the association. The practice was well known throughout the industry, and it was normal practice to report the results of those tender meetings to general monthly meetings of members.

The MBA/NSW viewed the collusive tendering provisions of the *Trade Practices Act* 1967, a Commonwealth Act, as 'entirely a statutory offence that could cover agreements that are not in any way illegal or commercially immoral.'<sup>48</sup> It did, however, recognise that both the Commonwealth Act and the NSW *Consumer Protection Act* made it an offence for tenderers to hold discussions. Despite its belief that the NSW legislation sanctioned its tender meetings and that any possible objection to its tendering procedures would be dealt with in the NSW jurisdiction,<sup>49</sup> the MBA/NSW took the precaution of inviting architects to tender meetings. This initiative caused some disquiet within the NSW Chapter of the Royal Australian Institute of Architects (NSW/RAIA), which had already begun to resist the promotion of standard forms of contract by the MBA/NSW. A meeting to resolve the problem with the NSW/RAIA was unsuccessful.<sup>50</sup>

The MBA/NSW met representatives of Commonwealth and NSW State authorities to discuss the status of its tender meetings under the collusive tendering provisions of the *Restrictive Trade Practices Act* 1971 and the *Restrictive Trade Practices Act* 1972, and at the end of 1972, MBA/NSW officers recorded their belief that:

--- there was little chance of objection provided the association maintained the general practice always followed ---- conditions and refraining (as always has been invariably the case) from any attempt whatever to regulate pricing ----.<sup>51</sup>

At the end of 1973, however, the (Whitlam) Commonwealth Labor Government had put a Bill before the House for the introduction of a new Act to address the issue of trade practices, which the MBA/NSW viewed with some trepidation. The legal advice sought by Master Builders Federation of Australia (MBFA) provided the MBA/NSW with little comfort.<sup>52</sup> The *Restrictive Trade Practices Acts* of 1971 and 1972 were repealed by the *Trade Practices Act*,

<sup>48</sup> MBA/NSW, 'Report of Contractual Relations Committee', *Annual Report*, 1968, pp. 15-16.

<sup>49</sup> MBA/NSW, 'Report of Contractual Relations Committee', *Annual Report*, 1970, pp. 11-12.

<sup>50</sup> MBA/NSW, 'Report of Contractual Relations Committee', *Annual Report*, 1971, p. 19.

<sup>51</sup> MBA/NSW, *Annual Report*, 1972, pp. 18-19.

<sup>52</sup> MBA/NSW, *Annual Report*, 1973, p. 18.

1974 when it came into effect on 1 October 1974. The MBA/NSW initially expressed its belief that its practice of inviting architects to tender meetings, despite absence of response to those invitations, was a procedure that may be acceptable under the 1974 Act. However, after receiving advice from the Trade Practices Commission,<sup>53</sup> the MBA/NSW announced that its tender policies 'would no further be used or implemented.'<sup>54</sup> The MBA/NSW found that with careful wording, however, its publication of charge-out rates was not in breach of the *Trade Practices Act 1974*.<sup>55</sup>

### **Industrial Relations in the Building Industry**

The need for sufficient numbers of tradesmen has always provided a challenge for the MBA/NSW and its membership. A report by Justice Alexander Beattie of the Industrial Commission of NSW into the State's apprenticeship system, produced in July 1968, proposed the creation of an advisory council and expanding the Industrial Commission's role to set general terms of indenture and training. His report was implemented in 1969 as the *Apprentices Act 1969*,<sup>56</sup> s.40 of which reduced the term of apprenticeship in the NSW building industry from five years to four years.<sup>57</sup> The MBA/NSW made a detailed submission to the Inquiry 'on the question whether skilled tradesmen are being trained in the number necessary to meet the reasonable needs of industry' and provided figures to suggest that during the 20 years ended 1965, that NSW had gained an average of 1,270 tradesmen per annum from the apprenticeship system and an average of 1,132 tradesmen per annum from migration.<sup>58</sup> By 1970 the MBA/NSW was concerned at dwindling numbers of tradesmen due to a decline in the numbers migrating to Australia, and saw any increase in apprenticeships as unlikely due to the high employment and training costs.<sup>59</sup> Further, the uncertainty of continued market demand made builders and subcontractors reluctant to enter an apprenticeship contract, a problem the MBA/NSW sought to answer by establishing its Group Apprenticeship Scheme in 1973.<sup>60</sup> The

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<sup>53</sup> MBA/NSW, *Annual Report*, 1974, p. 9.

<sup>54</sup> MBA/NSW, *Annual Report*, 1975, p. 12.

<sup>55</sup> MBA/NSW, *Minutes of Government contracts and trade practices Subcommittee*, 1975.

<sup>56</sup> Frazer, 'Beattie', p. 213.

<sup>57</sup> MBA/NSW, 'Report of Proceedings of two meetings of the Apprenticeship Subcommittee', *Minutes of Council of Management*, 11.11.1969.

<sup>58</sup> Industrial Commission of NSW, *The Apprenticeship System in NSW, A Report By the Commission to the Minister for Labour and Industry – July 1968*, NSW Government Printer, Sydney, 1969, pp. 39-40.

<sup>59</sup> *Builder NSW*, March 1974, pp. 86-8.

<sup>60</sup> MBA/NSW, 'Apprenticeship Committee Meeting 8/11/1973', *Minutes of Council Meeting*, 13.11.1973.

scheme commenced operations with 26 Apprentices in January 1974. Whilst regarded as a pioneering achievement, the idea was first floated in 1926 by the then MBA/NSW Secretary.<sup>61</sup> The scheme operated by the MBA/NSW employing the apprentices and then placing them with Host Employers who provided them with work and on-the-job training. The Host employers paid the apprentices under their care and also remitted weekly amounts to the MBA/NSW to offset on-costs from workers compensation, sick days, public holidays and annual leave. The administration costs of the scheme were later (from 1977) funded by the Builders' Licensing Board of NSW through its Education Fund.

In 1969, building unions sought a national long-service scheme for building workers whose casual employment invariably denied them benefits under legislation that operated within each State. A federal committee, established by the MBAs,<sup>62</sup> recommended rejection of the claim as the States of Tasmania and Queensland were at that time considering legislation for the portability of Long Service Leave in the building industry.<sup>63</sup>

Despite attempt by some MBFA officers to retain control of the claim,<sup>64</sup> the issue was resolved on a state-by-state basis. In NSW, the subject was initially to have been dealt with by the State Industrial Commission,<sup>65</sup> but with MBA/NSW support the NSW Building Trades Group of Unions (the BTG) achieved its objective through the passage of the *Building and Construction Industry Long Service Payments Act, 1974*.<sup>66</sup> The manner in which the unions' long-service demands were realized during the 1970s was a tranquil oasis in the NSW industrial relations environment that was marked by inter-union disputes, intra-union disputes between the ABLF and the NSW/ABLF and by the deregistration of the ABLF.

The development of NSW building awards since the introduction of multi-storey allowance in 1956 and up to 1975 provided an important background for these conflicts. It commenced when the NSW/BWIU successfully included a claim for a multi-storey allowance for work 'above the fourth floor storey' when applying for a new *Carpenters and Joiners and Bricklayers (State) Award* in 1956.<sup>67</sup> Whilst opposing the claim on the basis that

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<sup>61</sup> MBA/NSW, *Minutes of Half-Yearly General Meeting*, 17.8.1926.

<sup>62</sup> MBFA, *Minutes of Council Meeting*, 25-26.5.1969, p. 9.

<sup>63</sup> MBFA, *Minutes of Council Meeting*, 21.9.1969, p. 7.

<sup>64</sup> J. M. Jorgensen, *Memorandum to Federal Councillors*, MBFA, Canberra, 8.10.1969.

<sup>65</sup> MBA/NSW, 'Report of Industrial Relations Committee', *Annual Report*, 1972, p. 7.

<sup>66</sup> MBA/NSW, 'Report of Portability of Long Service Committee', *Annual Report*, 1975, p. 23.

