

# **CHAPTER 7**

## **WORKER CONTROL AND THE PERMANENCY OF EMPLOYMENT ISSUE**

### **The Rocky Road to De-registration**

**1972-1974**

#### **Introduction**

During the period 1972-1974 the NSW/BLF continued its one-out approach which isolated it from other building unions (with the exception of the FEDFA) and, particularly through its green ban campaigns, maintained its close ties with the Resident Action Groups, the Women's Liberation movement and radical students.

The Union also maintained a close relationship with the Aboriginal Land Rights movement. A dogman, Roy Bishop who later became a NSW/BLF Organiser, was dismissed for defying a Company decision and erecting a 'Land Rights Moratorium' sign on the site's crane jib.<sup>1</sup>

Throughout that period the NSW/BLF continued to challenge MBA/NSW members over the standard of amenities they provided on building sites.

This Chapter will analyse the three major issues and events (Workers' control, permanency, and the lock-outs by the MBA/NSW) which involved the NSW/BLF up to the time it disbanded in 1975. The de-registration of the ABLF and the events which occurred during the immediate post-deregistration period are also considered.

These three issues will not be addressed separately as they are inter-related and will therefore be addressed chronologically.

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<sup>1</sup> Eric Tindall, *Mainline - Napier House Project re Dismissal of Roy Bishop*, 21 June 1972. See also Commissioner Burns, *Decision*, in matter No.349 of 1972, Industrial Commission of NSW, 7 July, 1972 (The MBA/NSW was at that time referring matters to the State Commission due to the delays in having matters heard in the Federal Commission. The Federal Commission soon rectified this problem by specially assigning Commissioner Wilson to the NSW building industry.)

### **The rocky road to de-registration**

The NSW/BLF continued to pursue the ‘Two Dogmen per crane’ issue<sup>2</sup> and on 15 February 1972, at a compulsory conference called by Commissioner Watson, the MBA/NSW refused to participate in any move to alter the terms of the Dispute Settlement Clause and referred to the number of “current stoppages”.<sup>3</sup>

The MBA/NSW continued to gather affidavits, and the tactics to be pursued for the de-registration of the ABLF were discussed with Mr Ludeke QC who expressed concern at the continued NSW/BLF complaints over safety issues concluding that “if the union was not prepared to lay charges for breaches regarding safety and amenities, the Association might well consider doing so”.<sup>4</sup> That suggestion by Mr Ludeke was based on the ability of any person to lay a charge, against someone who had breached the Scaffolding and Lifts Act,<sup>5</sup> with the Department of Labour & Industry (DLI).<sup>6</sup> The MBA/NSW did not act on Mr Ludeke’s suggestion and the disputes over site amenities continued.<sup>7</sup>

The application for the de-registration of the ABLF was lodged on 7 April 1972,<sup>8</sup> and listed for hearing on 2 May 1972. On 19 April 1972 Mr Bob Hawke of the

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<sup>2</sup> MBA/NSW, “Report to Council of Management on the activities of the Industrial Relations Committee for the period ending 7/2/72”, *Minutes*, 8 February 1972.

<sup>3</sup> MBA/NSW “Report to the Council of Management on the activities of the Industrial Relations Committee for the period ending 9/3/72”, *Minutes*, 14 March 1972.

<sup>4</sup> MBA/NSW “Report of Proceedings of a General Meeting held 8/3/72 to consider the Builders’ Labourers situation”, *Minutes*, 14 March 1972.

<sup>5</sup> In early 1975 I laid charges, with the DLI, against a crane driver over an incident on a project at Darling Point. The crane driver (a staunch member of the FEDFA) had tried to hit some builders’ labourers (who were not supporters of Munday) with a concrete kibble during a concrete pour. A kibble is the large bucket in which concrete is lifted by crane to the work face.

<sup>6</sup> The part of the DLI that administered the various safety acts is now the NSW WorkCover Authority.

