

# Trade union strategy in Sydney's construction union: a Roman Catholic perspective

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## ABSTRACT

*Purpose* – The purpose of this paper is to document key elements of union strategy at Sydney (Lidcombe) branch of Australia's Construction Forestry Mining and Energy Union (CFMEU) in an attempt to document and critique its branch level strategy in the year immediately after the removal of the Howard-Costello Government.

*Design/methodology/approach* – A case study approach is used in analysing data obtained from internal CFMEU documents and correspondence; interviews with the New South Wales State Secretary of the CFMEU Andrew Ferguson, union organisers, one former organiser who worked for a number of years at Western Sydney but is now with a white-collar union in the education sector, and construction workers; CFMEU official publications; news media stories and a series of building site visits. The authors use a theory framework of Roman Catholic social teaching to frame the discussions and analyse the case study findings.

*Findings* – In focus groups with construction workers, the authors find one challenging external constraint for the CFMEU: reaching out to and meeting effectively the needs of younger workers especially those from families hostile to unionism. However, younger workers seem to hold a mix of individualistic and collectivist philosophies. The final case shows the CFMEU organiser Tulloch to be adaptable and flexible in the heat of industrial disputation. Finally, the fact that building workers brought the asbestos issue to CFMEU's attention in the final case study shows union willingness to pursue issues not initiated by the union.

*Originality/value* – The paper documents the fact that the CFMEU has the ability and potential to rebuild its influence on building sites in Sydney and win further favourable outcomes for exploited and vulnerable workers within its sphere of influence. Through the theoretical framework, the authors point that as it does so it will assist in bringing to fruition the Roman Catholic social teaching that presents strong trade unions as a valid form of collective voice for workers and a way for collective and individual labour to retain in practice the dignity that God has already clothed them with.

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## INTRODUCTION

This paper studies the Sydney (Lidcombe) branch of Australia's Construction Forestry Mining and Energy Union (CFMEU) in an attempt to document and critique its branch level strategy in the year immediately after the removal of the Howard-Costello Government, ie November 2007 to November 2008. This 'transitional time', prior to the Rudd Government releasing its own plans for workplace relations, was a time of excitement and anticipation in union offices and building sites across the country as people perceived that the balance of power had changed. However, industry participants remained unsure of exactly how far the new government would go in dismantling the repressive workplace laws of its predecessor. Put simply CFMEU strategy at the Sydney branch level during this transitional time revolved around a program of 'rebuilding influence' (Simms, 2007: 439; Wills and Simms, 2004: 66) on the building sites, re-establishing links with workers that were weakened during the Howard years, and generally educating workers on their legal rights at work and the benefits of union membership.

We use a case study approach using data obtained from internal CFMEU documents and correspondence; interviews with the New South Wales State Secretary of the CFMEU Mr Andrew Ferguson, union organisers, one former organiser who worked for a number of years at western Sydney but is now with a white-collar union in the education sector, and construction workers; CFMEU official publications; news media stories; and a series of building site visits where the second-mentioned author joined a union team at two construction sites located in western Sydney. Case study findings are analyzed within the context of our theoretical framework (Roman Catholic social teaching).

The remainder of the paper is structured as follows. Section 2 provides a history of Australian construction industry unionism, Section 3 presents the theory framework and literature review, while micro-cases are presented in Sections 4 and 5. Section 6 concludes.

## A BRIEF HISTORY OF AUSTRALIAN CONSTRUCTION INDUSTRY TRADE UNIONISM

We now briefly discuss the history of trade unions in the Australian construction industry in Australia, not because history is expected to repeat itself, but to set out the context for developments in the industry today.<sup>1</sup> These developments cannot avoid either building upon or departing from what has gone before. As Marx famously wrote,

“Men [*sic*] make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past” (Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, 1852 (Marx, 1994: 188)).

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<sup>1</sup> This section draws in part from a personal interview by the second-mentioned author with Paul True, former training officer at CFMEU Sydney, at the Wickham Park Hotel in Newcastle on 6 November 2009. True worked at CFMEU Sydney from 1998 to 2006 and has served a lifetime as a BLF organiser and union activist within the construction industry. Other sources include Bramble (2008) and Ross (2004).

The trade union movement in Australia received a great impetus from the ranks of the former unemployed in the 1930s and the 1940s. The Unemployed Workers' Movement (UWM), during the Great Depression of the 1930s, was responsible for the radicalization of a generation, with its attempts to prevent eviction of the unemployed from their homes in famous cases such as those in Bankstown, Clovelly, and Newtown in Sydney and Tighes Hill in Newcastle (Paul True, personal interview, 6 November, 2009). The Communist Party of Australia (CPA), formed in 1920, saw a surge in membership in the 1930s. The unemployed workers involved in the UWM went on to play important roles as rank and file activists in the construction industry after World War II. Contrary to popular belief, the construction industry unions have not always been radical or led by the rank and file. Paul True (personal interview, 6 November, 2009) describes the union leaderships in the immediate post-World War II era as 'petty criminals' and 'old-fashioned stand-over men', not organized or sophisticated enough to be termed gangsters. The BWIU and the BLF were both conservative unions before 1961. In the 1950s, the CPA noticed the names of three BLF members on their membership rolls and used these three to form a rank and file group within the BLF (Paul True, personal interview, 6 November, 2009). This rank and file group grew in power until its group, under Mick McNamara, took over leadership of the union at the 1961 elections (Bramble, 2008: 48). For the period from the 1950s to the 1980s, construction union divisions reflected the worldwide divisions in the ranks of the communist parties (Ross, 2004: 37, 298; Paul True, personal interview, 6 November, 2009). The BWIU remained pro-Moscow while the BLF was pro-Peking, its allegiance switching across to CPA breakaway group, the Maoist Communist Party of Australia (Marxist-Leninist) [CPA (M-L)] when it was formed in 1963 (Bramble, 2008: 22). The BWIU leadership was first CPA-connected, and then switched over to the newly formed Socialist Party of Australia (SPA), that retained a hard pro-Moscow line after the CPA moved over to humanitarian Eurocommunism. After 1983, BWIU leader, Pat Clancy, left the SPA because of that party's opposition to the Australian Labor Party's (ALP) Accord, and ended up to the right of all of the communist parties. Throughout this time the BLF was far more radical and militant than the BWIU since only the BLF had experienced takeover by the rank and file. Much of the conservatism of the BWIU leaders, according to Paul True (personal interview, 6 November, 2009), can be traced to fears of a repeat of the 14-year union deregistration that occurred in the period from 1948-1962.

The BLF was successful in raising the status of the previously marginalized 'shit-labourers' (including the crane crews, steelfixers, and scaffolders), traditionally far behind in status on the building sites to the tradesmen covered by the BWIU. Through strikes and militancy the BLF won improved working conditions for builders' labourers in the area of pay rates, working hours, site allowances, site safety, onsite amenities such as lunchrooms and toilets, and the no-work-when-it-rains concession. The BLF in New South Wales (NSW), under Jack Munday, took a third course, by being non-aligned (i.e. to either Moscow or Peking) Eurocommunists. The NSW BLF experimented with 'green bans', namely boycotts of work on environmentally sensitive or historically important sites in inner Sydney especially in the historical precinct known as 'the Rocks' (Bramble, 2008: 56; Ross, 2004: 168-169). Much of the humanitarian tradition of the Sydney CFMEU today is built upon the legacy of the pioneering work of the NSW BLF in the Munday era. The NSW BLF supported gay and

lesbian, women's and aboriginal rights causes (Ross, 2004: 17). Famously, the union ordered a stop work on an extension to a Christian residential college at Macquarie University after hearing that the college had expelled a gay student only for reason of his sexuality (Bramble, 2008: 56). The Victorian branch of the BLF, led by Norm Gallagher, was equally as militant as its NSW counterpart but placed less of an emphasis upon social and environmental issues (Bramble, 2008: 48). The Victorian branch launched a hostile and ultimately successful takeover of the NSW branch in the mid-1970s (Bramble, 2008: 77) which created ongoing hostility towards the Gallagher faction. Meanwhile, the BWIU, having lost hope of a communist revolution occurring in Australia, abandoned class struggle in practice although not in rhetoric. From that point on it became increasingly reformist in practice while its rhetoric continued on unchanged.

