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## INDIVIDUALISATION AND RESISTANCE AT THE COAL FACE

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In the past two decades Australia has experienced a transition from a collectivist legal regime for industrial relations to a new "individualist" regime. Alongside this, corporate individualisation strategies, aimed at reducing or precluding the influence of unions have become particularly evident in Australia, New Zealand and the United Kingdom (Brown et al 1998; Dannin 1997; McCallum 1996; Oxenbridge 1999; Wooden 2000), and a coherent individualising model is emerging in Australia. This paper provides an example of that model in operation.

We examine a large multinational corporation, MineCo, and its subsidiary operating a mine in Australia, CoalCo. The focus is a dispute in which a number of union members were targeted for removal by the organisation. We were able to interview seven of the mineworkers in April 2003 and transcribe them. We also make use of evidence in the decisions in the Australian Industrial Relations Commission and other documents. We analysed transcripts and decisions using NVivo qualitative analysis software. We have used fictitious names. We find a dispute based on a clash of ideologies – collectivism versus individualised profit – and the impact this had on their lives and the lives of their families.

### AN INDIVIDUALISING MODEL OF EMPLOYEE BEHAVIOUR

The source of "individualisation" is economic liberalism, a theory with a long history but a simple purpose to legitimate the process of accumulation necessary in capitalist society (Rubin 1929). The economic liberal paradigm typically includes ideas of a 'flexible' labour market, financial liberalization and privatisation (Murray 2004). Company ideologues, business lobby groups and some state bureaucrats refine and mass-produce the economic liberal message (Pusey 1992). Competitive interests and emerging ideologies combine to pressure corporations to adopt anti-collectivist strategies of "individualisation" of employment relations – that is, as "the removal of collective mechanisms for determining terms and conditions of employment" (Brown et al 1998:i). These strategies then lead to micro-level practices of social closure at the workplace (Parkin 1974). This in turn has direct effects on workers and worker organisation, and leads to various forms of resistance,

the nature of which will depend on the resistors and the power against which they resist.

The Australian government, at the federal level, has sought since 1997 to create one of the industrialized world's most favourable environments for individualising strategies through a combination of legislative and administrative arrangements. The common theme amongst individualising firms has been individual contracts. These may be offered as certain types of common law contracts, or may take the form of 'Australian Workplace Agreements' (AWAs), which are individual contracts that are formalised and registered under federal legislation. In Australian workplaces unionists often work alongside non-unionists, and in organisations such as MineCo unionists often work alongside workers on AWAs. The 1997 law largely retained federal protections against 'unfair dismissal' and these formed the legal basis for the workers' resistance.

The conceptual framework used here is based on a model originally developed in Peetz (2002) and adapted and applied by Dundon and Rollison (2004:158-62). This model identifies both real and symbolic dimensions of the behaviour of individualising employers. Ideas being communicated from individualising practices to workers can be either inclusivist or exclusivist, or simultaneously both. In this model inclusivist behaviour tells particular employees that they are an integral part of the organization; while exclusivist behaviour indicates targeted employees, or forms of their behaviour, or unions themselves, are not welcome. Some messages will be simultaneously inclusive and exclusive of groups. An individualising strategy will typically operate through many mechanisms. Actions demonstrate both the benefits to the employees of adopting the company's preferred, union-free, model, and the disadvantage to those who pursue an alternative model. Not every individualising strategy will contain each method described. Nor will it always succeed. Individualising strategies will range from simplistic exclusivist methods to highly sophisticated strategies. More sophisticated approaches will heed advice of fellow employers and the writings of management theorists, and make use of some human resource management techniques (Legge 1995; Van den Broek 1997) and embrace both inclusivist and exclusivist methods.

## **THE DEVELOPMENT OF THE COALCO STRATEGY**

CoalCo is a large multinational corporation and MineCo is its subsidiary. Both are situated in rural Australia. They operate several coalmines in Australia, including AMine, a longstanding mine, and BMine, recently opened and located a couple of hours drive away. Except where indicated otherwise, our discussion here focuses on events at Amine with its significant history of union avoidance and individualisation. There was little doubt amongst the mineworkers that CoalCo had not acted in isolation, but followed a broader corporate strategy.