<sup>67</sup> *NSW Industrial Gazette*, vol. 123, 1956, pp. 32-42 at p. 40.

multi-storey work had been undertaken for many years and any disabilities peculiar to it had already been considered during the fixation of margins, the MBA/NSW admitted that there had been an increase in the number of such buildings constructed.<sup>68</sup> When making the *Carpenters and Joiners and Bricklayers (State) Award 1960*, Justice Taylor observed that the relevant change was not in the number of multi-storied buildings but in their height, and noted that ‘the new AMP building at Circular Quay’ was ‘to reach a height of 26 storeys.’ In varying the multi-storey allowance, he introduced a higher rate to work above the 10<sup>th</sup> floor storey and a still higher rate for all work above the 16-floor storey.<sup>69</sup>

The MBA/NSW also faced wage demands from the NSW/ABLF. The growing size of buildings increased the number of builders’ labourers, in the Central Business District (CBD) of Sydney. Before the 1960s, employers regarded the NSW/ABLF leadership as moderate. However, this changed in 1961, when the left-wing Rank-and-File ticket won the NSW/ABLF elections. Mick McNamara, a 22-year-old labourer, became the new secretary of a debt-ridden branch. Many members paid their union dues in advance and union officials worked without pay for many weeks.<sup>70</sup> The ABLF applied for a new federal award and hearings were held before Commissioner Webb in Sydney between September and November 1961.<sup>71</sup> Whilst the hearings resumed on 12 February 1962, a NSW/ABLF conference of delegates on 18 February 1962 reported widespread discontent among the NSW/ABLF membership. The basis of that discontent was the higher wages and conditions received by other building workers and the NSW/ABLF was directed to obtain an interim agreement to overcome the alleged disparity.<sup>72</sup> Disputation and adjourned hearings led to MBA/NSW complaints,<sup>73</sup> until the hearings finally resumed and the *Builders Labourers (Construction on Site) Award 1962* replaced the previous two classes of labourers with four classifications.

As Table 8:2 below indicates there was now a complex wage structure for builders’ labourers.

<sup>68</sup> *NSW Arbitration Reports*, vol. 55, 1956, pp. 348-387 at p. 372.

<sup>69</sup> *NSW Arbitration Reports*, vol. 59, 1960, pp. 694-706 at p. 704.

<sup>70</sup> Paul True, *Tales of the BLF: Rolling the Right!*, Militant Publications, Parramatta, 1996, pp. 51-2.

<sup>71</sup> MBA/NSW, ‘Report on the Activities of the Industrial Department for the period ending 11 November 1961’, *Minutes of Council of Management*, 14.11.1961.

<sup>72</sup> Letter from M. McNamara (NSW/ABLF) to W. D. Ford (MBA), 28.2.1962.

<sup>73</sup> L. R. Ball, *Report on Builders Labourers’ Request for Interim Agreement*, MBA/NSW, 2.3.1962; Letter from H. N. Barton (President, MBA/NSW) to NSW/ABLF, undated (circa March 1962).

**Table 8:2**

**CLASSIFICATIONS AND WAGE MARGINS FOR BUILDERS' LABOURERS  
IN THE NEW ABLF AWARD**

<b>1.</b>	(i) <b>Drainer</b> (ii) <b>Rigger</b> (iii) <b>Dogman</b>	£4/-/- per week (\$8.00)
<b>2.</b>	(i) <b>Scaffolder</b> (ii) <b>Powder Monkey</b> (iii) <b>Hoist or Winch Driver</b>	£3/5/- (\$6.50)
<b>3.</b>	(i) <b>Bricklayer's labourer</b> (ii) <b>Assistant Rigger</b> (iii) <b>Assistant Powder Monkey</b> (iv) <b>Demolition Work (after three months experience</b> (v) <b>Gear Hand</b> (vi) <b>Pile Driver</b> (vii) <b>Tackle hand</b> (viii) <b>Jackhammer man</b> (ix) <b>Concrete Mixer driver</b> (x) <b>Steel and/or Bar bending</b> (xi) <b>Steel erection</b> (xii) <b>Aluminium alloy structural erector</b> (xiii) <b>Gantry hand or Crane hand</b> (xiv) <b>Crane chaser</b>	£2/-/- (\$4.00)
<b>4.</b>	<b>Builders' labourer employed on work other than that specified in the previous classifications</b>	£1/1/- (\$2.10)

Source: *Commonwealth Arbitration Reports*, vol. 101, 1962-63, p. 340.

The new ABLF award, however, failed to provide builders' labourers in NSW with many benefits that had been awarded to building tradesmen by the *Carpenters and Joiners and Bricklayers (State) Award 1960*. All building unions joined the NSW/ABLF in its criticism of the result and jointly called upon the MBA/NSW to rectify the anomalies by reinstating its former private (unregistered) agreement with the NSW/ABLF and providing such benefits through that agreement.<sup>74</sup> The NSW/ABLF served the MBA/NSW with a log of claims,<sup>75</sup> and McNamara outlined the claims to a meeting of the MBA/NSW Council of Management. In light of NSW/ABLF disputation in support of its demands, the demands were rejected.<sup>76</sup> The industrial action continued to such an extent that the federal Commission, on its own motion, convened a private conference of the major parties to the ABLF award.<sup>77</sup> The matter was finally resolved on 11 March 1964 when the federal

<sup>74</sup> Letter: L. Schurr, Secretary, Building Trades Group, Labor Council of NSW, to MBA/NSW, 18.2.1963.

<sup>75</sup> NSW/ABLF, *Log of Claims – for hand service on Master Builders Association*, 19.2.1963.

<sup>76</sup> MBA/NSW, *Minutes of Council of Management*, 19.2.1963.

<sup>77</sup> L. R. Ball, 'Report to General Secretary', *Minutes of Council of Management*, 13.8.1963.

Commission decided to grant the application ‘for uniformity of conditions with tradesmen in NSW’, a decision that the MBA/NSW decided not to appeal due to legal advice that any appeal was likely to fail.<sup>78</sup>

The rank and file ticket won the 1964 NSW/ABLF elections outright and Mick McNamara retained his position of secretary. His leadership team included Jack Munday, a member of the CPA. The leadership moved into the NSW/BWIU offices in 1964 and the two unions worked in close cooperation.<sup>79</sup> Also in 1964, Norm Gallagher, who had become Federal Secretary of the ABLF in 1961, broke away from the CPA and helped form another party that was pro-Maoist. In 1968, Mick McNamara resigned and was succeeded by Jack Munday.<sup>80</sup> Munday enjoyed a close relationship with Jack Cambourne, NSW Branch secretary of the Federated Engine Drivers and Firemen’s Association of Australasia (NSW/FEDFA), a relationship fostered by their shared membership of the CPA,<sup>81</sup> and one that had certain industrial relations implications. Crane drivers in NSW, members of the NSW/FEDFA, operated two basic types of cranes - mobile cranes and lofty cranes - each requiring its own particular certificate of competency. All lofty crane drivers employed by members of the MBA/NSW were paid under the terms of the registered Lofty Crane Drivers Agreement,<sup>82</sup> but mobile crane drivers were paid in accordance with the *Engine Drivers’ General (State) Award*. Crane crews and the militant unions that represented them exploited the important role played by lofty cranes in high-rise construction.

Another significant group of builders’ labourers were dogmen. Changes in technology, such as the greater use of concrete and the use of pre-cast concrete panels,<sup>83</sup> widened the scope of work and broadened the range of skills required of dogmen. They connected loads to cranes by hooks or slings and then directed the crane driver when and where to lift and deposit a load.<sup>84</sup> In the 1960s, the increased height in buildings provided a dramatic background to dogmen who would sling the load and then ride it to its destination, and then ride the hook back to street level and sling the next load. The lofty crane was the key to

<sup>78</sup> MBA/NSW, *Minutes of Executive Committee*, 12.3.1964.

<sup>79</sup> Glenn Mitchell, *On Strong Foundations: The BWIU and Industrial Relations in the Australian Construction Industry 1942-1992*, Harcourt Brace, Sydney, 1996, p. 144.

<sup>80</sup> Jack Munday, *Green Bans & Beyond*, Angus & Robertson, Australia, 1981, pp. 40-44.

<sup>81</sup> *National Times*, February 1976, pp. 22-26 at p. 24.

<sup>82</sup> Industrial Agreement no. 2618, *NSW Industrial Gazette*, vol. 143, 1961, p. 1208.

<sup>83</sup> Mary Murphy, *Challenges of Change*, Lend Lease Corporation Limited, Sydney, 1984, p. 22.