<sup>7</sup> During one dispute over amenities in 1973, the NSW/BLF advocate suggested that the standard of the amenities in question were below the standard of those ‘normally’ provided in the high-rise construction area. To enable him to ‘prove the point’, the NSW/BLF advocate requested the Federal Commission to inspect the amenities provided by Civil and Civic on a project near Sydney Central Railway Station. As the MBA/NSW advocate in the matter, I objected to that proposal on the grounds that the amenities provided by Civil and Civic were far in excess of the standards required under legislation, and in excess of any suggested average industry standard. Commissioner Wilson ironically suggested that I might like to let him inspect some examples of the ‘worst amenities’ MBA/NSW members provided so that a more appropriate comparison could be achieved. I declined the offer. *Diary Notes*

<sup>8</sup> MBA/NSW “Minutes of Executive Committee Meeting held 11/4/72”, *Minutes*, 11 April 1972 (The Executive were advised of the lodgement of the de-registration application at its 11 April meeting. Coincidentally my appointment as an Industrial Officer was also announced at that meeting)

Australian Council of Trade Unions (ACTU) requested a conference with the MBA/NSW as the ABLF had called for ACTU involvement.<sup>9</sup> The requested meeting was held on 26 April 1972 and attended by Bob Hawke and Harold Souter (ACTU), John Ducker of the NSW Labor Council, Norm Gallagher and Mr J.A. Delaney (ABLF), and Jack Munday. The MBA/NSW was represented by Peter Anderson, Harry Hall and Ray Rocher (Executive Committee), Lindsay Cooper of the Industrial Relations Committee, and John Martin, Les Ball and Wally Glover (Staff).<sup>10</sup> Mr. Hawke suggested that the MBA/NSW action was, in essence, to punish all builders' labourers all over Australia for the actions of one individual branch. Mr Hawke stated that the Association should not ignore the involvement of the ACTU in the situation which he described as 'unreal'. Gallagher said the MBA/NSW had embarked on a collision course with his union and that at the hearing, before the Commonwealth Industrial Court, he would be seeking an adjournment of the (de-registration) case in order to allow the ABLF time to prepare an application to de-register the MBA/NSW. The grounds on which such application would be made were:-

- (a) Members of the MBA/NSW were completely ignoring their responsibilities to safety and amenities;
- (b) That the Association's federal industrial registration was defective.<sup>11</sup>

An acrimonious debate between Munday and Ball developed with Munday claiming the Association's inflexible stance on the Disputes Settlement Procedure as being the root cause of the current spate of disputes and stoppages.<sup>12</sup> Hawke recommended both parties should seek an adjournment of the de-registration case so that further

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<sup>9</sup> MBA/NSW "Report of Special Meeting of the Council of Management together with representatives of Major Contracting Companies", *Minutes*, 9 May 1972.

<sup>10</sup> MBA/NSW "Report of Proceedings of a Meeting held between representatives of the MBA, ACTU, NSW Trades and Labour Council, and the ABLF on 26/4/72", *Minutes*, 9 May 1972.

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

(The Dispute Settlement Procedures were the root cause of the problem; however, their role in the disputes was a matter of interpretation. Munday suggested that the demand by the MBA/NSW that the NSW/BLF accept and observe those procedures, was the cause of the unrest. The MBA/NSW believed that the refusal by the NSW/BLF was the reason for the industrial problems - that is, if the NSW/BLF followed the procedures there would be no strikes, because the procedures obviated strike action.)

conferences could be held. He also confirmed the continued involvement of the ACTU provided that the parties agreed to accept the outcome of such conferences.<sup>13</sup>

Mr Ludeke QC was advised of the discussions and recommended agreement to the ACTU proposal and prepared a document for consideration by Gallagher and Munday:-

The Master Builders' Association would require the ABLF to make the following application:

- (a) That the matter be adjourned in order to allow discussions to take place between the Federal and State officials of the ABLF and the Master Builders Association of NSW, officers of the ACTU, and officers of the NSW Trades and Labour Council.
- (b) That the matter be restored to the list on 7 days notice.<sup>14</sup>

At a meeting between officers of the MBA/NSW and the ABLF to discuss the document, Gallagher stated that it was acceptable to him while Munday, on the other hand, said "That's just shit!" Gallagher repeated emphatically "The Federation accepts it".<sup>15</sup>

The Commonwealth Industrial Court, on being advised of the developments by Fisher QC and Ludeke QC, brought the matter forward and listed it for mention on 28 April 1972 at which time the matter adjourned. Representatives of the BTG were invited by Ducker to the next meeting of the parties, a situation at first objected to by Gallagher. Les Ball outlined various disputes that had occurred since the adjournment of 'the Case', and this led to Munday again blaming the MBA/NSW's inflexibility over the Disputes Settling Procedures. After lengthy debate, both the MBA/NSW and the NSW/BLF accepted a Ducker proposal:-

- (1) The MBA/NSW and NSW/BLF would seek to resolve their differences over the Disputes Settlement Procedure;
- (2) The NSW/BLF would endeavour to discuss a dispute with the MBA/NSW prior to industrial action being taken;

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ibid - L.R. Ball (MBA/NSW), "Addendum to Report"