The Hawke Federal ALP Government won the election in March 1983 largely based on a commitment to engage the trade union movement in strategic partnership (termed 'the Accord'), which would involve wage restraint, as a collaborative project to ensure that the Australian economy could emerge from the recent recession (Bramble, 2008: 114-122; Ross, 2004: 69-70). Acceptance of the Accord by the BWIU and BLF leaderships marked the formal abandonment of class struggle as the guiding principle of the construction industry unions, although the BLF accepted the Accord with much less enthusiasm than did the BWIU (Bramble, 2008: 119; Paul True, personal interview, 6 November, 2009). Writing from a Marxist perspective, Bramble (2008: 119) categorizes the leadership of unions such as the Australian Metal Workers' Union (now the Australian Manufacturing Workers' Union but always the AMWU) and the BWIU as 'an intermediary layer between capital and labour and committed ultimately to the capitalist order'. The BLF was deregistered as a legal trade union in 1986, after it became progressively unwilling to accept the decline in real worker wages that followed the Accord, and its members were forcibly moved into the BWIU. The BLF continued on bravely for several years after deregistration, especially in its traditional powerbase in Victoria. It finally admitted defeat when the deregistration was extended for five more years in 1991, and leading BLF organiser John Cummins began to press for inclusion in a new industry super-union that the BWIU had already taken steps to bring about (Ross, 2004: 256). Paul True alleges (personal interview, 6 November, 2009) that the BWIU 'aided and abetted' the demise of the BLF at the hands of State and Federal Governments. The amalgamation of the BWIU and the remnants of the BLF was part of a broader consolidation of industry unions whereby all of the smaller unions representing specific crafts, with the exception of the electricians, merged, by choice or by coercion, to form the CFMEU. The dominant culture of the CFMEU, since its official beginning in March 1994, has been that of the BWIU, especially in NSW. The NSW branch has also been closely linked to the NSW ALP with State Secretary Andrew Ferguson being a son of NSW deputy-premier Jack, himself a BWIU executive, and brother of current Federal MPs Martin and Laurie. Paul True claims (personal interview, 6 November, 2009) that the CFMEU in NSW prior to the 2007 Election was being run 'increasingly like a sub-branch of the ALP' with its commitments to fighting the WorkChoices legislation through peaceful means culminating in exhortations to members and supporters to vote ALP at the ballot box. The question facing the CFMEU is, given its militant history and Communist Party influences in the area of its theory and guiding principles, what will replace class struggle as its fundamental reason-for-

being? The best suggestion at the moment appears to be humanitarianism especially in cases involving relatively powerless migrant workers whose cases can be boosted by being bankrolled by the organizational power and centralized strength of the NSW CFMEU. Paul True correctly states (personal interview, 6 November, 2009) that we must evaluate the strategies of the present leadership *in the context of the industry union history that they are building upon*. He recognizes that history never repeats (it is senseless to be forever re-debating whether Khrushchev was right or wrong in his speech at the 20<sup>th</sup> Party Congress and similar such matters) and we cannot simply hope for a return to the golden years of construction industry unionism. However, True suggests that, whilst we cannot rebuild the past, we can retain some ‘features of the past’ (personal interview, 6 November, 2009), such as the bottom-up culture of the NSW BLF in the Munday era and emphasis upon the rank and file. Overall he rates the performance of the CFMEU in recent times as ‘fair at best’, claiming that ‘Che Guevara would spit in the face of the NSW CFMEU’. However, True ranks Ferguson as ‘excellent’ in the areas of ‘overseas’ (i.e. statesmanship on behalf of the CFMEU overseas and statements and actions in relation to overseas issues) and ‘solidarity’. This includes an ‘excellent’ rating in regards his work with Sydney’s migrant worker communities, where he has had sustained opposition from senior people within his union. True expresses a personal hope (personal interview, 6 November, 2009) that Ferguson will use the bureaucratic and centralized nature of the NSW CFMEU not as an end in itself, nor as a means to consolidate a power base, but as a means to push through and assist the cases of exploited migrant workers.

## **THEORETICAL FRAMEWORK AND LITERATURE REVIEW**

The rise of Roman Catholicism since the Second Vatican Council in the 1960s has been associated with statements and publications by the ‘radical’ (O’Shea, 2005: 7) Pope John Paul II (e.g. 1981) confirming the dignity of labour and the importance of trade unions that can raise and protect wages and working conditions.<sup>2</sup> At a gathering of workers in May 2000, John Paul II (2001: 16), in his own words, voiced ‘a strong call to correct the economic and social imbalances present in the world of work and to make decisive efforts to ... give due attention to solidarity and the respect owed to every human person’. Furthermore, workers should not be ‘treated as mere tools for profit, rather than as free and responsible persons’ (John Paul II, 1986: 73). In *Laborem exercens [On Human Work]*, John Paul II (1981: 92) argues that capital should always serve labour rather than labour serve capital. Furthermore, he writes that ‘[t]he key problem of social ethics ... is that of *just remuneration* for work done’ (1981: 77, emphasis original), and that ‘a just wage is the concrete means of *verifying the justice* of the whole socioeconomic system and ... of checking that it is functioning justly’ (1981: 78, emphasis original). Traditionally the Roman Catholic Church has venerated St Joseph, the human father of Jesus, as a skilled labourer in the purest (unalienated, pre-capitalist) form (see Moore, 1977). Whilst Lennon and McCartney portrayed the priest Father Mackenzie as socially irrelevant and introverted 40 years ago in the Beatles’ ‘Eleanor Rigby’, it is worth noting that the Howard Government’s *Workplace Relations Amendment (Work*

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<sup>2</sup> The Roman Catholic Church’s social teaching is widely held by theologians to have commenced with Pope Leo XIII’s encyclical *Rerum novarum [On the Condition of Labour]* in 1891. Curran (2002: 7) lists 13 documents generally held to make up the canon of Church social teaching, including three by Pope John Paul II.

*Choices) Act 2006 (Cth.)* was strongly opposed by the Roman Catholic Church in Australia and its most senior representative Cardinal George Pell of Sydney. Working in conjunction with the trade unions and other voices on the left, the Catholic Church took upon itself the role of intellectual, moral, and spiritual vanguard on workplace relations. Father Bill O'Shea (2005: 35) reminds us that 'social justice and human rights are just as integral to the Church's mission as its liturgy and its religious education'.

John Paul II (1981) writes that the following rights of workers should be considered sacrosanct from the Roman Catholic perspective (many of these had already been spelled out by Pope Leo XIII in *Rerum novarum [On the Condition of Labour]* in 1891; Curran, 2002): (a) the right to unemployment benefits (73); (b) the right for a mother to stay out of the workforce should she so choose (79); (c) the right to cheap or zero cost medical care (81); (d) the right to at least one day off work per week (81); (e) the right to a pension and workers' compensation insurance (81); (f) the right to satisfactory and safe working conditions (81); (g) the right of freedom of association (81); (h) the right to strike (85); (i) the right to work in a foreign country (90); (j) at terms and conditions no worse than those available to nationals of that country (92). Clearly the WorkChoices laws and the Section 457 visa scheme, designed to provide Australian employers with a low-cost source of foreign labour, in combination violated a number of these sacrosanct rights, especially (h) and (j).