<sup>84</sup> *Scaffolding and Lifts Act, 1912*, s.5. The definitions of ‘dogman’ and ‘crane chaser’ were introduced in 1948.

progress on a multi-storey project and the crane driver and the dogman ('the crane crew') occupied positions of great strategic power and regarded themselves as 'independent' from the rest of the workers on site.<sup>85</sup> The NSW/FEDFA's Lofty Crane Drivers Committee became an elite and exclusive group within the union and, due to it lacking any formal legal capacity, was able to vigorously and successfully pursue its 'closed-shop/Union Hall Hire' policies.<sup>86</sup> The industrial power of lofty crane drivers, and their willingness to exercise it, led to some crane drivers obtaining payments well in excess of rates prescribed by the industrial agreement and there were apocryphal claims of extortionate demands on subcontractors who needed to have their equipment and materials lifted to the various working floor levels.<sup>87</sup>

Whilst all specialist builders' labourers (dogmen, riggers and scaffolders) tended to regard themselves as separate from the general labouring force,<sup>88</sup> dogmen assumed an elitist position and established a Committee within their union in which they discussed issues of mutual interest and planned campaigns. The leading role played by the Dogmen's Committee became evident during the latter months of 1969 and in early 1970 during the NSW/BLF margins campaign.<sup>89</sup>

In 1969 the NSW/BWIU applied to the Industrial Commission of New South Wales for a new award for carpenters, joiners and bricklayers. Other building tradesmen's unions made applications in similar terms for new awards to the NSW Industrial Commission and the ABLF also applied in similar terms to the federal Commission. Seventeen conferences were held between the MBA/NSW and the BTG, which included the NSW/ABLF. Pat Clancy (NSW/BWIU Secretary) stressed the unified position of the building unions and that they were seeking social reform through two important issues, paid public holidays and accident pay. Whilst agreeing to the claim for paid public holidays, the MBA/NSW advised the unions to refer the accident pay claim to the NSW Government as it was a matter related

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<sup>85</sup> MBA/NSW, 'Report of Meeting between MBA/NSW Major Contractors and the NSW Branch of the ABLF to discuss problems concerning Dogmen', *Minutes of Council of Management*, 11.7.1972.

<sup>86</sup> 'Evans v Federated Engine Drivers and Firemen's Association of Australasia (NSW)', 6.7.1973, *NSW Industrial Arbitration Reports*, vol. 73, 1973. pp. 394-5.

<sup>87</sup> MBA/NSW 'Report of meeting of major contractors to discuss problems with Lofty Crane drivers on 27/10/72', *Minutes of Council of Management*, 14.11.1972.

<sup>88</sup> Evidence of Joseph James (Joe) Owens during the 1970 Builders Labourers Award Work Value Case. *Transcript of Proceedings*, Commonwealth Conciliation and Arbitration Commission, (C no. 1366 of 1969) and (C no. 1169 of 1970), 13.7.1970, pp. 357-359.

<sup>89</sup> MBA/NSW, *Minutes of Council of Management*, 11.11.1969.



to the *Workers Compensation Act*.<sup>90</sup> The matter went before Mr. Justice Sheehy, who overruled the objections of other employer associations and established a new award, the *Carpenters and Joiners and Bricklayers Construction (State) Award 1969* in terms agreed between the MBA/NSW and the NSW/BWIU.<sup>91</sup>

Shortly after the making of the 1969 BWIU award, the NSW/ABLF commenced a campaign in support of a demand for an increase of \$6.00 to margins. At the heart of that claim was the relationship between the award rates for building tradesmen and builders' labourers, which the union believed had not kept pace with changes in technology and the increased skills required of many builders' labourers. Hearing of the ABLF application was delayed by a campaign pursued by NSW/ABLF dogmen for wage increases.<sup>92</sup> In February 1970, ABLF branches throughout Australia commenced industrial campaigns in support of a \$6.00 per week claim.<sup>93</sup> On the advice of J.T. Ludeke QC, MBA/NSW members reported all NSW/ABLF generated industrial action,<sup>94</sup> and the option of deregistration of the ABLF began to be explored.<sup>95</sup>

In NSW the campaign included strikes, bans, limitations and interrupted concrete pours.<sup>96</sup> A total of 1,805 hours of work were lost in a seven day period on the King Street Parking Station project due to action by builders' labourers; dogmen on another Sydney project refused to complete concrete pours on three separate occasions in February 1970. A dogman on the Sydney Trades Hall project was ordered by an official of the NSW/ABLF to cease work on a concrete pour whilst trucks of concrete waited to be unloaded.<sup>97</sup> On 23 February 1970, all dogmen in Sydney went on a twenty-four hour strike in support of the demand for increased wages. A federal Commission hearing on 2 March 1970 proved abortive. However, the MBAV received respite from industrial pressure by agreeing to enter negotiations,<sup>98</sup> but the industrial pressure in NSW continued unabated. Later that month the parties exchanged certain assurances and the disputation was halted. The MBAs were

<sup>90</sup> MBA/NSW, *Annual Report*, 1969, p. 10.

<sup>91</sup> *The Australian Law Review*, vol. xi, no. 26, 8.11.1969, pp. 6-7.

<sup>92</sup> MBA/NSW, *All Member Circular No. 36/1969*, 4.11.1969.

<sup>93</sup> MBA/NSW, *Minutes of Council of Management*, 10.3.1970.

<sup>94</sup> MBA/NSW, *All Member Circular No 4/1970*, 26.2.1970.

<sup>95</sup> MBA/NSW, *Minutes of Major Contractors Meeting*, 26 February 1970.

<sup>96</sup> MBA/NSW, *Minutes of Council of Management*, 10 March 1970.

<sup>97</sup> *Transcript of Proceedings*, in the Matters of: Master Builders Association of NSW (C no. 130 of 1970); of Master Builders Association of Victoria (C no. 936 of 1970); of Fricker Bros Pty Ltd, South Australia (C no. 609 of 1970); and the Australian Builders Labourers' Federation – 2.3.1970, p. 4.

<sup>98</sup> MBA/NSW, *Minutes of Industrial Relations Committee*, 4 .3.1970.

divided: with MBAV not opposed to negotiating on the issue of margins; MBA/NSW demanded that the Commission determine the issue; and, the MBAs of South Australia and Western Australia flatly opposed to any increase in margins.<sup>99</sup>

The MBAV obtained an extension to its truce at a meeting with the ABLF on 26 April 1970,<sup>100</sup> but in NSW there was a general stoppage of builders labourers on 4 May 1970 followed by five weeks of industrial action. The dispute continued to be marked by violence for which Jack Munday blamed the MBA/NSW's refusal to negotiate – a claim somewhat supported by Commissioner Watson.<sup>101</sup> That development led the MBA/NSW to commence negotiations despite continuing strikes.<sup>102</sup> The ABLF rejected 'out of hand' offers made at a meeting in Melbourne and, prior to walking out of the meeting, 'advised employers that the truce which until that time had existed in the Southern States could now be regarded as terminated.'<sup>103</sup> An outbreak of further violence on a number of building sites in NSW followed with builders' labourers invading building sites.<sup>104</sup> Attempts 'to stave off the increasing amount of violence' were rejected by the ABLF,<sup>105</sup> and in the face of further violence one builder was told by police that they could do nothing as the site was not enclosed ' - -- because two panels of our hoarding had been removed' to enable materials to be brought onto the site.<sup>106</sup> Two days later the same site was again invaded with \$13,000 damage being caused despite there being a police presence throughout the time - uncertainty as to their powers in such circumstances was the explanation later given for their reluctance to act.<sup>107</sup> During the margins campaign the NSW/ABLF began to refer to its activists as 'vigilantes',<sup>108</sup> but others of the left within the union movement regarded the term 'vigilante' as

<sup>99</sup> MBA/NSW, 'Report of Meeting of Major Contractors held 17 March 1970'; 'Report of Meeting of Major Contractors held on 26 March 1970'; 'Report of Conference between MBAs on 3 April 1970'; 'Minutes of meeting of Industrial Relations Committee on 7 April 1970', *Council of Management Minutes*, 14 .4.1970.

<sup>100</sup> Les Ball, *Memorandum to the Executive Committee*, MBA/NSW, 26.4.1970.

<sup>101</sup> *Transcript of Proceedings* before Commissioner Watson in Master Builders' Association of NSW and the Australian Builders' Labourers Federation (C no. 486 of 1970) – 15.5.1970, pp. 3, 4, 6, 7, 9A, 11, 12.

<sup>102</sup> MBA/NSW, *Minutes of Special Meeting of Members*, 19.5.1970.

<sup>103</sup> MBA/NSW, 'Report of the Industrial Relations Committee for period ending 1 June 1970', *Minutes of Council of Management*, 9.6.1970.

<sup>104</sup> MBA/NSW, *Minutes of Executive Committee*, 25.5.1970.

<sup>105</sup> MBA/NSW, 'Report of the Industrial Relations Committee for period ending 1 June 1970', *Minutes of Council of Management*, 9.6.1970.

<sup>106</sup> Letter from R. L. Rocher to MBA/NSW, 22.7.1970.

<sup>107</sup> Raymond L. Rocher, Affidavit - Exhibit AAL, *Transcript of Proceedings*, Australian Industrial Court, (B no. 40 of 1972) and (B no.73 of 1973), 3.4.1974, pp. 355-9.

<sup>108</sup> Pete Thomas, *Taming the Concrete Jungle*, NSW/BLF, Sydney, 1973, p. 28.