- (3) A circular - in English, Greek and Italian - to be forwarded to Delegates and members of the NSW/BLF notifying them of the decision; and,
- (4) In June the position was to be reviewed.<sup>16</sup>

The final (ACTU-MBA/NSW) conference was held on 7 June 1972 at which the MBA/NSW pointed to the number of disputes which involved the interruption to concrete pours. The MBA/NSW also expressed its concern over the apparent support for such action by Bob Pringle, the NSW/BLF President, who had openly stated that a good time to make a demand was “in the middle of a concrete pour”.<sup>17</sup> The meeting was adjourned on the basis that it could be resumed at short notice by either party. Munday said he would 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 on its part, agreed to remind its members of their obligations to safety and amenities.<sup>18</sup> Six days later, the MBA/NSW again referred Munday to the Pringle position on walk-outs during concrete pours:-

You indicated that while you are not necessarily prepared to accept second-hand advice that it had occurred, you would nevertheless speak to Mr.Pringle and you also said that you would write to your members about this matter.

You are advised that 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 can only assume that you have either not mentioned it to him in the way you said that you would or alternatively that he is completely ignoring the situation. We would appreciate your comments”.<sup>19</sup>

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<sup>16</sup> MBA/NSW “Report of Meeting between representatives of the MBA, ACTU, NSW Trades and Labour Council, ABLF and the BTG on 3/5/72”, *Minutes*, 9 May 1972.

<sup>17</sup> MBA/NSW “Report of Proceedings of Meeting between representatives of MBA, ACTU NSW Trades and Labour Council, BTG and ABLF”, *Minutes*, 13 June 1972.

<sup>18</sup> *Ibid*

<sup>19</sup> L.R. Ball (MBA/NSW), *Letter to Jack Munday, Secretary, NSW Branch of the (ABLF)*, 13 June 1972.

No reply was ever received to that letter. Later that month (on 21 June 1972) negotiations commenced between the BTG and MBA/NSW for a new award which traditionally, and logically, also included the NSW/BLF. On that occasion the NSW/BLF stated they would formulate its own log of claims and attended negotiations in an ‘observer’ capacity only.<sup>20</sup> It was not until late September that year that the MBA/NSW received the demands of the ABLF which, for NSW, included guaranteed employment for three years and the right of workers to elect their own foremen and leading hands. The general demand required wage rates, Australia-wide, to be based on those prescribed in the Victorian Building Industry Agreement.<sup>21</sup>

The MBA/NSW resolved to seek the assistance of the ACTU in encouraging the ABLF to withdraw its demands and join in the negotiations with the other building unions. At the same time, MBA/NSW members complained at the continued disruption of their projects by NSW/BLF demands for two dogmen per crane; for the employment of female nippers; and, for workers nominated by the union to be employed (Union Hall Hire).<sup>22</sup>

The making of the new tradesmen’s awards was a historic event for, as noted by Justice Sheehy, there was complete unanimity among Employer Associations concerning the negotiated settlement.<sup>23</sup> The ABLF, in the meantime, had withdrawn its log of claims and successfully applied for a new award in the same terms as the Tradesmen, with wage rates adjusted in accordance with the ‘Watson formula’.

The NSW/BLF announced, in September 1972, that it would “close its books” from 3 October 1972. This move was interpreted by the MBA/NSW as a tactic to

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<sup>20</sup> MBA/NSW “Report of Proceedings of a Meeting on 21/6/72 between representatives of the Building Trades Unions and Building Trade Employer Organisations, regarding proposals for new Building Trades Awards, to replace those that expire in October this year”, *Minutes*, 11 July 1972.

<sup>21</sup> MBA/NSW “Report on Proceedings of a Meeting held 21/9/72 with representatives of Employer Organisations and The Australian Builders’ Labourers Federation”, *Minutes*, 10 October 1972.

<sup>22</sup> MBA/NSW “Report of Proceedings of a Meeting of Major Contractors on 22/9/72”, *Minutes*, 10 October 1972.