The exact relationship between Roman Catholicism and Marxism remains unclear. Although in the 1960s Pope Paul VI validated the use of Marxism as a tool of sociological analysis (Curran, 2002: 203) and did not rule out violent revolution in certain cases (Curran, 2002: 162, 164), John Paul II opposed the Latin American Catholic-Marxist 'liberation theologians', accusing them of politicizing the gospel and mixing it with human ideologies. However, as his biographer George Weigel (2005) notes, John Paul II seems to have taken onboard some of the ideas of the liberation theologians such as the 'preferential option for the poor' and 'sinful structures' that had not been previously emphasized in Catholic social teaching. (see also Curran, 2002: 13, 185, 204). The former Cardinal Ratzinger, the present Pope Benedict XVI, remains a stauncher and more committed opponent of liberation theology and Marxism than John Paul II ever was. Our approach to Catholicism and Marxism is at the left-wing end of the Catholic spectrum, following on in the spirit of Pope Paul VI, although we acknowledge that the Church is more likely to swing to the right than to the left under Pope Benedict XVI.

CFMEU strategy today is *consistent with* the pro-worker side of the Roman Catholic tradition since the union takes all steps possible to *humanize* workers and their families.<sup>3</sup> Furthermore, as Peetz (2006: 25) writes, '[a] union seeks to create and strengthen employee identifications with occupation, class and union'. The union can be expected to continue to reject moves by building company bosses to treat labour as simply another variable cost of production an idea that is totally at odds with Roman Catholic social teaching. CFMEU, in effect, opposes the 'ideology of accounting' where wages are an 'above-the-line' expense to be minimized whenever possible.

Whether union strategy is correctly conceived or not and successful or not is extremely important from the Roman Catholic perspective. If union strategy is intelligently conceived

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<sup>3</sup> This does not mean or imply that the CFMEU leadership is presently composed of practising Catholics.

and successful in practice union power and reach increase, union density increases, and the benefits of union membership are maximized both at the levels of collective labour and the individual worker. While, for Catholic social teaching, the right to freedom of association is invariant, the benefits flowing from that right to the worker are very much a function of past and present union strategy. Where the rights of the worker are protected at worksites the revealed dignity of the human person as labourer created in the image of God is enshrined. Theological dignity requires dignity in practice which requires successful union strategy that expands union power, reach, and density. As the union is a free association of labourers in an industry it is the ideal body to further the collective interests of labour and to ensure that, consistent with Catholic social teaching, capital remains in labour's service (Curran, 2002: 79, 90). Significantly, Leo XIII's *Rerum novarum* states that '[w]henver the general interest or any particular class suffers, or is threatened with evils which can in no other way be met, the public authority must step in to meet them' (cited in Curran, 2002: 141). Clearly there is no reason why a trade union or the church could not be the body to 'step in' to protect those oppressed, and they may be more suitable institutions to do this than the bureaucratic state machine (Curran, 2002: 142). As Curran (2002: 144) points out, 'mediating institutions [for example, local churches and trade unions] are closer to the grassroots level and can deal effectively with some aspects of the problem of poverty'.

Peetz (2006: 157-185) and Peetz *et al.* (2007) contrast two union strategies, the 'servicing model' and the 'organising model'. The organising model has been championed over the last ten years by the Australian Council of Trade Unions (ACTU) and its former Secretary Greg Combet (Peetz, 2006: 163). Under the servicing model, organisers are the focus of attention, the union and the membership look to them to produce results, and they are the ones that receive most resourcing and support. Union members have a 'transactional' worldview whereby organisers deliver 'services' to members in exchange for 'fees' (Peetz, 2006: 161). 'Grievance work' takes up the bulk of organisers' time and resources and it is organisers who pressure management to alter its behaviour. By contrast, under the organising model, workplace delegates (shop stewards) are the focus of attention, are supported with resources, and are expected to produce the bulk of the results. It is this approach that is now recommended by the ACTU. The advantages of this approach are that the union is seen to be part of, rather than above and separate from, the workforce, and the union can be more responsive and accountable since the delegates are on site full time. Workers' self-confidence increases when they win small victories at workplaces without the organisers' direct involvement (Peetz, 2006: 168-172). A good example of the use of the organising model is during the 1986 Victorian Nurses' Strike in Australia when union organiser Irene Bolger of the now defunct Royal Australian Nursing Federation (RANF) frequently supported rank and file strategies that she did not personally agree with (Bloodworth *et al.*, 1998: 133-149). The success of many Australian unions in increasing their membership bases, or at least in dramatically halting the rates of decline, since 2000 has been attributed to the shift from the servicing to the organising model (Bramble, 2008: 204, 243; Peetz, 2006: 60, 163).

Evidence suggests that the servicing approach remains the primary approach in Australia. Peetz (2006: 166) argues that his survey evidence, reported also in Peetz *et al.* (2007), shows that unions are less than a quarter of the way through the changes they need to make. However, there is evidence of a cautious move towards the organising model. Union

organisers lament, in survey responses, that too much of their time is spent on grievance work which suggests that organisers favour the organising model. The surveyed organisers were spending 30% of their time (down marginally from 34% two years previously) on grievance work whereas they suggested an ideal figure of 17%. By contrast, they felt that they should be spending 26% of their time building delegate structures and training delegates. Actual time spent in these activities was stated to be only 11%, marginally up from 9% two years previously. However, CFMEU implicitly encourages a servicing worldview as final outcomes of grievance cases, which nearly all involve organiser action, are highlighted repeatedly in union publications. Patrick O'Brien (name changed), a former CFMEU organiser in western Sydney, and now an organiser with a white-collar union in the education sector, defends the CFMEU, arguing that grievance work is just a part of the job, may be repetitive and mundane, but is necessary to be done if membership needs are to be met effectively (personal interview with second-mentioned author, 15 June, 2009). It is true that in the rough and tumble of the construction industry appeals to management by independent organisers, rather than by delegates who are employees, might be initiated more frequently and meet with more success.

Pyman *et al.* (2009) study the degree of 'unmet demand' for unionization existing in Australia. They define unmet demand as survey respondents indicating that they would like to join a union but are not already members of a union. They note that unmet demand occurs primarily on 'greenfields' sites where access to the union and union organisers is impossible or difficult. Thirty-eight point five percent of surveyed workers who did not have a union at their workplace indicated willingness to join. However some unmet demand also occurred at high density workplaces (Pyman *et al.*, 2009: 12), suggesting that unions should not ignore 'infill recruitment' at these places. Whether to focus on 'infill' or 'expansionary' (at greenfields sites) recruitment may be a difficult strategic choice for a union (Palmer and McGraw, 1990: 16). Twenty five percent of surveyed non-members in unionized workplaces reported that they would be 'very likely' or 'fairly likely' to join the union if someone were to invite them. The authors give a figure of 38.5% for Australian unionism if all unmet demand is included (or 27.8% if only the 'very likely to join' unmet demand responses are included). They note that unmet demand is negatively correlated with a number of demographic variables such as age, income, and years of working (Peetz, 2006: 30, 168). There is significant unmet demand among younger workers, casting doubt on the theory that younger workers are by nature more individualistic. Workers are also more likely to join a union if the union has been able to demonstrate successful outcomes in the past (Pyman *et al.*, 2009: 8). Younger workers are less likely to fall into this category and hence they are more likely to be 'unmet demand'.