CoalCo strategy also reflected the close relationship between the company and the incoming conservative federal government, elected in 1996:

It mostly goes back to '96 ...They're telling the government what to do, this is what we want and this is what we'll do... So you've got a bit of a problem trying to level them out: get them to a level playing field, when you've got that opposition behind you. ['Barry']

The supporting federal government legislation referred to included the enabling of formalized individual contracts (AWAs) and the abolition of seniority as a basis for determining the order in which workers would be retrenched (laid off) when compulsory lay offs occurred. The abolition of seniority enabled CoalCo to develop an alternative system for retrenching people, based on the facade of performance appraisal enabling the targeting of unwanted individuals.

The purpose of CoalCo's strategy was to obtain a compliant, flexible workforce of a particular "mindset" (BCA 1989:2): "You just do what you're told". ['Barry']

As early as February 1997, CoalCo's Productivity Improvement Plan included a presentation to managers describing as a barrier to productivity: "Employees aligned with union goals and follow union direction over management direction". It suggested that outcomes for improved work practices included "Agreements that support union activity will be removed". As a consequence, CoalCo's Productivity Improvement Plan set a target of reducing union membership by thirty per cent over the first six to eight months of 1997. From then, regular meetings of CoalCo general managers would report on the numbers of employees on AWAs and those terminating their membership of the CFMEU [Decisions].

The mineworkers had an inkling of what was to come:

I've seen a thing in the foreman's crib... some circular or some little flyer they would de-unionize regardless of time and cost ... I can remember that little sentence... It took me eye a little bit and I thought oh yeah, but at that point you didn't sort of, you took it on board but I don't know whether it penetrated fully until things started to happen ['Barry']

## **EMPLOYMENT PRACTICES**

Employment practices encompass the status of employment and the conditions under which work takes place.

## **EXCLUSIVIST EMPLOYMENT PRACTICES**

An employer embarking on an individualising strategy often engages in *layoffs* ('redundancies'). These create a climate of vulnerability (e.g.

Bronfenbrenner 2001). They also provide the opportunity to the employer to rid it of some union activists, either by deliberate targeting or by virtue of seniority CoalCo was no exception:

They made me the offer and then they turned around and they made me three offers in two days and they kept on coming back and they were saying, well we'll give you \$30,000 and we'll let you stay on seven day rosters and you can finish up in July and you still get the \$30,000 in July...['Alan']

This first round of redundancies took place before legislation abolishing seniority was in force. Not all workers were offered voluntary redundancy and nine workers who were not offered a package volunteered for one anyway, but were refused. There was some take-up of the company's offer:

A lot of people just grabbed it and ran, they panicked, they didn't stay.. But the sixteen wanted to stay and that's where they hit the snag because we weren't going to move, we wanted to just keep on working. ['Barry']

CoalCo consistently argued that redundancies were necessary for the operational requirements of the mine [Decisions]. Later, though, it appeared that the firm had, in part, simply switched from employed labour to contractors:

They've got contractors there and they said they wouldn't get any more and there would be no overtime. But they've got overtime and they've got contractors going again and they're doing our work. ['Barry']

It was clear that people targeted for the redundancies were predominantly union members not workers on AWAs.

within a week of taking on the vice president's job of the union, [I] got a knock...and asked to pack up and leave. ['Alan']

What was not known at the time was the degree of precision of targeting by CoalCo because long before the redundancies had been offered, CoalCo had put together a **black list** of workers who were "to go". Remarkably, CoalCo management even called it a "black list". The list was apparently created in 1997. It contained names of people who were to be targeted for departure. It was first written up on a whiteboard, based on the "gut feelings" of supervisors about the fifty so-called "worst performers". Its existence was only revealed in mid 1999 when one of the heroes of this story, a former administrative employee in the management office of CoalCo, disclosed its existence and explained at the court hearing its meaning: "Black meant they did not have a job anymore." Another witness from CoalCo management conceded that the workers on the black list were "the people

that they wanted to get rid of." In October 1997, in preparation for performance appraisal reviews, all supervisors were instructed that "Black List are unlikely to achieve 7 or 8 (i.e. 'Meet expectations')" [Decision A]. This, as we shall see below, would provide the pretext for their dismissal.