<sup>23</sup> MBA/NSW “Supplementary Report to the Council of Management on the Activities of the Industrial Relations Committee for the period ending 14/11/72”, *Minutes*, 14 November 1972

force building employers to obtain their labourers from the union office, and advised its members to ensure the financial status of their labourers' union membership.<sup>24</sup>

The MBA/NSW fears that 'Union Hall Hire' was the motive behind the NSW/BLF decision to 'close its books' were soon realised when members reported increased demands by NSW/BLF that new labourers should be obtained from the union Office.<sup>25</sup>

Ted Cooper of Concrete Constructions Pty Ltd reported that the NSW/BLF had just introduced a 'Yellow' card system to signify who, among its membership, was financial. Concerns were expressed that this development may merely have been designed to identify which builders' labourers had jobs and where they were working, and that the 'Yellow' Cards may be selectively issued.<sup>26</sup>

The NSW/BLF 'union-hall hire' campaign continued to the point that the MBA/NSW Industrial Policy Committee (MBA/NSW IPC) directed the Staff to convene a Special Meeting of Major Contractors to consider the issue.<sup>27</sup> The NSW/BLF capitalised on the 'Labour Code' proposed by the Minister for Labour, the Hon. Clyde Cameron in the new Whitlam Government. That code suggested that the Whitlam Government would deal only with employers in good standing with unions. An industrial dispute over the employment of a NSW/BLF nominated First Aid Officer was promoted by the union as the builder employing a non-union person:

..... the Builders Labourers Federation is well aware that the first aid man on the Edgecliff complex is a member of a union " - he was a member of the Health and Research Employees' Association - " In these circumstances the Union is misleading the Government. The real point at issue in this dispute is that the first aid man is not a person put forward by the Builders Labourers Federation. The Federation wants to enforce worker control in the industry and compel employers to hire all builders' labourers through its office. ---- obviously your proposals for the letting of Commonwealth contracts to good union firms are open to abuse and I

<sup>24</sup> L.R. Ball (MBA/NSW), *Negotiations with Building Trades Unions for new Building Industry Awards to apply from 1st November, 1972*, Circular 54/1972, 29 September 1972

<sup>25</sup> MBA/NSW "Report of Proceedings of Meeting of Major Contractors on 16/1/73", *Minutes*, 23 January 1973.

<sup>26</sup> Ibid

<sup>27</sup> MBA/NSW "Report of Proceedings of a Meeting of the Industrial Policy Committee on 21/2/73", *Minutes*, 13 March 1973.

suggest that this is a classic example of how a union by misrepresentation of facts might prejudice a company.<sup>28</sup>

A similar concern over the Cameron proposal (which was virtually for compulsory unionism) was expressed at a national meeting of major building and civil engineering contractors on 7 March 1973.<sup>29</sup> The election of the Whitlam Government - and the attitude of such Ministers as Johnson (Housing), Kavanagh (Construction) and Cameron (Industrial Relations) - had a dampening effect on the de-registration option for most of 1973.<sup>30</sup>

Over the Easter week-end in 1973, a National Workers Control Conference was held in Newcastle, NSW. The broadsheet advertising the event contained various articles on the subject: -

It (workers control) begins with simple trade union demands, for control of hiring and firing, tea-breaks, hours, speed of work, allocation of jobs, and so on. It mounts through a whole series of demands (open the books, for instance) to a point where, ultimately, over the whole society, capitalist authority meets impasse.<sup>31</sup>

In the face of mounting pressure for worker control - which included union hall hire, union deployment and transfer of labour, rejecting an employer's right to dismiss labour, and election of foremen by workers - the MBA/NSW initiated proceedings against the union under s.33 of the Commonwealth Conciliation and Arbitration Act. At the first hearing of the matter, Munday called for an Inquiry into permanency and stated:

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<sup>28</sup> John Martin (MBA/NSW), *Letter to the Hon Clyde Cameron, Minister for Labour, Canberra*, 1 March 1973.

(Justice Aird of the Federal Commission had earlier expressed the view that, while tradesmen and builders' labourers were entitled under their awards to act as part-time first aid officers, the only union with appropriate cover of full time first aid officers was the Health & Research Employees' Association.)

<sup>29</sup> Trevor Nixon (National President AFCC and Chairman of the Emergency National Meeting of the industry), *Letter to the Prime Minister of Australia*, 8 March 1973.

<sup>30</sup> *Diary Notes*

<sup>31</sup> "What is Workers Control?" *National Workers Control Conference Newcastle, Easter, 73*, Quality Press, Forest Lodge, Undated.