‘regrettable and certainly non-working class ... a term mainly used by extreme right wing groups to excuse unlawful, terrorist activities.’<sup>109</sup>

Some MBA/NSW members broke ranks and breached the association's policy precluding individual agreements with Unions and were disciplined in accordance with MBA/NSW Rules. On Monday 27 July 1970 four member companies were fined by the MBA/NSW Council for ‘signing an agreement for over award payments and that these actions were regarded as inimical to the interest of this Association.’<sup>110</sup> One of those fined challenged the decision and filed a notice of appeal.<sup>111</sup> A special meeting of members to consider the appeal was cancelled on legal advice and the fines imposed on the four builders, as well as a fine imposed on a fifth builder,<sup>112</sup> were rescinded.<sup>113</sup> Despite that set-back, there appeared to be a closing of ranks on the issue of ‘over-award’ deals. The dispute was finally resolved in 8 June 1970 by the ABLF (and the NSW/ABLF) accepting the employers’ previous offer on an interim basis,<sup>114</sup> and a decision in the work value case before Commissioner Watson significantly narrowed the wages gap between building tradesmen and builders labourers by introducing a percentages system, which became known as the *Watson formula*.<sup>115</sup>

The dispute exposed the dependence of the ABLF on the federal arbitration awards to provide benefits to its membership. The ABLF maintained its status within the union movement through its federal award that, after the 1971 roping-in of Queensland employers, had assumed a ‘national’ character. Munday, whose membership relied on ‘Gallagher’s’ federal award, achieved no enhanced status through the award system and, therefore, perceived more benefit in gains achieved by industrial pressure.<sup>116</sup>

The builders’ labourers’ margins dispute highlighted a number of other issues. It drew attention to the lack of national cohesion between the Master Builders Associations,

<sup>109</sup> Building Industry Branch of the Socialist Party of Australia, *Six Turbulent Years: Lessons from the rise and fall of the NSW Builders Labourers leadership and building industry struggles 1969-75*, Sydney, undated, p. 24.

<sup>110</sup> MBA/NSW, *Minutes of Special Meeting of the Council of Management*, 27.7.1970.

<sup>111</sup> J.E. Rowell, *Notice of Appeal against \$1000 fine*, Rowell & Muston (Builders) Pty Ltd, 3.8.1970.

<sup>112</sup> MBA/NSW, *Council of Management Minutes*, 11.8.1970.

<sup>113</sup> *Ibid.*, 8.9.1970.

<sup>114</sup> MBA/NSW, ‘Supplementary Report of the Industrial Relations Committee’, *Minutes of the Council of Management*, 9.6.1970.

<sup>115</sup> Commissioner Watson, *Decision in the Matter of the Australian Builders Labourers’ Federation and the Master Builders Association of NSW and Others* (C no. 1366 of 1969), 13.8.1970, pp. 4, 12.

<sup>116</sup> Notes of discussions between officers of the MBA/NSW Industrial Relations Department and the MBA/NSW Executive Director, 13.6.1972. J. R. Elder, *Diary Notes*, MBA/NSW, 1972.

and MBA/NSW members called for ‘a more cohesive effort - if not by all employers then certainly between the MBAs in various states’.<sup>117</sup> In 1970 MBFA in response formed its Industrial Matters Committee.<sup>118</sup> The dispute also exposed an emerging rift between the NSW/ABLF and many of the tradesmen's unions. The then recent resignation of Pat Clancy from the CPA due to his disagreement with the shift in policy line introduced by the new CPA leadership<sup>119</sup> may also have been a factor. The animosity between the leaderships of the NSW/BWIU and NSW/ABLF can also be attributed to union competitiveness compounded by NSW/ABLF fear of NSW/BWIU domination. The NSW/BWIU amended its rules in 1969 to extend its coverage to include slaters, tilers, shinglers and roof fixers.<sup>120</sup> On the other hand, tradesmen resented the rising power of builders’ labourers as they saw their numerical strength and status on site reduced by changes in technology.<sup>121</sup> The rigger classification now ‘enjoyed the same skill margin’ as that of bricklayers, and riggers’ ‘take-home’ pay exceeded that of painters by 40 cents, leading the BTG to claim an increase to tradesmen's margins of \$10.00 per week. The NSW/ABLF opposed the claim on the basis that it would interfere with relativities.<sup>122</sup>

Following a BTG campaign of bans, limitations and statewide stoppages in support of its claim,<sup>123</sup> as Table 8.3 on the next page indicates, Justice Sheehy granted the BTG claim by increasing the carpenters' margin and raising the margins of bricklayers, painters and plasterers to an equal amount.

Against the background of the industrial unrest associated with the various wage claims, the MBA/NSW complained to the NSW Government about the inadequate law of trespass.<sup>124</sup> The passage of the *Summary Offences Act*, 1970 provided a simple vehicle through which invaders could be charged. On 21 December 1970, Tom Hogan, NSW/ABLF Organiser, had the dubious distinction of being the first person in the building industry to be

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<sup>117</sup> MBA/NSW, *Minutes of Major Contractors Meeting*, 26.3.1970.

<sup>118</sup> MBA/NSW, *Minutes of Council of Management*, 28.5.1970.

<sup>119</sup> *The Australian Financial Review*, 17.8.1970, p. 6.

<sup>120</sup> S. J. Frenkel and Alice Coolican, *Unions against Capitalism? A Sociological comparison of the Australian Building and Metal Workers' Unions*, George Allen & Unwin, Sydney, 1984, p. 176.

<sup>121</sup> S. J. Frenkel and Alice Coolican, ‘Competition, Instability and Industrial Struggle in the New South Wales Construction Industry’ in S. J. Frenkel (ed.), *Industrial Action: Patterns of Labour Conflict*, George Allen & Unwin, Sydney, 1980, pp. 51-2.

<sup>122</sup> MBA/NSW, *Minutes of Council of Management*, 8.9.1970.

<sup>123</sup> *Ibid*, 10.11.1970.

<sup>124</sup> MBA/NSW, *Executive Committee Minutes*, 22.6.1970.

arrested under the provisions of the Summary Offences Act.<sup>125</sup> Prior to that however, on 30 November 1970, a senior NSW/ABLF official had, with nine other NSW/ABLF vigilantes, appeared before the Parramatta Court of Petty Sessions to face charges for malicious injury to a concrete mixer and to four brick walls at the construction site of the new Baulkham Hills High School.<sup>126</sup>

**Table 8:3**  
**COMPARISON OF TRADESMEN'S AWARD WEEKLY WAGES FROM**  
**1 NOVEMBER 1970 AS PER THE SHEEHY 'CATCH-UP' DECISION**

	CARPENTER		BRICKLAYER		PAINTER		PLASTERER	
	Dec `69	Nov `70	Dec `69	Nov `70	Dec `69	Nov `70	Dec `69	Nov `70
Margin	20.10	24.10	19.90	24.10	20.10	24.10	19.90	24.10
Public Holidays	1.1437	1.2851	1.203	1.2742	1.1059	1.27583	1.1773	1.2851
Sick Leave	1.1437	1.2851	1.203	1.2742	1.1058	1.27583	1.1773	1.2851
Lost Time	1.8301	2.0573	1.926	2.0791	1.1058	1.27583	1.1774	2.0573
Travelling Time	4.1325	4.4225	4.118	4.4225	4.1325	4.4225	4.118	4.4225
Tool Allowance	1.50	1.50	.70	.70	.30	.30	1.50	1.50
Industry All'nce	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25
Weekly Rate	70.00	74.80	69.20	74.00	68.00	72.80	69.20	74.80
Basic Wage	<u>39.60</u>	<u>39.60</u>	<u>39.60</u>	<u>39.60</u>	<u>36.90</u>	<u>39.60</u>	<u>39.60</u>	<u>39.60</u>
Weekly Wage	<u>109.60</u>	<u>114.40</u>	<u>108.80</u>	<u>110.90</u>	<u>107.60</u>	<u>112.40</u>	<u>108.80</u>	<u>114.40</u>

Source: MBA/NSW, *Building Workers Wages Analysis Register 1950-1981*, 19.12.1969, 1.11.1970.

In line with a national stoppage called by the ABLF to formulate its 'Wages campaigns in 1971', the NSW/ABLF held mass meetings in the Australian Capital Territory, at Newcastle and Wollongong, and at Sydney Trades Hall over award demands, and demanded the dropping of charges against Tom Hogan, and against those arrested at Baulkham Hills. The NSW/ABLF called on the Labor Council of NSW (the Labor Council – as it was renamed in 1908) to launch a campaign for the repeal of the Summary Offences Act under which they were charged.<sup>127</sup> The apparent disinterest of the rest of the building trade unions in Munday's campaign of opposition to the Summary Offences Act was more an indication of the isolated position of the NSW\ABLF than of any acquiescence to the Act. Further, there is no evidence that the provisions of the Act were ever used against any union other than the NSW/BLF, despite the occurrence of some torrid disputes between members of the MBA/NSW and tradesmen's unions. The NSW/ABLF called on its members to fight against

<sup>125</sup> Letter from J. B. Munday to the Secretaries, All Affiliated Trade Unions, 22.2.1971.