Only union members were placed on the black list. This included a number of union activists. The effects of the black list on individuals' careers became clear. When the legislation barring seniority took effect, a second round of retrenchments took place. In this round, those remaining workers on the black list who had not accepted voluntary redundancies were dismissed. As one mineworker said in evidence:

On the day after I received my retrenchment notice in July 1998 I remember upon turning up for work...being directed to go to the Change house...[a manager] addressed a number of us who were present. He told us that "having been retrenched that we would never be re-employed by MineCo and we would never get a start at any other MineCo pit" [Evidence]

More specifically, the manager was quoted as saying "as long as my arsehole points to the ground" none of the retrenched workers would ever work at CoalCo again. While the black list was kept secret, it was apparent that blacklisting was going on: "I'm damn sure there's no chance of getting a job because of what he has said". [Alan']

Once contracts are offered, an individualising corporation has other exclusivist methods to remove employees retaining collectivist orientations – and to demonstrate that resistance is futile. So a deunionising employer may use *discrimination* to pressure unionists to either accept the company's terms or resign their employment, and simultaneously make an example of them to the other employees, providing an unambiguously exclusivist message. As the Commissioner who heard the case put it, at CoalCo a "conspiratorial allegiance" amongst management "involved a strategy designed to force the applicants to accept the redundancy package and various methods were used to achieve this" [Decision A]. One of these was to cut the pay of workers on the black list:

They took us off seven-day roster and put us on permanent day shift, which effectively cut our wage by about 20 per cent, 25 per cent. [Daryl']

Even more seriously, blacklisted workers were reassigned from their normal jobs to menial or meaningless tasks under a different supervisor, in what became known as the "snake pit" [Decision A]. The workers were:

given these demeaning tasks in the hope we'd say, bugger this, we're not going to cop this and bolt, but it didn't happen. They tried to intimidate us. [Barry']

One worker's experience of this "blood sport" summed it up:

I would be out there chipping weeds or something that was, you know, good fun, for eight and a half hours a day in that heat. .. He'd get some of the scabs, and drive around stopping there, just over from you, and sit there and have a joke and then drive off. Stuff like this... They use big machinery ... a spray gun and paint em in a few minutes. We had paintbrushes to do it. It was all part of the intimidation to try and get rid of you ['Daryl']

Three of the blacklisted workers avoided this fate because CoalCo was unable to find anyone to do their normal job. Less qualified workers, from other areas, were brought in to cover the positions vacated by the blacklisted workers:

They got rid of production people, they bought people that were first aiders ... that had never operated a piece of machinery in their life ... put them in our jobs - and were getting rid of union people. ['Daryl']

## DUAL INCLUSIVIST AND EXCLUSIVIST EMPLOYMENT PRACTICES

Clearly, at the heart of a sophisticated individualising strategy, particularly in Australia, the United Kingdom and New Zealand, is the *offering of individual contracts* - in the Australian case typically formalized through AWAs. The symbolism here is dual: if you are offered one and sign, you are 'in', if you are not offered one, or do not sign, you are 'out'. AWAs were offered at CoalCo, though not to all employees - the blacklisted workers were generally not offered them. AWAs were almost always associated with resignation from the union. Employees on individual contracts are unable to be represented by the union in collective bargaining, as they have no collective bargaining.

When contracts are offered to unionized workforces there may be an *inducement*, in effect a non-union premium, to 'encourage employee acceptance' as employees 'have less protection than in an arrangement which is regulated by a third party.' (Hamberger 1995:294; also Brown et al 1998:20). This is a common tactic of MineCo, and was adopted at CoalCo:

Part of what they did with that was more money. You know - we're good we'll look after you, you sign this bit of paper...I think to sign it from memory, was \$3,000 straight up and then they got incentive payments each year on a performance based criteria again ['Daryl']

The difference in pay became quite large because of the way in which bonuses under a *performance-related* pay scheme were offered to AWA staff:

...They admitted in the court case, that if you're on an AWA when it comes to your performance rating you were marked higher than if you were a union member.

For some workers the difference was equivalent to up to \$10,000 per annum.

Performance-related pay, a common feature of individualising employers (Brown et al 1998), must be linked to a form of *performance appraisal*.

Through 1997, they started the performance inspection reviews. That was supposedly as a training and monitoring system. But as we found out as the case unfolded, it was a way to sack us ['Daryl']

One mineworker's perspective was blunt:

it was the biggest load of bullshit I'd ever heard in me life. ['Colin']

CoalCo scheme involved biased criteria that were designed to remove people whose attitudes, rather than behaviour, did not fit the mould of CoalCo.

In our PERs if you were quiet you weren't having an input, but if you spoke, you were negative. So it didn't matter which way you go, it was what was called the double-edged sword. ['Barry']

Other performance appraisals simply contained incorrect information.