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>32</sup>

Disputes over worker control issues continued and 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>33</sup> The MBA/NSW lockout ended when the NSW/BLF resolved, at a mass meeting of its members on 4 June 1973, to accept the employers’ terms of settlement.<sup>34</sup> Some confusion was created by the union’s loose translation, to its members, of those terms.<sup>35</sup> In a letter to the Royal Australian Institute of Architects (RAIA), John Martin, MBA/NSW Executive Director, complained:

Attached is a copy of the BLF recommendation to the meeting of its members on 4 June 1973 together with an extract from “The Sydney Morning Herald” of 1st June. Both documents state what Mr. Justice Aird said about the return to work on 4th June. The Herald version is correct because I personally checked with the Judge. The union statement widely differs from the truth and is typical of the dishonesty practised by the union”.<sup>36</sup>

The Federal Government referred the matter of an investigation into the problems of permanency to the Federal Commission, and Justice Aird was assigned the task. This was later assigned to Justice Elizabeth Evatt and an analysis of the arguments,

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<sup>32</sup> *Transcript of Proceedings*, in matter of Section 33 notification of a dispute re employment of builders labourers, C.No.1733 of 1973, Commonwealth Conciliation and Arbitration Commission, 8 March 1973, p.5

<sup>33</sup> John Martin (MBA/NSW), *Letter to Mr A C Reynolds, Secretary, NSW Chapter, Royal Australian Institute of Architects*, 5 June 1973.

<sup>34</sup> The MBA/NSW terms of settlement included the dropping of all claims for ‘worker control’ by the NSW/BLF and the NSW/FEDFA; that all bans and limitations be lifted; that the two unions abide by the terms of their recently freely negotiated awards and agreements; and, the acceptance of a Dispute Settlement procedure that involves the BTG so that any disputes would be referred to a BTG- MBA/NSW panel before any stoppages occur. The agreement reached before Justice Aird was virtually the same except the Disputes settlement process was to be administered by Commissioner Wilson rather than the suggested panel.

<sup>35</sup> The NSW/BLF interpreted the agreement to be applicable to only those limited sites that had specifically been mentioned in the hearing before Justice Aird.

<sup>36</sup> John Martin (5/6/73) *Op Cit*

conclusions and proposed trial scheme through the offices of the Commonwealth Employment Services (CES) is a subject more appropriately addressed by a separate thesis. Munday proudly outlined, to his members, his concept of the ideal scheme through which a more stable and permanent employment relationship within the building industry could be achieved:

The government must be impressed by the way in which we have repeatedly stated that permanency of employment for builders' labourers will mean a need for Federal and State governments, employers, architects and building workers to come together to determine which building can be built with the public interest in mind; in fact, buildings which are socially beneficial to the community as a whole.<sup>37</sup>

That view indicated that Munday, in pursuing Permanency, was equally, if not more, focused on achieving power for his 'green bans constituency' as he was on obtaining the benefits of more secure and predictable employment for the NSW/BLF membership. There was obvious irony in the situation of Munday (the trade union official) calling for permanency of employment for his membership, while Munday (the revolutionary environmentalist) frustrated millions of dollars worth of construction work through his green ban activities thereby reducing the amount of work available to his membership.

The green ban community certainly recognised Munday's continued and active support for their interests for, on Friday 1 June 1973, Wendy Bacon (a self-confessed anarchist, co-editor of "Tharunka", and a leader of the Victoria Street Resident Action Group) called a rally (meeting), at Trades Hall, "to pledge support for the Builders' Labourers Federation in their struggle for permanency and union hire in the building industry".<sup>38</sup> The reference to 'union hire' reflected Munday's belief, and expectation, that any Permanency Scheme would incorporate the provision that workers would be allocated work by the union. The rally, on 1 June, "composed overwhelmingly of non-members of the BLF" heard "speaker after speaker (explain) the support their

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<sup>37</sup> Jack Munday, "Permanency: A Permanent Subject", *Builders Labourers' Federation*, June 1973, p.1 (This magazine was usually called "The Builders' Labourer" and, in fact, the individual pages of the publication were so headed.)

group had received from the BLF in their different struggles”. Those speakers included representatives from the Committee of Resident action Groups; individual Resident Action Groups; the Women’s Liberation Working Women’s Group; the Sydney Centre for Workers’ Control; the Redfern Aboriginal Housing project; the Alternative Rhodesian Information Centre; and, the Abortion Law Reform Campaign.<sup>39</sup>

In the face of such adulation it was hardly surprising that, at a compulsory conference (of the respective Executive Committees of the MBA/NSW and ABLF) called by Justice Aird, Jack Munday refused to remain and participate because the judge would not agree to the NSW/BLF Executive and Resident Action Group representatives also attending.<sup>40</sup> That conference was hastily convened by the judge after the MBA/NSW had filed a fresh application to de-register the ABLF on 18 October 1973 - during the week of the violent green ban confrontation at the Rocks. A strike by builders’ labourers commenced over the Rocks issue and the strikers had resolved to ‘stay out’. With no labourers to assist the tradesmen the jobs ground to a halt and MBA/NSW major contractor members achieved another lock-out by standing down Crane-drivers,<sup>41</sup> closely followed by tradesmen who openly blamed builders’ labourers for ‘putting them out of work’.<sup>42</sup> Many builders’ labourers staged work-ins.<sup>43</sup> Pat Clancy demanded more consultation between the unions to prevent his members ‘from being thrown out of work’ and wanted a Code of Inter-union relationships,<sup>44</sup> a suggestion rejected by the NSW/BLF as it challenged union ‘autonomy’.<sup>45</sup>