Lastly, the authors discuss the main theories as to why workers join unions, which can be summarized as: (a) dissatisfaction with current workplace (Bramble, 1993: 55; Peetz, 2006: 15; Pyman *et al.*, 2009: 7; Wheeler and McClendon, 1991); (b) ideological reasons (Peetz, 2006: 17; Pyman *et al.*, 2009: 7; Wheeler and McClendon, 1991); and (c) instrumental reasons (Peetz, 2006: 17; Pyman *et al.*, 2009: 7; Wheeler and McClendon, 1991), meaning that the worker joins if she/he perceives that she/he will gain from union membership based on cost-benefit criteria. This last factor is consistent with Karl Marx (1976: 1069-1071) describing unions as 'insurance' in Volume 1 of *Capital*. For Marx, trade unions prevent the



individual worker, out of desperation, from selling her/his labour-power at a price below its value. For Marx (1976: 275, 284-306), historical and social factors, unique to a particular civilization and culture at a particular point in time, determine the value of labour-power. Therefore, union influence in an industry over time contributes to the creation of the value of labour-power at any particular moment.

Bain and Taylor (2008) study the reactions of five unions in the UK (Amicus, Unifi, Lloyds Trade Union (LTU), Communication Workers Union (CWU), and the Union of Shop Distributive and Allied Workers (USDAW)) to the event of offshoring of call centre work to India by a sample of banks and finance companies. The outcomes of each campaign, measured in terms of the success of each union in preventing compulsory redundancies, are also highlighted and the authors discuss the links between campaign strategies and outcomes. They rely upon Hyman's (1975) definition of 'power' (see also Kelly, 1998; Martin, 1992) and the argument that industrial disputes involve assessment of one's own power against the power of the other side. Martin (1992: 1) vividly describes power as the 'ghost at the bargaining table'. Kirkbride (1992) and Kelly (1998) emphasize that 'the actors' *perceptions* of power resources were critical in understanding power struggles' (Kelly, 1998: 51, emphasis added). Hyman (1975: 97) argues that unions' negotiating positions are based on what can 'realistically' be gained from employers. There remains a need to 'assess clinically the other side's power resources in adversarial situations' (Bain and Taylor, 2008: 19; see also Magenau and Pruitt, 1979; Salamon, 2000: 79). The focus here on 'realism' and 'clinical assessment' suggests that, in the Australian context, it would be inappropriate to expect the CFMEU of today to adopt the same militaristic tactics used by the predecessor building unions in the 1960s and 1970s (including the Building Workers Industry Union (BWIU) and the Builders Labourers Federation (BLF)). The societal context, and more importantly the legal context, has changed dramatically since those times. Of special relevance to our discussion of CFMEU strategy is Kelly's (1998: 51, emphasis added) statement that 'purely structural accounts of power [have] omitted the attitudes and *strategies* of the actors'.

Bain and Taylor (2008) find that those UK unions that threatened strike action and campaigned vigorously against the employer were more likely to achieve success. In one case (USDAW against Reality), success was achieved when affected call centre workers were joined by transport workers in threatening strike action. By contrast, passive unions that did not threaten strike action but merely contacted the local parliamentarian and/or arranged consumer petitions had fewer successes. These right-wing unions often couched debate in terms that encouraged xenophobia; Indian workers were the subject of ridicule rather than the British employers. These unions in some cases relied nearly exclusively on work done by full-time union organisers. They alienated substantial proportions of their memberships by deciding *not* to undertake any form of industrial action. Harry Williams, of the School of Policy at Newcastle University (Australia), argues that the same situation of worker disappointment and alienation exists presently in the Australian construction industry (interjection at Newcastle University research seminar, 24 April, 2009). Hence he calls for the CFMEU, and especially its less militant New South Wales (NSW) branch with its strong Australian Labor Party (ALP) connections, to focus on agitation first rather than education and to take strike action where necessary (regardless of the fines that may be imposed).

Heery and Simms (2008) survey and interview a number of young British union organisers participating in industry training. They aim to identify the key internal and external constraints perceived by the organisers that make their work less likely to achieve its objectives. This research is especially important for the present study as we are interested here in evaluating the *strategy* of the CFMEU in the immediate post-Howard environment and would also like to suggest possible paths forward for the union in this time of opportunity. Heery and Simms (2008: 39) find that internal constraints identified by their sample of union organisers are perceived to be at least as important as external constraints. Because internal constraints are internal to the organisers' own unions they remain within union control. Hence possibilities exist for proactive and in-touch unions to firstly change themselves and secondly change their external environments. Unions may 'push back the boundaries of constraint' (Heery and Simms, 2008: 40). Heery and Simms (2008) find that female organisers do not seem to experience greater problems than male organisers although they are less likely to encounter satisfactory lay support. This finding about lack of lay support is consistent with a masculine culture still being a feature of many unions (Heery and Simms, 2008: 37; Kersley *et al.*, 2006: 146-147). Over 90% of organisers that Heery and Simms surveyed were ethnically white Britons (Heery and Simms, 2008: 27 and Table 1: 28) which reinforces the claim that British union organisers are not well matched well with the multicultural workforces that they hope to serve. We find that this is definitely not the case for CFMEU, whose Sydney branch has hired a number of foreign-language speaking organisers and also produces foreign-language publications. This suggests that CFMEU is now well placed to effectively recruit members from ethnic minority backgrounds within the western Sydney construction industry and, more importantly, to meet their needs effectively (albeit largely within the context of what Peetz (2006) terms the servicing model). Patrick O'Brien comments that reaching out to ethnic minority workers has been a strength of the CFMEU in Sydney and he comments that Construction & General Division State Secretary, Andrew Ferguson, brother of Federal ALP MPs Martin and Laurie, has a detailed understanding of the various ethnic communities in Sydney as well as the ins and outs of Labor Party politics in the area. However, because many new migrant workers have poor or zero English skills, and in many cases are illegals, servicing the needs of these members at Sydney is highly likely to follow the servicing model.<sup>4</sup>

Another important finding of Heery and Simms (2008: 37) is that organisers with a past background in social activism tend to perceive constraints to be less important. This result suggests that such organisers' prior work experience is of benefit to them when working as organisers. One of the CFMEU's foreign-language speaking organisers, the Korean speaking Mr Chikmann Koh, has a background in investigative journalism. He was formerly an investigative reporter for a Korean-language publication in Sydney which is how he came into contact with the CFMEU. The Iranian Farsi and Dari-speaking organiser, Mr Manzoor, who joined the CFMEU on a part-time basis in May 2008, has prior working experience in community liaison at a multicultural working-class government high school in western Sydney. Mr Mal Tulloch is presently a Holroyd councillor and previously was an organiser at

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<sup>4</sup> The CFMEU's Chikmann Koh and the Korean Tiler Association of Australia (KTAA)'s president Phillip E. Oh estimate that of the 4,000 to 5,000 Korean ceramic tilers working in Sydney 70% are illegals.

the CPSU (Community and Public Sector Union *not* the Communist Party of the Soviet Union) and mayor of Holroyd. These prior positions required negotiation and persuasion skills in tense workplace contexts and with a social activism component; these prior backgrounds are likely to serve these CFMEU organisers well in their organising activities.