<sup>126</sup> *SMH*, 1.12.1970, pp. 1-8.

<sup>127</sup> NSW/ABLF, *Recommendation Mass Meeting - Sydney, Wollongong, Newcastle, Canberra*, 4.2.1971.

the Summary Offences Act,<sup>128</sup> but there was no groundswell of support from builders' labourers generally and other organizers were prosecuted.<sup>129</sup>

In December 1970 the NSW building tradesmen's unions through the BTG resolved to pursue a wage increase of \$6.00 and introduction of accident pay. The NSW/ABLF refused to support the claims unless it included increasing margins of the first two ABLF award classifications and all other labourers' margins to 100 per cent and 90 per cent respectively of tradesmen's margins.<sup>130</sup> The tradesmen's unions rejected the NSW/ABLF approach.<sup>131</sup> The NSW/ABLF was at that time seeking a flow-on of the tradesmen's ('catch-up') \$4.00 increase granted in November 1970, and it 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.<sup>132</sup> Despite the rhetoric of the NSW/ABLF, the ABLF decided to adjourn its application for wage increases and to pursue the traditional approach of picking up all, or a percentage, of increases granted to the NSW/BWIU Award. This also undermined the NSW/ABLF claim that wage rates should be determined by workers and not by courts.<sup>133</sup>

The ABLF also applied to change its name to *Australian Building and Construction Workers' Federation* and had started using that name. The application was later rejected and the name *Australian Building Construction Employees & Builders' Labourers' Federation* (ABCE&BLF) substituted in its place.<sup>134</sup>

Meanwhile BTG mass meetings called upon the MBA/NSW to settle the building workers' demands by agreement and warned all other employer associations that unless they 'agreed to participate in fruitful negotiations they too would face industrial action involving -

<sup>128</sup> NSW/BLF, *Defeat Anti-Union Law*, Quality Press, Sydney, roneoed, undated, 26 February 1971.

<sup>129</sup> See affidavits of G. A. Connor, W. F. Bagshaw, M. A. Gray and J. B. Stevenson in relation to Pringle and Hadfield, and affidavit of S. C. Treseder in relation to Perez. Exhibits 4H, 4J, 4K, 4L and 4M respectively *Transcript of Proceedings*, in matters (B no. 40 of 1972) and (B no. 73 of 1973), Australian Industrial Court, 24.4.1974, pp. 558-72.

<sup>130</sup> *The NSW Builders' Labourer*, vol. 4, no. 24, November 1970, p.1.

<sup>131</sup> NSW Building Tradesmen's Unions, *Our Stand for Unity in the Building Industry*, 2 page roneoed, undated.

<sup>132</sup> NSW/ABCWF, *AN URGENT CALL from Builders' Laborers to All Workers!*, Quality Press, Sydney, undated (in early 1971).

<sup>133</sup> NSW/ABLF, *AN URGENT CALL to All Workers!*, Quality Press, Sydney, undated (early 1971); MBA/NSW, *Minutes of Council of Management*, 9.3.1971.

<sup>134</sup> *Commonwealth Arbitration Reports*, vol. 146, 1972, pp. 1052-4. For the sake of uniformity all reference in this thesis to that union will continue to be under the abbreviated 'ABLF'.

stoppages, bans, limitations, demonstrations etc.<sup>135</sup> The MBA/NSW, again despite opposition from all other employer associations, supported the re-opening of the Awards.<sup>136</sup> On 18 June 1971, Justice Sheehy in the NSW 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.<sup>137</sup> MBA/NSW opposition due to the industrial actions of the NSW/BLF frustrated an ABLF application to the federal Commission for a flow on of the special loading. The special loading case deepened the rift between the NSW/ABLF and NSW tradesmen's unions that had developed during the NSW/ABLF campaign for increased margins in 1970.<sup>138</sup>

In January 1971, the BTG insisted that its claim for Accident Pay be finalised within the year. It did agree to participate in a joint approach with the MBA/NSW to the NSW Minister for Labour and Industry to request that payments for workers' compensation payments be related to the award 'take home pay' rather than to a statutory sum, and an accident pay working sub-committee was established,<sup>139</sup> to obtain quotes from insurance companies for accident pay cover.<sup>140</sup> Despite MBA/NSW concerns over the availability of such cover, a life assurance firm offered to provide a \$40.00 per week payment above that provided under workers' compensation legislation, for a period of 26 weeks at a premium of \$38.10 per worker.<sup>141</sup>

When the MBA/NSW then procrastinated over the implementation of the accident pay, the NSW/BWIU commenced industrial action against major contractors. Within nine days the Opera House and the Lakes Golf Club projects suffered stoppages in support of demands for accident pay and by 27 April almost every major project in Sydney was on strike.<sup>142</sup>

<sup>135</sup> MBA/NSW, 'Report of meeting between Employer Associations and the BTG on 1/3/71', *Council of Management Minutes*, 9.3.1971.

<sup>136</sup> Ibid.

<sup>137</sup> *NSW Arbitration Reports*, vol. 71, 1971, pp. 409-414 at pp. 410-11.

<sup>138</sup> MBA/NSW, *Minutes of Council of Management*, 13.7.1971.

<sup>139</sup> MBA/NSW, 'Report of meeting between Employer Associations and the BTG on 29/1/71', *Minutes of Council of Management*, 9.2.1971; MBA/NSW, 'Report of meeting between Employer Associations and the BTG on 12/2/71', 'Report of meeting between Employer Associations and the BTG on 1/3/71', *Council of Management Minutes*, 9.3.1971.

<sup>140</sup> MBA/NSW 'Report of meeting of Accident Pay Working Sub-Committee on 16/3/71', *Minutes of Council of Management*, 13.4.1971.

<sup>141</sup> MBA/NSW 'Report of meeting between Employer Associations and the BTG on 20/4/71', *Minutes of Council of Management*, 11.5.1971.

<sup>142</sup> 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, 29.4.1971, p. 3.

MBA/NSW approaches to the relevant Minister proved unsuccessful due to concerns at possible ‘flow-on’ effects of any amendment to workers' compensation legislation. The NSW/ABLF ‘in the interest of united action of building workers’ shelved its 100%-90% relativities claim so it could support the BTG accident pay campaign.<sup>143</sup> A mass meeting of all building unions at Sydney's Wentworth Park on 13 May 1971 resolved to continue the strike and commenced a march to the Newtown offices of the MBA/NSW. Some participants were in wheelchairs and there were banners in various languages demanding full pay whilst on workers compensation.<sup>144</sup> The industrial campaign that followed the mass meeting and the march included acts of violence when NSW/ABLF vigilantes comprised the majority of a group.<sup>145</sup>

The NSW Industrial Commission intervened. Justice Sheehy on 18 May 1971 suggested to a compulsory conference he had convened that a pay loading could provide a solution to the dispute.<sup>146</sup> The NSW/ABLF violence continued and on 20 May 1971 BTG mass meetings of building workers resolved by a ‘2-1 vote’ to end the strike. Justice Sheehy then announced that he would hear the unions' case for accident pay the following day and would hand down a decision at the conclusion of the hearing.<sup>147</sup> He also stated that he would look favourably to making an award that, in some form, would provide accident pay benefits.<sup>148</sup> NSW/ABLF 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.<sup>149</sup> On the evening of 20 May tensions came to a head at the weekly meeting of the Labor Council when a group of builders' labourers intruded the meeting and ended up as a vicious brawl. A motion to suspend the NSW/ABLF was adopted and Munday, who had arrived at the meeting after the fighting was over, unsuccessfully challenged the suspension motion.<sup>150</sup>

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<sup>143</sup> NSW/ABLF, *Recommendation to Mass Meeting*, 7.5.1971, one page, roneoed.

<sup>144</sup> *SMH*, 14.5.1971, p. 3.

<sup>145</sup> Building Industry Branch of the Socialist Party of Australia, *Six Turbulent Years*, p. 28.

<sup>146</sup> *SMH*, 19.5.1971, p. 2.

<sup>147</sup> *SMH*, 21.5.1971, p. 1.

<sup>148</sup> MBA/NSW, *Council of Management Minutes*, 8.6.1971.

<sup>149</sup> Meredith Burgmann, ‘A New Concept of Unionism: The NSW Builders Labourers Federation 1970-1974’, PhD Thesis, Macquarie University, 1981, p. 132.