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<sup>38</sup> “Rally backs and thanks BLF”, *Tribune*, 5-11 June 1973

<sup>39</sup> Ibid

<sup>40</sup> “Urgent matter of importance” - H.O. Hall, President MBA/NSW, *Minutes of Annual Meeting of Council*, Master Builders Federation of Australia, 31 October 1973.

<sup>41</sup> Justice Sheehy later ordered the employers to pay the Crane Drivers for their time lost as by ‘cancelling the Agreement’, even on the basis of misconduct, the MBA/NSW members had breached the ‘Notice’ provisions. This dispute provided the grounds necessary for the FEDFA to successfully have the Lofty Crane Drivers Industrial Agreement replaced by the Building Industry Crane Drivers Award which applied only to members of the MBA/NSW.

<sup>42</sup> *The Australian*, 6 November, 1973.

<sup>43</sup> *The Sun*, 7 November 1973.

<sup>44</sup> *The Sun*, 13 November 1973.

<sup>45</sup> *The Australian*, 14 November 1973.

The Association, so as to utilise evidence gathered since 7 April 1972, filed a fresh application to de-register the ABLF. The fresh application became B.No.73 of 1973 and was joined to the previous, and stood-over, application filed on 7 April 1972 which was B.No.40 of 1972. The Australian Industrial Court issued, on 18 October 1973, 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 as it, the ABLF claimed, would be exercising both judicial and administrative powers. The argument was dismissed on the basis that the Court had only to use its judicial power.<sup>46</sup> The De-registration 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, or reinforced, and demands made for ‘workers control’.

More strain was placed on relations between the ABLF and the NSW/BLF and between the ABLF and the BWIU over the ACTU elections. Pat Clancy, who had been elected to the ACTU Executive in 1969, lost his position to Gallagher at the September 1973 elections through Gallagher being supported by the smaller right-wing building unions. [Clancy regained the ACTU Executive position in 1975].

There has been much debate about Gallagher’s motives for challenging Clancy, the Left’s candidate. The most likely answer is the elevation of Clancy to National Secretary of the BWIU earlier that year,<sup>47</sup> which Gallagher undoubtedly saw as a challenge to him on the ‘national’ stage. Gallagher, after all, was the only building union leader with a Federal award applying in each state - though the conditions prescribed were not uniform. Gallagher, facing de-registration of his Federal/National union, was in a different position to that of Munday, the NSW/BLF leader, who could fall back on his union’s State registration. Gallagher began seeking ways to convince the MBA/NSW that he would ‘clean up’ his union’s NSW branch, and

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<sup>46</sup> (1974) 130 C.L.R. 87

<sup>47</sup> The BWIU recovered its federal registration in 1962  
*Commonwealth Arbitration Reports*, Volume 100, pp.834-836.

his concerns were obviously heightened by the knowledge of Clancy's successful attempts to secure the support of many other building unions for a National Building Tradesmen's Award. A national stoppage of building tradesmen, on 2 April 1974, had been foreshadowed in support of that objective. Prior to that date, the MBA/NSW notified the matter to the Federal Commission, and Commissioner Brack found a dispute existed and the Unions resolved to commence serving employers and their associations around Australia with their logs of claim.<sup>48</sup>

Gallagher, in an attempt to encourage the MBA/NSW to abandon its De-registration Case, advised the President of the Federal Commission that the NSW/BLF was no longer authorised to represent the ABLF before the Commission. This resulted in the farcical situation in which NSW/BLF-generated disputes were referred to the Federal Commission, and officers of that union refused to attend hearings due to their lack of official recognition.<sup>49</sup> By the time Gallagher made his (short-lived) interventionist attempt, Munday had been replaced by Joe Owens as Secretary of the NSW/BLF due to the Munday promoted Union rule limiting tenure of office as secretary to two (2) terms.

When the de-registration case resumed on 2 April 1974 the ABLF's Federal Research Officer advised the Court that the union would take no further part in the proceedings.<sup>50</sup> On 21 June 1974 the industrial registration of the Australian Building Construction Employees and Builders' Labourers' Federation was cancelled.