The most important internal constraints nominated by surveyed respondents in Heery and Simms (2008) were as follows (listed in order of the percentage of respondents listing the constraint as ‘very important’): (a) lack of commitment or experience of workplace activists (43%); excessive demands on time and energy (33%); (c) lack of support from full-time officers of the union (32%); (d) inadequate union systems or information (32%); and (e) absence of an organising tradition within the union (30%). By contrast, the most important external constraints were as follows: (a) employer opposition to trade unions (37%); (b) union image; too male dominated or unattractive to younger workers (33%); (c) lack of access to targeted workplaces (29%); (d) individualistic values among non-members (27%); and (e) absence of supportive legislation (20%).

In the present study, the external constraint of Howard-Costello Government workplace laws is in the process of being dismantled,<sup>5</sup> to be replaced by the Rudd Government Fair Work Australia regime, while the external constraint of Howard-Costello Government hegemony to a large extent ceased on election night 2007. A third external constraint that has emerged recently (but had not emerged at the time of our field work) is the global financial crisis of 2009. The CFMEU organisers tend to be comfortable in the traditional adversarial organiser role, can mobilize workers, often threaten if not actual strikes then peaceful boycotts, and often win favourable financial settlements. Most, such as Keryn McWhinney and Mal Tulloch, have many years working experience in the construction industry while others, such as Chikmann Koh and Manzoor, have prior working experience in complex roles involving negotiation and persuasion skills and a social activism component.

Important external constraints nominated by British union organisers *which have not been removed* in Australia are as follows: ‘lack of access to targeted workplaces’ [situation probably improving but far from ideal]; ‘union image (too male dominated and unattractive to younger workers)’; and ‘individualistic values among non-members’. Another pressing external constraint is the global financial crisis.

## **BUILDING SITE INFORMATION CAMPAIGN VISITS**

In May 2008 the Sydney (Lidcombe) branch of CFMEU began a campaign of building site visits by a union team. The meetings, primarily information sessions about superannuation, long service-leave, and permanent disability entitlements, were conducted during the course of a morning. Each morning’s program had the union team meet groups of 8-20 workers for 20-30 minute sessions, session after session, for the duration of the mornings. Simms (2007: 439) explains the motivations behind such information campaigns: ‘[T]hey attempt to place an emphasis on appealing to workers and on building collective interests and solidarity at workplace level around relevant workplace issues’. Only some of the site visits would be what Simms (2007) terms ‘greenfield union organising campaigns’, i.e. visits to workplaces

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<sup>5</sup> The actual content of these laws and their ramifications have been discussed in detail elsewhere and are outside the scope of the present paper. Elton and Pocock (2008) is a typical qualitative study investigating the implications of WorkChoices on twenty low-paid and vulnerable workers based in Adelaide, South Australia.

with low density. Other visits were to building sites with high density. For example, the Merrylands shopping centre extension site, visited on 14 May, 2008, had a density of 60% and every company operating on the site on the day had an Enterprise Bargaining Agreement (EBA).

During the course of each morning visit there was the opportunity for each worker onsite to attend one session. Sessions were theoretically held in the lunch breaks of the workers. The fact that the union team could enter the two worksites that the second-mentioned author visited on 14-15 May, 2008 (requiring the approval of the principal contractor at the site) suggests that the industrial relations climate in Australia had already altered compared to the Howard-era. This conclusion is reinforced by the comments of union organisers. Workers at the sites visited (shopping centre extension site at Merrylands and apartment site at Rhodes) seemed positive and enthusiastic about the union team visits, many questions were asked and answered, and many workers filled out membership forms. A new, young union delegate was chosen, amidst much celebration, at the relatively less union-friendly Rhodes site. The CFMEU's Ferguson explained to the second-mentioned author the union strategy behind the visits. The goals of the visits were to 'rebuild influence' (Simms, 2007: 439) on building sites and to reconnect with workers. In Ferguson's words, in conversation with the second-mentioned author on 14 May 2008:

"Today [we are] going around our sites doing super. We were very strong ten years ago. We have picked an issue to campaign on. We have a little team going around focusing on super. Some [bosses] underpay, some pay late, some not at all. We have recovered AUD40,000 plus in the last three weeks. We are educating and trying to demonstrate efficacy based on one issue. ... One guy is good at calcs [calculations] and checks super calcs on site. We are trying to win small victories on the site".

O'Brien states that during his six years as a CFMEU organiser in western Sydney he did not experience any similar workplace campaigns and he commented that he felt the strategy was 'unusual'. He said it was likely a product of the current institutional and legal environment and what building companies were willing to permit. He also pointed out that it is important, as Ferguson says, to demonstrate efficacy by winning small victories on the sites. O'Brien, furthermore, commented that workers always 'enjoy guest speakers'. However, O'Brien also claims that the CFMEU in western Sydney did not fully take advantage of good years in the industry, during the economic boom associated with the 2000 Sydney Olympic Games, to strengthen delegate structures, and improve leadership, communication, and activism 'on the ground'. He sees this time period as an important lost opportunity which is affecting the western Sydney branch of the union to this day.

Simms (2007: 448, 451) distinguishes theoretically between the 'organising phase' and the later 'representation phase' that involves 'negotiating and enforcing collective agreements, and personal casework' (448). In CFMEU building site visits, both phases were combined although clearly there was specialization: Ferguson's primary focus was organising whereas the calculation person's, and to a lesser extent McWhinney's, focus was on personal casework (or 'grievance work'). There was a concern expressed by Ferguson and CFMEU

organisers to the researchers that bans on union entry to building sites (still in place technically in May 2008) meant that union presence necessarily had diminished on sites. Therefore, the union was no longer necessarily at the forefront of workers' consciousness. Ferguson indicated his view that the rebuilding process would be challenging and difficult but not insurmountable (in Ferguson's words: 'it will be hard work; no magic solutions'). In part it rests upon the union's ability to be proactive, to raise its profile physically on sites, and to be seen as relevant, approachable, and pro-worker. Younger workers, who may have known no other government than Howard-Costello (Van Onselen and Senior, 2008: 186), were especially the target of the CFMEU site visits. Ferguson perceived that there was a requirement to educate younger workers (Towers, 1987: 241) and migrant workers on the ABCs of the role and function of an independent trade union and the benefits of industry labour having a collective voice with the ability to secure concessions from bosses (Simms, 2007). Union organisers discussed with the researchers how younger workers do not always know what the role and function of an independent trade union is. It is doubtful whether this is taught in schools and it is not clearly explained in the media or by government organizations. One worker asked an organiser at the Rhodes building site what the difference was between 'the union' and 'super'!

The union team at the two site visits included Ferguson, two full-time organisers, a lawyer working with Taylor & Scott, and a retired construction worker Mr Barry Hemsworth serving with the team in a volunteer capacity. At each session, Ferguson opened by introducing the CFMEU, the purpose of this particular campaign, and the union strategy to rebuild influence on building sites. He encouraged workers to stay back at the end of the session and complete the union application form, talk to organisers if necessary, and/or have their pay slips checked to see whether superannuation entitlements had been paid correctly. There was openness in allowing workers to raise and address particular practical issues of concern to them. As Simms (2007: 444) writes, '[t]he ways in which unions come to identify and define issues create understandings and expectations among organising workers about how their interests are and can be defined'. At the Merrylands site on 14 May, 2008, Ferguson made the following comments to workers:

"We have to rebuild our membership and influence onsite. ... Our goal is to attack non-union companies to bring them up to the standard. ... It's about priorities and then we work. If we set up a strike we will lose money and be fined and not exist. ... We are not going to use strike strategies now. [PM] Rudd is on the side of the employers and builders, contrary to media presentations. We have to rebuild our power on the sites. It's not going to happen if people don't support us".