<sup>150</sup> *SMH*, 21.5.1971, p. 1.



The MBA/NSW unsuccessfully appealed to the Supreme Court of NSW that accident pay was not an 'industrial matter' and beyond the jurisdiction of Justice Sheehy.<sup>151</sup> Faced with defeat, the MBA/NSW decided to 'get on with the job' of making the accident pay scheme work,<sup>152</sup> and agreed with the building tradesmen' unions on a scheme designed to implement the intent of the Sheehy Decision.<sup>153</sup> Other employer associations pursued an unsuccessful appeal before the Industrial Commission of NSW sitting in Court Session.<sup>154</sup>

The accident pay case had implications for the NSW/ABLF. It served to further isolate the NSW/ABLF from tradesmen's unions in NSW. Further, ABLF efforts to block attempts of its NSW Branch to have its suspension from the Labor Council lifted,<sup>155</sup> increased the rift between officials of the NSW/ABLF and those of the ABLF.

The NSW/ABLF relationship with the NSW/MBA further deteriorated over the issue of green bans. It had become involved in the anti-Vietnam War movement, supporting Aboriginal Land Rights, opposing racism and was 'the first building union in Australia to compel the employers to employ women.'<sup>156</sup> Because of its political activism, Munday later wrote, the NSW/ABLF was 'actively responsive' to requests for assistance from those opposed to the development of Kelly's Bush at Hunters Hill.<sup>157</sup> From that start at Kelly's Bush, the NSW/ABLF commenced to implement 'green bans' on any project deemed to disadvantage local residents. Due to the arbitrary decisions of the aloof State Planning Authority (SPA) that administered town planning for the NSW Government, resident action groups, created during the latter part of the 1960s, coordinated citizen protest against the NSW Government under their umbrella, the Coalition of Residents Action Groups (CRAG).<sup>158</sup>

The works prevented from commencing by NSW/BLF imposed green bans was in excess of \$1,000 million.<sup>159</sup> One of the most notorious of the controversial green bans was

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<sup>151</sup> MBA/NSW, *Minutes of Council of Management Meeting*, 8.6.1971.

<sup>152</sup> MBA/NSW, 'Report on meeting between Employer Associations and Building Tradesmen's Unions on 11/6/71', *Minutes of Council of Management Meeting*, 13.7.1971.

<sup>153</sup> MBA/NSW, *Minutes of Council of Management Meeting*, 13.7.1971.

<sup>154</sup> 'Further Judgment of the Commission No. 251 of 1971', *Building Trades Dispute re Pay of Injured Workers*, Industrial Commission of NSW in Court Session, 22.10.71.

<sup>155</sup> Burgmann, 'A New Concept of Unionism', pp. 141-2.

<sup>156</sup> Jack Munday, 'From Red to Green: Citizen-Worker Alliance', in Drew Hutton (ed.), *Green Politics in Australia*, Angus & Robertson, North Ryde, 1987, p. 110.

<sup>157</sup> *Ibid*, pp.110-111.

<sup>158</sup> Jack Munday, *Green Bans and Beyond*, Angus & Robertson, Sydney, 1981, p. 79.

<sup>159</sup> *Ibid*.

on the demolition of houses owned by Frank Theeman. The houses in Victoria Street, Kings Cross were to be demolished in preparation for the construction of a new development. Former tenants and squatters were encouraged by the Victoria Street Resident Action Group (VRAG) to move into the houses that were to be demolished.<sup>160</sup> Munday placed a green ban on the area until redevelopment plans had been approved by the National Trust. Following approval of the redevelopment plans, the green ban was not lifted and the developer accused Munday of breaking his word. Munday agreed that he would not lift the ban because the residents were not satisfied with the plan.<sup>161</sup> The dispute included acts of vilification by VRAG.<sup>162</sup> There were posters erected around the city displaying photographs of Theeman employees with the caption: 'Not wanted in Victoria Street or anywhere - Theeman's Scabs - authorised by the VRAG and BLF'.<sup>163</sup>

The MBA/NSW had some difficulty in producing articulate policies opposing the NSW/ABLF's actions due to the public support for the green bans. It did, however, find the penchant for violence of green ban activists a useful platform on which to challenge those bans. However it was the 'worker control' aspects of the green bans movement that the MBA/NSW most feared. In imposing green bans, Munday exercised control over the builder or developer by usurping their right to make decisions concerning their means of production, and transferring that right into the hands of resident action groups.<sup>164</sup> The green bans fuelled the move by the MBA/NSW to deregister the ABLF.

### **The Deregistration of the ABLF**

As a means of removing MBA/NSW objection to its application for the special loading increase granted to tradesmen's awards in NSW, the ABLF offered to provide undertakings designed to 'wipe the slate clean' and to consider a disputes settlement clause in its award that would be 'binding on all office bearers of the Federation.'<sup>165</sup> Members of the MBA/NSW IPC, however, doubted the likelihood of the NSW/ABLF adhering to any

<sup>160</sup> VRAG, *Save Victoria Street*, 1 page roneo, undated, just prior to 12.6.1973.

<sup>161</sup> Frank William Theeman, Affidavit - Exhibit 4Z, and sworn evidence, *Transcript of Proceedings*, Australian Industrial Court, B no. 40 of 1972 and B no. 73 of 1973, 30.4.1974, pp. 636-47.

<sup>162</sup> *Street Sheet*, Victoria Street Resident Action Group, Kings Cross, 17.7.1973.

<sup>163</sup> Michael Arthur Theeman - Affidavit 5C and sworn evidence, *Transcript of Proceedings*, in matters B no. 40 of 1972 and B no.73 of 1973, Australian Industrial Court, 30.4.1974, pp. 648-655.

<sup>164</sup> *Commonwealth Arbitration Reports*, vol. 158, 1974, p. 1065.

<sup>165</sup> MBA/NSW, *Minutes of Council of Management*, 10 August 1971.

undertakings given on its behalf by the ABLF, but MBA/NSW Counsel suggested the proposal could be useful as any breach of ABLF undertakings by officers of the NSW/ABLF provided a very good case for the cancellation of the registration of the ABLF.<sup>166</sup>

The spark that set off the deregistration was the MBA/NSW members' belief in their right as employers to deploy builders' labourers to duties other than those that the labourers regarded as their normal responsibilities.<sup>167</sup> Despite ABLF acceptance of this,<sup>168</sup> a meeting of Sydney dogmen in August 1971 rejected performing other than dogmen's work,<sup>169</sup> and ABLF attempts to resolve the problem were unsuccessful.<sup>170</sup> The MBA/NSW Industrial Relations Committee recommended in September 1971 'That the Association immediately commence proceedings in the Commonwealth Industrial Court to cancel the registration of the Australian Builders' Labourers' Federation.'<sup>171</sup>

While the MBA/NSW resolved to prepare an application to deregister the ABLF on 14 September 1971,<sup>172</sup> it pursued several other issues in regard to the NSW/ABLF. It unsuccessfully called for a Royal Commission to investigate extortion allegations against the NSW/ABLF.<sup>173</sup> A newspaper, which was about to print an article about an allegation that the NSW/ABLF had extorted money from Pedy Concrete, was allegedly told by Munday that he would 'close the company [Pedy Concrete] down for good if the Newspaper printed the article.'<sup>174</sup> The NSW/ABLF denied that \$1,500 it received from Pedy Concrete was the result of a union-imposed fine, but rather an offer freely made by the company. Pedy Concrete, understandably, refused to comment on a suggestion it had submitted to 'industrial blackmail' and had merely referred to their 'harmonious relationship' with the NSW/ABLF.<sup>175</sup>

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<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> MBA/NSW, 'Report of meeting between Employer Associations and the ABLF on 30/7/71', *Minutes of Council of Management*, 10.8.1971.

<sup>169</sup> Letter from J. D. Martin (MBA/NSW) to N. L. Gallagher (ABLF), 23.8.71.

<sup>170</sup> Affidavit of Leslie Roy Ball, Exhibit 6N, *Transcript of Proceedings*, in matters B no. 40 of 1972 and B no.73 of 1973, Australian Industrial Court, 1.5.1974, pp. 692-736; Letter from N. L. Gallagher (ABLF) to J. D. Martin (MBA/NSW), 26.8.1971.

<sup>171</sup> MBA/NSW 'Report of meeting of Industrial Relations Committee on 7/9/71', *Minutes of Council of Management*, 14.9.1971.

<sup>172</sup> MBA/NSW *Council of Management Minutes*, 14.9.1971.

<sup>173</sup> MBA/NSW, *Minutes of General Meeting of members*, 20.9.1971.