That day also marked John Martin's last day as Executive Director of the MBA/NSW - he resigned to take up the position of National Executive Director of the Retail Traders Association. He was replaced by Raymond Leslie Rocher, of the Plunkett dispute, a long-serving member of the Association's Executive Committee who, at the time of his appointment, had been the MBA/NSW Deputy President.

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<sup>48</sup> MBA/NSW "Minutes of Industrial Policy Committee 1/4/74", *Minutes*, 9 April 1974.

<sup>49</sup> MBA/NSW "Minutes of Industrial Policy Committee 18/3/74", *Minutes*, 9 April 1974.

<sup>50</sup> *Transcript of Proceeding*, in matter B.No.40 of 1972 and B.No.73 of 1973, Australian Industrial Court, 2 April 1974 at pp.255-256.

### **The post de-registration period**

Logs of claim had been served for a National Tradesmen's Award by the BWIU; the Plasterers and Plaster Workers Union of Australia; the Operative Painters and Decorators Union of Australia; the Operative Stonemasons' Society of the State of NSW; the Tilelayers' Union of NSW; and, the Slaters, Tilers Shinglers and Roof Fixers' Union of Australia.<sup>51</sup> The ASC&J was still to serve its log and the ABLF had served a Statement of Intent.<sup>52</sup>

The unions were advised of the MBA/NSW resolution to oppose the attendance of the ABLF at the first hearing of the matter to be held in Melbourne on Tuesday 25 June 1974.<sup>53</sup> Nor would the MBA/NSW participate in any negotiations at which the ABLF was present. The MBA/NSW iterated its undertaking, originally given to John Ducker of the Labor Council, that it would ensure that the relationship between the Builders' Labourers award conditions and those of Tradesmen would be maintained.<sup>54</sup>

A meeting of representatives of MBAs from around Australia, held on 24 June to discuss the forthcoming hearing before Justice Evatt the following day, gave no support to the MBA/NSW proposition that Employer Associations should boycott any hearings or meetings at which the ABLF was represented.<sup>55</sup> The reasons given by John Luckman, MBAV Senior Industrial Officer, 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.<sup>56</sup> Similar reasons were given by the other state MBAs. The MBAs, and in particular the MBAV, were opposed to the de-registration action taken by the MBA/NSW, which they believed unfairly destabilised their relations with the ABLF due to the activities of one branch of the

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<sup>51</sup> MBA/NSW "Minutes of Meeting of Building Unions and Employer Organisations, 21/6/74", *Minutes*, 9 July 1974.

<sup>52</sup> *Ibid*

<sup>53</sup> *Ibid* (Due its de-registration three days earlier)

<sup>54</sup> *Ibid*

<sup>55</sup> J.R. Elder, *Memorandum to Chairman, MBA/NSW Industrial Policy Committee*, 26 June 1974.

<sup>56</sup> *Diary Notes*

union. Many national contractors shared that criticism of the MBA/NSW. Their displeasure was heightened by the industrial pressure Gallagher placed on their operations around Australia in support of his demand that they convince the MBA/NSW to withdraw its de-registration application.<sup>57</sup>

The de-registered ABLF served logs of claims directly on a number of employers around Australia on behalf of the employer's individual (builders' labourers) employees.<sup>58</sup> Justice Evatt ruled that the ABLF could represent a number of individual members of the unincorporated Union. Her Honour was advised that the MBA/NSW would pursue the matter in the High Court.<sup>59</sup> That challenge to the High Court, while being unsuccessful in overturning Her Honour's Decision,<sup>60</sup> was successful in frustrating Gallagher's attempts to become a part of the historic award-making process and he saw Clancy's influence growing at the expense of his own.

Gallagher commenced his move against the NSW/BLF on 16 October 1974 by attending the Sydney Institute of Technology project after receiving a telegram from the builders' labourers' job delegate asking for his intervention due to the 'elitist' actions of the dogmen, riggers, scaffolders and the hoist driver who, assisted by the crane drivers, were telling the site when and why to go on strike.<sup>61</sup> Hearings before the State Commission and before the Equity Court ensued and the NSW/BLF won an injunction against Gallagher restraining him from signing up NSW/BLF members.<sup>62</sup>

Gallagher continued to enrol defectors from the NSW/BLF whose officers found themselves hindered by the MBA/NSW cynical interpretation of the conditions applying to rights of entry signed by the state secretary as compared to those which were signed by the federal secretary.<sup>63</sup>

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<sup>57</sup> Ibid

<sup>58</sup> MBA/NSW, "Minutes of Industrial Policy Committee on 1/8/74", *Minutes*, 13 August 1974. (That log of claims was referred to as an 'agency log'.)