Ferguson made the following significant comments to workers at Merrylands about the power balance in the construction industry that can be interpreted within the context of the industrial relations literature reviewed by Bain and Taylor (2008):

"In the next few years we will rebuild influence in this industry. Laws will change to be more sympathetic to collective bargaining. Our union will get stronger. ...

Howard laws gave complete power to employers in the workplace. Employers have had so much power under the Howard Government. A Labor Government is better than a Liberal Government but it is very scared of big business. ... The industry goes up and down and our influence goes up and down. There are no magic solutions, guys. ... Our challenge is to deal with non-union companies [that pay] no 'top-up' [union rate minus negotiated rate]. ... We are not trying to get more money out of union companies but are attacking non-union companies. Aim is to rebuild influence and membership on site. Recently we could not even have meetings like this”.

After Ferguson, CFMEU organiser Ms Keryn McWhinney spoke about the building industry superannuation fund CBUS as well as worker superannuation, death benefit, and long service-leave entitlements. Her strategy involved educating workers, especially younger workers, on the benefits that CFMEU and its predecessors in the construction industry, including the BWIU and the BLF, have won for workers over preceding decades. These benefits include, most significantly, an industry-wide long service leave scheme introduced in 1975 as well as taken-for-granted amenities such as onsite lunchrooms and toilets and the no-work-when-it-rains concession. McWhinney explained how construction industry unions won the long-service leave scheme and the additional benefit that the payments would no longer be at the minimum wage (as previously) but at the award rate plus productivity.<sup>6</sup> As McWhinney stated, an additional concession won by the unions is that workers can get work credit for up to four year absences from work due to injuries, including non-work injuries, when computing long service leave entitlements. Workers legally operating as subcontractors rather than employees and having an ABN number also qualify for the scheme (another concession won by the unions). In McWhinney's words, as spoken to the workers at Merrylands on 14 May 2008: 'The union has fought for those changes in recent times to improve the scheme for construction workers'. As Simms (2007: 445) concludes: '[O]fficials and organisers were able to make a case both to workers and to managers that they [issues] needed to be addressed and, of course, attributed any resulting improvement to the union's intervention'. Clearly the former Australian building industry unions won a range of working conditions improvements for workers and McWhinney aimed to ensure that this strong legacy is not taken for granted.

After McWhinney, the Scott & Taylor lawyer spoke about workers compensation insurance and about how and when to claim to receive full entitlements. There were questions from the floor about free hearing tests and how these could be arranged. The lawyer explained how a percentage is determined for each worker's permanent injury(ies) such as permanent hearing loss and how a once-off fixed sum payment is computed based upon this percentage. The sessions also involved the offer by McWhinney to check computations of superannuation payments on worker payslips. The discussion by organisers regarding death benefits reminded workers to take up and pay for four units of death benefit insurance so that dependent families could receive AUD200,000 (AUD50,000 per unit) in the event of the worker's death or AUD100,000 in the event of total permanent disability (TPD). Recent

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<sup>6</sup> EBA rate as at May 2008 was AUD22 per hour plus AUD6 per hour productivity allowance as compared to a typical AUD17-18 per hour at non-union companies.

cases where a worker inadvertently had not updated his coverage and a family was left with an insufficient benefit were highlighted. Names and photographs of workers and families *humanized these cases* in workers' minds and indicated that such situations affect real-life workers such as themselves. The CFMEU puts into practice the Roman Catholic assumption that capital should serve labour rather than labour serve capital.

The sessions focused heavily on issues of monetary entitlements *already enacted into law* but which, through employer negligence or fraud, were not being paid on behalf of workers at the correct rates or amounts. Simms (2007: 444) comments that '[w]orkers may simply accept an issue as a fact of their working lives until someone highlights, for example, the law, or the potential for injustice'. Raising workers' consciousness of issues and reminding workers of the union's past and present ability to achieve tangible results on prior issues were the cornerstone aims of the union organisers' addresses. As Pyman *et al.* (2009) suggest, workers are more likely to join unions if they have had favourable positive experiences with unions in the past. Reminding workers of past union successes, however, may not have been necessary for old-time unionists and may be considered too far removed by some young workers only interested in the present and in the future. What are we to make of this emphasis on monetary entitlements rather than class consciousness, affirmative action, industrial disputes, or even workplace safety issues? At one level there is a desire on the part of Ferguson to claim common ground with workers and help to rebuild lost relationships through a concern with the material wellbeing of workers within a general context of the need to hold to account employers. If workers are interested in monetary entitlements then the CFMEU is interested in this as well. On another level, trade unions' bread-and-butter for over a century has been pay disputes; Luxembourg (2005) [1906] writes that the trade unions in Russia from 1896 to 1905 first mobilized disaffected workers over economic bread-and-butter issues and only later did worker dissent spill over into political concerns. However, one possible downside in emphasizing monetary outcomes is that workers become vulnerable to monetary offers made by employers (or rival building unions as in Australia in the 1980s when the BWIU competed with the BLF) which are generous but which may impact adversely on the worker and/or on collective labour (Bramble, 2008; Ross, 2004; Simms, 2007). As Palmer and McGraw (1990: 15) point out, 'the lack of unity among unions moving into an industry provides the employer organization with the opportunity to play one off against the other'. Hence, in Australia in the 1980s, employers and governments were pleased to enlist BWIU support on occasion in order to crush the might of the ascendant BLF.

The addresses to workers during the sessions for the most part lacked class rhetoric, and militant action was neither mentioned nor advocated. The union organiser discourses were marked by their carefulness, restraint, logic, and professionalism. For O'Brien, this is what he has come to expect from the western Sydney branch of CFMEU with its ALP culture and connections. He points out that ALP-style unionism will always be more bureaucratized, centralized, and restrained than non-affiliated unionism or unionism connected to political parties to the political left of the ALP, e.g. the now defunct Communist Party of Australia (Marxist-Leninist) of which the BLF's Norm Gallagher was a member. Clearly the CFMEU organisers felt grateful in being able to enter worksites again and there was a desire to project a mature, blameless, and responsible image. Only Ferguson made occasional references to 'rich people' and the need to protect workers from the scheming of such individuals. Simms

(2007: 440) writes that ‘strong group identities and ideological resources which allow groups to attribute perceived injustices to “managers” are important prerequisites of collective action’. Ferguson attempted to establish a discourse whereby previous and present State and Federal Governments were the authors of ‘perceived injustices’ to construction workers, in addition to ‘bosses’ and ‘rich people’. There is a clear element of truth in this with the Federal and State Governments of the 1980s, including ALP governments, having bitterly persecuted the BLF. Harry Williams points out that there is no reason why nuggets of Marxism could not be inserted into organiser speeches (interjection, Newcastle University research seminar, 24 April 2009). Williams recalls BWIU organisers in the past telling workers that they worked for themselves up until Tuesday and for the boss for the rest of the week, a popularized reference to Marx’s theory of surplus-value as unpaid labour time.