<sup>174</sup> *Daily Telegraph*, 17.9.1971, p. 1.

<sup>175</sup> *The Australian*, 18.9.1971, p. 3.

The MBA/NSW also tried to break the impasse over the disputes settlement issue. It and the ABLF the parties agreed to let Commissioner Watson of the federal Commission decide the matter as part of his hearing of the union's wage application, but the Commissioner initially failed to pursue it. Discussions with the NSW/ABLF over certain aspects of the dispute settlement proposal continued throughout November and December 1971,<sup>176</sup> and on 22 December 1971 the Commissioner formally handed down a decision settling the matter. The union had agreed to circularize its membership details of the new clause but this had been deferred by Jack Munday 'until after he returned from holidays towards the middle of January 1972.'<sup>177</sup> During Munday'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 Munday's absence and resolved to reject the disputes settlement clause'. Les Ball replied that Munday had accepted the clause and 'notwithstanding the rejection by the Branch meeting -- we expect it to be honoured.'<sup>178</sup> However, the clause was never accepted by the NSW/ABLF.

The MBA/NSW now focused on the deregistration of the ABLF, and filed an application for the union's deregistration on 7 April 1972,<sup>179</sup> which was listed for hearing on 2 May 1972. At the request of the ABLF, on 19 April 1972 Bob Hawke of the Australian Council of Trade Unions (ACTU) sought a conference with the MBA/NSW. At that meeting Hawke interpreted the MBA/NSW action as, in essence, punishing builders' labourers Australia-wide for the actions of one individual branch. Gallagher stated he intended seeking an adjournment of the deregistration case in order to allow the ABLF time to prepare an application to deregister the MBA/NSW on grounds that members of the MBA/NSW were ignoring their responsibilities to safety and amenities and that its federal industrial registration was defective. On Hawke's recommendation, but with opposition from Munday, the ABLF filed an application with the Commonwealth Industrial Court for the matter to be adjourned to allow discussions to take place between the federal and state officials of the ABLF, the MBA/NSW, the ACTU, and the Labor Council. The matter was adjourned and at a meeting of the parties, Les Ball outlined various disputes that had

<sup>176</sup> MBA/NSW, *Minutes of Council of Management*, 9.11.71, 14.12.1971.

<sup>177</sup> MBA/NSW, 'Report to the Council of Management on the activities of the Industrial Relations Committee for the period ending 13/1/72', *Minutes of Council of Management*, 18.1.1972.

<sup>178</sup> Affidavit of Leslie Roy Ball, Exhibit 6N, *Transcript of Proceedings*, in matters B no. 40 of 1972 and B no. 73 of 1973, Australian Industrial Court, 1.5.1974, pp. 692-736.

<sup>179</sup> MBA/NSW, *Minutes of Executive Committee*, 11.4.1972.

occurred since the adjournment of the case, which Munday blamed on the inflexibility of the MBA/NSW over the disputes settling procedures. After lengthy debate, both the MBA/NSW and the NSW/ABLF agreed to a John Ducker (Labor Council) proposal:

to resolve their differences over the Disputes Settlement Procedures; NSW/ABLF would endeavour to discuss a dispute with the MBA/NSW prior to industrial action being taken; NSW/ABLF members would be notified of this agreement by a multi-lingual circular; and the position would be reviewed in June.<sup>180</sup>

The final ACTU-MBA/NSW conference was held on 7 June 1972 at which the MBA/NSW pointed to the number of disputes involving interruption to concrete pours, and expressed its concern at the support for such action of Bob Pringle (NSW/ABLF President) who had publicly stated that a good time to make a demand was 'in the middle of a concrete pour'. The meeting was adjourned and Munday agreed to investigate the alleged statement by Pringle and seek to discourage further walk-outs during concrete pours by writing to all of his members. The MBA/NSW agreed to remind its members of their obligations to safety and amenities.<sup>181</sup> Six days later it also reminded Munday of the Pringle position on walk-outs during concrete pours and of his promises in that regard, and advised him:

--- on Friday morning 9th June at approximately 10.50 am in the presence of Mr John Elder, an Industrial Officer of this Association, Mr Pringle said that members of the Builders' Labourers Union "had no faith or confidence in the Commission since the O'Shea case and that members of the Federation would take the only course open to them - stoppages during concrete pours. -- We would appreciate your comments."<sup>182</sup>

No reply from the NSW/ABLF was ever received to the letter.

The NSW/ABLF announced that it would close its membership books from 3 October 1972, a move interpreted by the MBA/NSW as a tactic to force building employers to obtain their labourers from the union office.<sup>183</sup> Those fears were realised when members reported fresh NSW/ABLF demands that new labourers should be obtained from the union office.<sup>184</sup> The NSW/ABLF quickly capitalised on the *Labour Code* proposed by Clyde Cameron, Minister for

<sup>180</sup> MBA/NSW, Sundry Reports of Meetings: between MBA, ACTU, NSW Trades and Labor Council and the ABLF on 26.4.1972; 'Addendum to Report, MBA, ACTU, TLC, ABLF and BTG on 3/5/72', *Minutes of Council of Management*, 9.7.1972.

<sup>181</sup> MBA/NSW, 'Report of Meeting between representatives of MBA, ACTU NSW Trades and Labor Council, BTG and ABLF', *Minutes of Council of Management*, 13.6.1972.

<sup>182</sup> Letter from L. R. Ball (MBA/NSW) to Jack Munday (Secretary, NSW Branch of the ABLF), 13.6.1972.

<sup>183</sup> MBA/NSW, 'Negotiations with Building Trades Unions for new Building Industry Awards to apply from 1st November', *All Members Circular 54/1972*, 29.9.1972.

<sup>184</sup> MBA/NSW, *Minutes of Council of Management*, 23.1.1973.

Labour in the new Whitlam Government, which suggested that the Government would only let contracts to employers in good standing with unions. In the face of mounting pressure for worker control - which included union hall hire, rejection of an employer's right to dismiss labour, and for the election of foremen by workers - the MBA/NSW initiated proceedings against the union under s.33 of the Commonwealth Conciliation and Arbitration Act for a bans clause to be inserted into the Builders Labourers Award outlawing strikes. At the first hearing of the matter, Munday called for an inquiry into permanency and stated:

It is true to say what can be called 'union control of labour' and the use of an employment book in the Sydney section of the New South Wales Branch is designed as a step to permanency. We feel we have a responsibility to our members to strive to have as much continuity as possible in the industry - to see they get employment first.<sup>185</sup>

MBA/NSW major contractor members resolved to dismiss all builders labourers and crane drivers on Thursday 24 May 1973, and all building tradesmen who could not be economically employed on the following day.<sup>186</sup> The MBA/NSW lockout ended when the NSW/ABLF resolved, at a mass meeting of its members on 4 June 1973, to accept the employers' terms of settlement. The MBA/NSW terms of settlement included: the dropping of all claims for 'worker control' by the NSW/ABLF and the NSW/FEDFA; that all bans and limitations be lifted; that the two unions abide by the terms of their negotiated awards and agreements; and the acceptance of a dispute settlement procedure that included the establishment of a joint MBA/NSW-BTG panel. The final agreement reached before Justice Aird of the federal Conciliation and Arbitration Commission was virtually the same except the disputes settlement process was to be administered by Commissioner Wilson rather than by an MBA-BTG panel. The agreement, however, was interpreted by the NSW/ABLF to be applicable to only those limited sites that had specifically been mentioned in the hearing before Justice Aird. The MBA/NSW advised the Royal Australian Institute of Architects (RAIA) that the NSW/ABLF interpretation of the return to work agreement made before Justice Aird was false and concluded that '[Its] statement widely differs from the truth and is typical of the dishonesty practised by the union.'<sup>187</sup>

<sup>185</sup> *Transcript of Proceedings*, Section 33 notification of a dispute re employment of builders labourers, C no. 1733 of 1973, Commonwealth Conciliation and Arbitration Commission, 8.3.1973, p. 5.

<sup>186</sup> MBA/NSW, 'Minutes of Meeting of Major Contractors, 22 May 1973', *Minutes of Council of Management*, 12.6.1973.

<sup>187</sup> Letter from MBA/NSW to the NSW Chapter, Royal Australian Institute of Architects, 5.6.1973.