<sup>59</sup> MBA/NSW "Report to Council of Management on the activities of the Industrial Relations Department - August 1974", *Minutes*, 10 September 1974.

<sup>60</sup> (1975) 132 C.L.R. 87

<sup>61</sup> J.R. Elder, *Memorandum to Chairman (MBA/NSW) Industrial Policy Committee*, 1 November 1974

<sup>62</sup> Ibid

<sup>63</sup> MBA/NSW, *All Member Circular - Rights of Entry Permits*, 7 November 1974.

(The MBA/NSW exploited the retention of the Federal Builders' Labourers' Award by conferring on Gallagher the rights that de-registration denied him.)

The MBA/NSW membership was united in its support for the Gallagher take-over of the NSW/BLF. The MBA/NSW continued to encourage its membership to inhibit entry to building sites of NSW/BLF officials. The most descriptive comment on the role of the MBA/NSW, in seeking to rid itself of the NSW/BLF and its supporters, came from Justice Sheehy. The Judge, who was hearing a re-instatement claim by the sacked workers from the Qantas project (a site with a disastrous industrial history), observed:-

In the circumstances the workers may well have wondered whether the treatment given them was from the hand of the Company or the MBA or even the Executive of the Federal body of the union. It purported to come from the Company in the guise of a disciplinary measure taken because of the interruption of the concrete pour but I think that the workers could have said that although they felt the hand of Esau, they heard the voice of Jacob.<sup>64</sup>

The pressure was maintained on the NSW/BLF and its supporters began to respond against the MBA/NSW. In November 1974 the offices of the MBA/NSW were defaced with such slogans as “MBA + Gallagher = Scab” and “*No MBA Scab union*”<sup>65</sup>. On 5 March 1975, twelve people were charged with breaking into the offices of the MBA/NSW and stealing 108 files. The group (led by Tony Hadfield, NSW/BLF Organiser, and Wendy Bacon - former Editor of *Tharunka*), included one journalist, three teachers, one tutor, and five university students.<sup>66</sup> At the end of March 1975, the leadership of the NSW/BLF acknowledged defeat at a meeting, attended mainly by their supporters from outside the union.

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<sup>64</sup> *Decision*, Dispute Dillingham Constructions Pty. Ltd. re Dismissals, No.523 of 1974, 4 December 1974.

<sup>65</sup> *NSW Builder*, Volume 3, No.11, 1974, p.576

<sup>66</sup> MBA/NSW “Minutes of Executive Committee on 11/3/75”, *Minutes*, 11 March 1975.

## Conclusion

The rejection by the NSW/BLF leadership of the disputes settlement procedures introduced by Commissioner Watson in December 1971, and its campaigns in support of worker control and union hall hire, led the MBA/NSW to initiate two industry lock outs in 1973. This further isolated the NSW/BLF from other tradesmen unions who blamed it for 'putting their members out of work'.

Despite his claims for permanency of employment for building workers, the underscoring feature of Munday's objectives were seen to be worker control and the green bans issue. An unsuccessful, and short-lived, attempt by Gallagher to intervene in the affairs of the NSW/BLF concentrated on rights of representation before the federal commission. This approach merely made dispute resolution more difficult.

The de-registration action by the MBA/NSW isolated it from other MBAs who resented their quite good relationships with the ABLF in their own states being adversely affected. Many national contractors also resented the MBA/NSW actions due to their building projects in states other than NSW being subjected to industrial pressure by the ABLF over its threatened de-registration.

The application by building tradesmen's unions for a national award, and the successful moves by the MBA/NSW to exclude the ABLF from those negotiations undermined the leading position previously enjoyed by Gallagher. Denied intervention by the long, but ultimately unsuccessful High Court challenge by the MBA/NSW (to its 'agency log'),<sup>67</sup> the ABLF leadership moved against the NSW/BLF and began the process of ousting its incumbent leadership.

Despite encouragement from various legal decisions, the NSW/BLF leadership was unable to withstand the combined efforts of the ABLF and the MBA/NSW.

The union movement generally maintained a policy of non-interference having been given assurances by the MBA/NSW that the conditions of employment of builders' labourers would not be allowed to be eroded.

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<sup>67</sup> *Building Construction Employees and Builders' Labourers' Award, 1973 - Application to Vary*, (1974) 29 IIB 2827.