Interestingly, ‘rich people’ were referred to by Ferguson in the specific context of encouraging workers to transfer their super accounts to CBUS. It was mentioned that account-keeping fees at CBUS are AUD5 per month whereas other super funds frequently charge AUD20 per month. According to Ferguson, AMP deducts an ‘admin’ fee which is ‘bullshit’; in fact ‘some schemes charge five dollars per week’. As Ferguson stated to workers at Merrylands: ‘AMP control workers’ money for the benefit of rich people - shareholders, running it in the interests of profit’ whereas in reality ‘it’s your money’. Ferguson added: ‘We own the [CBUS] money. No-one at the top is sucking out the money for rich people’. It appears that the class struggle has taken on a hue totally unforeseen by Marx and Engels: The battleground is choice of superannuation fund; the proletarian revolution will be won when the full community of construction workers transfers their super accounts to CBUS! However, the fact that half of the CBUS non-independent directors are nominated by employer associations (Gluyas, 2008a, 2008b) must cast doubt upon any assertions of ‘workers’ control’. The union sentiment here is obviously sincere. However, the campaign on this point raises a number of issues. Transfer to CBUS in effect means one set of salaried bureaucrats managing the workers’ money rather than another set of salaried bureaucrats. Secondly, both CBUS and mainstream funds invest in portfolios of company ordinary shares that pay dividends to shareholders and may not be committed at all to the workers’ movement. Workers’ transferring to CBUS strikes us a peculiarly postmodern form of and site for class struggle. Workers’ control, if it means class control, does not seem obviously in play here notwithstanding Ferguson’s comments regarding rich people. Some workers might be alarmed at the ACTU and the big unions establishing an ‘archipelago’ of control and influence (Foucault, 1977) that extends from ALP seat preselections (Bramble, 2009: 19) to superannuation fund management. One important positive point, not mentioned at the sessions, but mentioned in CFMEU promotional material, is that CBUS invests deliberately in construction projects as its way of contributing to the future prosperity of the industry. However, investments in property constitute only 15.5% of total investments (Gluyas, 2008a).

## **ASBESTOS SCARE AT MERRYLANDS SHOPPING CENTRE EXTENSION SITE**



This case demonstrates the ‘process of interest formation’ (Simms, 2007: 442) or, in other words, ‘how workers’ interests come to be identified and expressed’. Following Hyman (1999) and Simms (2007), we acknowledge, and demonstrate here, how ‘collective interests are socially constructed’ (Simms, 2007: 442). We agree with Simms (2007: 442) that, ‘understanding the effects of the processes of interest formation in the early stages of unionisation contributes to our understanding of unions’ ability to engage with new groups of workers and to express their interests’. The case also demonstrates the adaptability and flexibility of CFMEU organiser Mal Tulloch who adjusted the union position in response to demands voiced by a vocal but small group of younger workers. The fact that the CFMEU took up the asbestos testing as a campaign issue is consistent with Simms’ (2007: 446) theory that unions select and prioritize those potential campaign issues that are: (a) winnable; (b) salient; and (c) will gain collective support. The asbestos issue, and especially at a St Hilliers’ site given that this was not an anti-union builder, clearly satisfies all three of these conditions. The fact that workers first initiated the issue by contacting CFMEU when asbestos was found (Bartok, 2008) increased the union’s confidence *ex ante* that the issue was winnable, salient, and would receive collective support. Since the safety committee and workplace delegate played key roles in the resolution of the dispute, working in tandem with the CFMEU organiser, this suggests a mix of the servicing and organising approaches.

This case involved an issue that had been escalating over several months as a result of non-action by the building company St Hilliers Contracting Pty. Ltd. (hereafter St Hilliers) after promises made by it to workers that all workers working on the Merrylands shopping centre extension site on the day that the asbestos was discovered would be given free onsite lung-testing (which costs around AUD100 per worker). Since no action had been taken, despite negotiation between the company and Tulloch representing CFMEU, the issue came to a head on the day that the second-mentioned author visited the Merrylands site (14 May, 2008). The eventual satisfactory resolution of this issue, firstly among a meeting of all union-friendly workers on site and then at the safety committee meeting, demonstrated both the power of collective union action to ensure that prior commitments are kept but also the ability of the union to alter its maintained position in response to vocal worker opposition. These meetings and the final negotiated resolution occurred on the afternoon of 14 May 2008 after individual groups of workers had met the CFMEU team for 30 minutes each throughout the morning. Since the CFMEU’s goal in these small group meetings had been to rebuild influence on building sites, clearly the goodwill created during the morning could have rapidly evaporated had the CFMEU not been willing to alter its maintained position in the afternoon.

The 1.30pm mass meeting took place on the floor of the construction site rather than in the lunchroom cabins. It appeared that the meeting had been called spontaneously and had not been scheduled. Since it was conducted on the floor of the construction site, inside completed sections of the shopping centre extension itself, it was clearly held on ‘workers’ territory’. It appeared that most or all of the workers had stopped work and moved over to this side of the extension project to hear Tulloch speak. The attendance at this 1.30pm meeting of around 60-100 workers amounted to all or nearly all of the workers that had attended the earlier small group sessions. These workers would be union members, those interested in joining the union, and union sympathizers (Pyman *et al.*’s ‘union membership plus unmet demand’). Workers were gathered in a semi-circle as Tulloch spoke. Tulloch confirmed the CFMEU

position that the union was willing to enforce its will that St Hilliers would abide by its prior promise to test workers present on the site *at the date of asbestos discovery* for free on the site itself. An earlier informal meeting of Tulloch and the safety committee (headed by the union delegate, Graham (name changed)) had decided that if St Hilliers would not take concrete steps today to honour its promise then construction workers would occupy the original open-for-business part of the shopping centre next day to stage a peaceful protest. Workers had indicated their willingness to be involved in this protest. It appears that it was this intention to protest, as communicated to the builder, which led to the company's new willingness to take further action to initiate the tests. This finding is consistent with the case studies in Bain and Taylor (2008) where unions that take active industrial action are more likely to win satisfactory outcomes as opposed to the more passive right-wing unions that stick to efforts to contact parliamentarians, lobby customers to lobby employers, and/or muted PR strategies.

It appeared that the meeting with the 60-100 workers with Tulloch was designed by the union to simply communicate developments to the whole of the union-friendly site workforce. However, a group of three or four younger workers, standing in a group at front and centre of the gathering, challenged Tulloch to amend the negotiated agreement so that *all workers presently on the site* could receive the free testing. Concession here would have meant altering the CFMEU's maintained position that had been enshrined in the earlier agreement with the builder and had also been used in negotiations with the builder earlier in the day. Tulloch explained that the union needed 'evidence' and could only put forward a position with respect to a single site. In Tulloch's words, 'you can't go back and fix things from the past' and he stated a commitment to abide by process. He stated that the union wanted worker support for collective action.

Interestingly, the younger workers were not hesitant to argue forcefully with the union organiser nor were they reluctant to upset his decorum. The younger workers argued that the payment of union fees should result in all union members having access to the benefit of the free tests, a mix of individualist and collectivist arguments. These events amply demonstrate Peetz's (2006: 211) argument that '[w]orkers are simultaneously individualistic and collective'. One young worker threatened non-payment of union fees should the union not adjust its position. At first it appeared that neither party would back down. It is to the CFMEU's credit that Tulloch evaluated the merits of the arguments presented on the spot and a new CFMEU position was reached that would accommodate the younger workers' request. As in Heery and Simms (2008), union organiser creativity, flexibility, and responsiveness can be expected to play vital roles in overcoming external and internal constraints. O'Brien states that good organisers need to know 'which way the wind is blowing' on the ground and make the necessary adjustments on the spot. O'Brien credits Tulloch here with 'good organising'. However, O'Brien suggests that back in the 1960s and 1970s asbestos was viewed so seriously that it meant immediate downing of tools and walking off the job. For O'Brien, the facts of this case clearly demonstrate changed circumstances in the industry leading to changed union strategy.