On 18 October 1973, the Australian Industrial Court issued a *rule nisi* against the ABLF to show cause why its registration should not be cancelled, and ordered the union to appear before it on 27 November 1973. The ABLF unsuccessfully challenged, in the High Court, the right of the Industrial Court to deal with such a case,<sup>188</sup> and the deregistration case commenced on 10 December 1973 and was heard on another 3 days before adjourning to 2 April 1974. During the currency of the case, the industrial disputes continued with green bans being imposed and demands made for workers' control. The election of the Whitlam Government and the attitude of some of its Ministers, such as Les Johnson (Housing and Works) and Clyde Cameron (Industrial Relations), proved a serious obstacle to MBA/NSW deregistration objectives.<sup>189</sup> In November 1973 Johnson, in his capacity as Minister for Works, objected to 'provocative industrial practices' utilised by the MBA/NSW and stated that its members would be omitted from federal government tender lists.<sup>190</sup> The MBA/NSW authorised its Executive Director to pursue any legal action against Johnson recommended by its solicitors.<sup>191</sup> The MBA/NSW served a subpoena on Johnson, to attend the federal Commission in a dispute involving the NSW/ABLF on a project at the City South Telephone Exchange. No further threats were made by the Minister.<sup>192</sup>

Gallagher, in an attempt to encourage the MBA/NSW to abandon its deregistration case, withdrew the authority of its NSW branch to represent the ABLF in federal Commission hearings. This resulted in the farcical situation that when NSW/ABLF generated disputes were referred to the federal Commission, the NSW/ABLF officers refused to attend hearings due to the withdrawal of their official recognition.<sup>193</sup> When the deregistration case resumed on 2 April 1974 the Court was advised by the ABLF's research officer that the union would take no further part in the proceedings<sup>194</sup> and on 21 June 1974 the industrial registration of the ABLF was cancelled.

Its vigorous pursuit of the ABLF deregistration case had a number of implications for the MBA/NSW. The AFCEC was renamed the Australian Federation of Construction Contractors

<sup>188</sup> *Commonwealth Law Reports*, vol. 130, 1974, p. 87.

<sup>189</sup> *Builder NSW*, June 1973, p. 216.

<sup>190</sup> *This Day Tonight*, ABC Television, 7.11.1973.

<sup>191</sup> MBA/NSW, *Minutes of Executive Committee*, 13.11.1973.

<sup>192</sup> MBA/NSW, 'Report on activities of the Industrial Department 14 November – 10 December 1973', *Minutes of Council of Management*, 11.12.1973; J. R. Elder, *Diary Notes*, MBA/NSW, 1973.

<sup>193</sup> MBA/NSW, *Minutes of Industrial Policy Committee*, 18.3.1974, 1.4.1974.

<sup>194</sup> *Transcript of Proceeding*, in matter B no. 40 of 1972 and B no. 73 of 1973, Australian Industrial Court, 2.4.1974, pp. 255-6.

(AFCC) in July 1971,<sup>195</sup> and whilst its traditional membership was drawn from the ranks of national civil construction contractors, the building arm of those companies had membership with the MBA/NSW and with other MBAs. Despite, or because of, that joint membership, AFCC and the MBAs were vigorous competitors or opponents. The unilateral decisions pursued by the MBA/NSW during the 1969 Carpenters & Joiners Award Case before the NSW Industrial Commission stretched the patience of many national contractors - a situation exacerbated by the 1973 MBA/NSW decision to deregister the ABLF. Many national contractors had suffered from the industrial reprisals initiated by Gallagher due to the MBA/NSW threat to his union's registration. The diverse views held by the various MBAs and the inability of MBFA to impose a 'national' decision on those MBAs, frustrated many national contractors who wanted decisions to be made quickly and then imposed from the top. Naturally they saw their joint role as providing that 'from the top' direction. They also saw the national industrial decision making role as beyond the MBAs. So as to gain control of the situation, national contractors who held joint membership encouraged MBFA and AFCC to establish a joint Industrial Secretariat, the National Industrial Executive of the Building and Construction Industry (NIE) in 1974. The individual MBAs provided the majority of staff behind the NIE, despite the existence of an NIE Director and clerical support staff. However, the composition of the NIE Council appeared to MBA Industrial Officers to favour the interests of the AFCC membership.<sup>196</sup>

The MBA/NSW advised all unions that it would oppose the attendance of the deregistered ABLF at any arbitration hearings or at negotiations for a national tradesmen's award.<sup>197</sup> The MBA/NSW, however, was advised by a meeting of MBAs from around Australia that they would not support its proposition that employer associations should boycott any hearings or meetings at which the ABLF was represented. The reasons given by MBAV were: that they had 'no beef' with Gallagher; that they needed to maintain contact with the union; and that they needed Gallagher's involvement and commitment in retaining the nexus between tradesmen's awards and that of the builders' labourers. Similar reasons were given by the other state MBAs. All MBAs, and in particular the MBAV, were opposed to the deregistration action taken by the

<sup>195</sup> AFCEC, *Minutes of Extraordinary General Meeting*, 12.7.1971.

<sup>196</sup> AFCC contractor representatives as Ernest MacDonald of Civil & Civic and Robert Mierisch of Baulderstone Constructions seemed to outweigh the influence of MBA contractor nominations. J. R. Elder, *Diary Notes*, MBA/NSW, 1974, 1975.

<sup>197</sup> MBA/NSW 'Report of Meeting of Building Unions and Employer Organisations, 24/6/74', *Minutes of Council of Management*, 9.7.1974.



MBA/NSW, which they believed was unfair as it had destabilised their relations with the ABLF due to the activities of one branch.<sup>198</sup>

Despite its deregistered state, the ABLF acting as an agent served logs of claims directly on a number of employers around Australia on behalf of their individual builders' labourers employees.<sup>199</sup> Justice Evatt of the federal Commission ruled that the ABLF could represent a number of individual members of the unincorporated union. The MBA/NSW made an unsuccessful challenge to Evatt's ruling in the High Court.<sup>200</sup> The MBA/NSW supported Gallagher in his move in October 1974 to take over the NSW/ABLF and encouraged MBA/NSW members to inhibit entry to building sites of NSW/ABLF officials. At the end of March 1975, the NSW/ABLF acknowledged defeat.<sup>201</sup>

## Conclusion

Despite major external challenges to the MBA/NSW and a growing diversity of its membership during the period 1961-1975, the MBA regained the internal equilibrium it had lost in the immediate post-War period. Whilst its Presidents and officers were drawn from medium sized building firms, the large building contractors were able to exercise influence and make decisions related to industrial relations during the turbulent years between 1970 and 1975 through an initiative within the association's committee system. The MBA/NSW staffing assumed a bureaucratic structure and the role and authority of the association President became institutionalized. It was able to exercise authority over its members in the crucial area of industrial relations.

The MBA/NSW and other MBAs continued to protect their State-rights interests. This was displayed in 1969 when MBFA officers sought to retain control of the claim by building unions for a national long-service scheme for building workers. A federal committee, established by the MBAs, recommended rejection of the claim as the States of Tasmania and Queensland were at that time considering legislation for the portability of Long Service Leave in the building industry. In NSW, the subject was initially to have been dealt with by the State Industrial Commission, but with MBA/NSW support the NSW Building Trades

<sup>198</sup> J. R. Elder, *Memorandum to Chairman, MBA/NSW Industrial Policy Committee*, 26.6.1974.

<sup>199</sup> MBA/NSW, 'Minutes of Industrial Policy Committee on 1/8/74', *Minutes of Council of Management*, 13.8.1974.

<sup>200</sup> *Commonwealth Law Reports*, vol. 132, 1975, p. 87.

<sup>201</sup> MBA/NSW *Minutes of Council of Management*, 11.3.1975.

Group of Unions (the BTG) achieved its objective through the passage of the *Building and Construction Industry Long Service Payments Act, 1974*.

While the MBA/NSW continued to focus on the contractual and industrial interests of its members, there were challenges. It won some important demands such as the licensing of builders. In 1961 the association implemented a policy by which members were required to include rise and fall (escalation) provisions in all tenders for work exceeding \$50,000 in value. While that policy was unchallenged by the Trade Practices Act, MBA/NSW policies and practices designed to protect the tendering and contractual interests of its membership through tender meetings were regarded as collusive. Soon after that event, the MBA/NSW announced that its tender policies 'would no further be used or implemented.'

Through his alliance with various protest groups, the charismatic communist leader of the NSW/ABLF, Jack Munday, virtually converted his union into a quasi-social movement at a time when the punitive powers of the federal industrial system had been successfully challenged. The NSW building industry during the first half of the 1970s was an arena for inter-union conflict, industrial campaigns, violence and green bans. The MBA/NSW eventually sought the deregistration of the ABLF. This initiative highlighted that while the MBA/NSW had generally achieved internal equilibrium, builders were divided at a national level. Other MBAs were opposed to the MBA/NSW deregistration efforts, as were national contractors who suffered interstate bans and limitations over the issue. The national contractors tried to overcome disunity at the federal level by forcing the MBA movement to share decision-making over industrial relations matters with the AFCC through a new joint body, the National Industrial Executive.