It is interesting to note that this group of younger workers met with no clearly visible response, positive or negative, from any of the other workers gathered at the meeting. All seemed to recognize that, with the election of the Rudd Government, a new chapter had

opened in the history of Australian trade unionism; in fact a new dialectic has emerged: on the one hand the CFMEU will probably regain at least some of its historical influence on building sites and the opportunity is there for its power to expand. In Heery and Simms' (2008) terminology, two key external constraints have been or are in the process of being removed: Howard-Costello Government harsh workplace laws and Howard-Costello Government anti-union hegemony. However, contrary to the fears of conservative media commentators, a new dynamic will come into play where younger workers will no longer passively accept union dictates where these clearly infringe their sense of justice and individual entitlement. It appears that, in this new era, not only building company bosses but CFMEU organisers as well will become more accountable to both the individual and collectivist voices of labour. The CFMEU's own legitimacy will be continually tested and be continually re-evaluated in the light of new information. The CFMEU does not need to fear this. As this case study demonstrates, the CFMEU altered its maintained position quickly during the course of a day, listened to and accepted the arguments of as few as three younger workers out of a union-friendly workforce in the region of 60-100, and won a satisfactory resolution from the building company on the basis of this new position. The cynical picture that former ALP leader Mark Latham (2005: 254) pictured in his diaries of trade union officials seated around a table at a Chinese restaurant deciding everyone else's futures is way off the mark; the younger generation of workers (specifically the under-30 demographic) was responsible for voting out the Howard-Costello Government in November 2007 and has a new sense of its own power.

Immediately following this meeting a second meeting was held. As Tulloch stated in personal conversation with the second-mentioned author, 'the safety committee meeting was spontaneous to take advantage of the union being onsite'. It was held in a lunch cabin with union delegate Graham and the other safety committee members present along with a building company representative (the project manager Mr Max Baroni) and Tulloch. Other CFMEU organisers, including the new recruit Manzoor, sat at the back of the room but did not participate in the meeting. It was noted that originally St Hilliers had agreed for testing to take place in the six to eight weeks after 8 March 2008 but that this had not occurred.

One point of dispute was whether the subcontractors' workers' tests would be paid for by St Hilliers (this was the union position). St Hilliers had been advised by their lawyer, according to Tulloch (in personal conversation with the second-mentioned author), to push the testing cost on to the subcontractors and to hush the matter up. The safety committee meeting was conducted in hushed tones and it was over quickly: Tulloch put forward the new proposal, St Hilliers' Baroni acceded to it, and there was some practical discussion over where the tests would be held. The new union proposal to test all workers on the site as at the date of the meeting was quickly accepted by Baroni. Having workers occupy the open-for-business part of the shopping centre next door was clearly not a prospect that St Hilliers relished. The threat of peaceful protest was nearly as effective as an actual strike would have been given the circumstances of the case and given the easy access of workers to the completed part of the shopping centre next door.

Tulloch indicated to the second-mentioned author that there was strong union support on this building site (as stated previously St Hilliers had an EBA and union density on site was 60% including St Hilliers and all sub-contractors). Tulloch also mentioned that the CFMEU

was fortunate that union delegate Graham was a committed union person, had many years of experience in the industry, and was highly respected. For most workers on the site, except perhaps the youngest, there was a ‘culture of trade unionism’ (Simms, 2007: 449). Tulloch’s observations regarding the union delegate Graham are consistent with the prior literature cited by Simms (2007: 440) where she notes that shop stewards play a ‘central role’ in ‘forming and expressing workers’ interests’. Consistent with the organising model, the union delegate works to create counter-hegemony on site that is pro-union. However, although no-one mentioned it in the ‘union car’ on the 20-minute drive back to the CFMEU office, it is probably fair to suggest that everyone on the union team, and possibly many workers as well, were shaken up by the ferocity of the not unreasonable demands of the younger workers. CFMEU, represented by Tulloch, demonstrated to all workers on the site that it was willing to lose face publicly by reversing its maintained position in the interests of keeping workers supportive; workers’ safety interests were clearly paramount in Tulloch’s mind. Kelly and Heery (1994) emphasize the role that good union organisers play in ‘identifying collective agendas but also in ensuring that they are expressed effectively’ (Simms, 2007: 440). Tulloch performed these services effectively but he also empowered, structured, motivated, and guided the safety committee in a manner consistent with the organising model rather than the servicing model. Tulloch demonstrated adaptability and flexibility within a high-pressure environment on site; he did not simply perform designated tasks in a mechanical manner. There may be an element of ‘bureaucratising tendency’ or ‘conservatism’ (Bramble, 1993: 56; Simms, 2007: 440) among CFMEU organisers associated with the western Sydney branch (at least when compared to the historically more militant Victorian branch). However, Tulloch here showed a capacity and willingness to break that mould and pro-actively adjust his position to accommodate worker demands. Simms (2007: 441) points out that, as unions attempt to engage with groups outside the ‘traditional’ union constituency, they are forced to ‘adapt’ in order to succeed. Tulloch here demonstrated that necessary adaptability. Simms’ (2007: 446) assertion that ‘[i]nvariably ... issues affecting only a particular group of workers are sidelined in favour of issues likely to appeal to all workers’ did not apply here; CFMEU was willing to act to negotiate to achieve a satisfactory outcome for only a small group of affected workers.

Simms (2007: 444), furthermore, states that, in the union campaigns she witnessed, ‘in general, most of the issues around which the unions campaigned were identified by union professionals’. As stated previously, this was not the case here as it was building site workers that called in the CFMEU when asbestos was first discovered at the Merrylands site (Bartok, 2008). This is consistent with high density on the site and a proactive union delegate. However, consistent with Simms (2007), the exception to the general rule of union initiation of issues did occur at Merrylands in relation to a ‘highly controversial issue ... where norms of “fairness” had been breached’ (Simms, 2007: 445).

## **CONCLUSIONS**

Using a series of case studies, based on data obtained from fieldwork at the western Sydney (Australia) branch of the Construction Forestry Mining and Energy Union (CFMEU), we document union strategy at the branch level in the year immediately after the federal election defeat of John Howard’s Government. A key aspect of union strategy at the branch level in

western Sydney was building site visits by organisers designed to rebuild influence on sites and reconnect with workers. Evidence suggests that the removal of a key external constraint, Howard Government neo-liberal hegemony, altered the invisible balance of power (Martin's (1992) 'ghost at the bargaining table') significantly even on election night 2007. The CFMEU's hiring of foreign language speaking organisers and production of foreign language publications is a praiseworthy attempt to reach out to ethnic minority workers and bring them under the 'mainstream' union umbrella. In focus groups with construction workers, we find one external constraint identified by Heery and Simms (2008) to remain challenging for the CFMEU: reaching out to and meeting effectively the needs of younger workers especially those from families hostile to unionism. However, consistent with Peetz (2006), younger workers seem to hold a mix of individualistic and collectivist philosophies. Our final case shows the CFMEU organiser Tulloch to be adaptable and flexible in the heat of industrial dispute. Lastly, the fact that building workers brought the asbestos issue to CFMEU's attention in our final case study shows union willingness to pursue issues not initiated by the union (Simms, 2007). Consistent with Simms' (2007) theory, the CFMEU probably pursued the asbestos issue with the builder because it was winnable, salient, and could gain collective support. The CFMEU has the ability and potential to rebuild its influence on building sites in Sydney and win further favourable outcomes for exploited and vulnerable workers within its sphere of influence. As it does so it will assist in bringing to fruition the Roman Catholic social teaching that presents strong trade unions as a valid form of collective voice for workers and a way for collective and individual labour to retain in practice the dignity that God has already clothed them with. Very important here, as Pope John Paul II realized, is the 'preferential option for the poor' in the face of 'sinful structures'.

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