You went in with foreman, supervisor and went through it. I told one bloke, that's just absolute lies and you know it...Most of them had that bloody PER filled out, and then they'd get you in - instead of getting you in and talking, and then writing it out while you were there ['Ernie']

If the supervisors' ratings were not meeting the company's objectives, then managers undertook the "massaging" of the scores:

I jumped down eighteen people on their list from one list to another list since I took on the [unions] vice president's job, so I went backwards in a hurry ['Alan']

It was a different story for those workers who signed AWAs, that is, non-union contracts. They received a "massaging of scores":

One of the blokes is still there and the manager batted for him to keep his job, 'cause his record wasn't all that good and they kept him. Came back one day and said 'I don't know what I did but I kept my job'. ... They only want people that they can tower over and they'll do what they want. ['Barry']

Importantly, the workers who were given low ratings were not given a genuine opportunity to improve their scores but were sent instead to the "snake pit", making it impossible to improve their score:

They'd bring people doing work on overtime... They wouldn't use us, they would bring somebody else in. So we were given no chance at all to be put to use. As we found out later, there was no way, no matter what we did it weren't going to change ['Daryl']

The symbolic stakes for MineCo are high:

I suppose they reckon they've got to beat us, because if they buy us out, that will set a standard then and there will be other cases that follow the same path so they're going to have to get rid of us without handing over a cent. So I'd say the battle's going to go on for a while. ['Barry']

## RELATIONAL METHODS

While employment practices define the terms and conditions under which people are employed other aspects of the employment relationship go beyond the work-effort bargain. These encompass such things as meetings, grievance procedures and participation programs, which can be grouped together under the heading 'relational' measures

Individualising employers will typically use a range of these relational measures.

## EXCLUSIVIST RELATIONAL MEASURES

One strategy that is common amongst individualising employers' preference, evident in the UK and New Zealand, is to *refuse to meaningfully negotiate* (Kelsey 1997:265; Dannin 1997:216-7,239; Brown et al 1998:34), in order to make the union appear ineffectual and individual contacts appear more attractive than a collectivist arrangement. This was used at other MineCo sites and was also evident at CoalCo:

the wages of the union employees were frozen after 1996. [It] was the last pay rise up, until 2001. They wouldn't come to no agreement. So each year the AWA people were getting an increase and the union people were dropping behind. And the difference in that now is something like ten to fifteen thousand ['Daryl']

Another related strategy is to provoke *disputes* with the union. As the workers saw it, CoalCo began provoking industrial action, culminating in:

a stoppage and picket lines for about six weeks. And what we know now [is this] was part of the softening up period, you know to get people financially [dependent] so that when the time come right in 1997 they could start up, offering AWAs. ['Daryl']



Another common strategy is prolonged *legal action*, especially as justice delayed is often justice denied (JQC 1996). MineCo appealed every decision adverse to the company. We return to the implications of this later.

Other relational measures put more direct pressure on workers in the *community*. Some are particularly salient in a company town:

They've tried to push us out of town...we were supposed to be out of the company houses by midnight on the 24th, but we're going through the legal process and we don't know what's going to happen. They've told us we have to, but we haven't moved yet. ['Daryl']

They put pressure on families. One mineworker's daughter:

wore a union t-shirt to school one day on a school trip [to the mine]. The school reprimanded her because [CoalCo] didn't like her wearing it; it was an inappropriate shirt to wear to the mine ['Daryl']

The problem, as one worker saw it, was that:

The company nearly owns the whole bloody town...if you speak out loud, well, you know your money's going to be cut, it's common sense. ['Ernie']

According to the workers, this also operates through their influence on local businesses:

My wife's been sacked from three jobs because of what's happened... She was working as a cleaner at a motel in town. [A manager's] secretary come in [and said] I'll need to tell you that if you don't get rid of her, you won't get no more of [CoalCo's] business...['Daryl']

## INCLUSIVIST RELATIONAL MEASURES

*Inductions* and *social events* are seemingly inclusivist means by which individualising organisations seek to establish and consolidate the messages of cooperation with the employer that with which they wish workers to be imbued. At CoalCo's new BMine:

They've just started their first employees and they've got three weeks of what's known as bonding. Bonding, you know, to start off they took the wives over for the first weekend and had a little get together and they went to [a resort] for the next week, you know it's all part of the brain washing...['Daryl'].

## DUAL INCLUSIVIST AND EXCLUSIVIST RELATIONAL MEASURES

*Large group meetings* had several functions. They were one way in which the company reinforced its messages. Meetings could be seen as

involving employees while making clear signals about who or what was to be excluded. One worker recounted, how at such a meeting:

Twice I'd asked questions of [the manager], twice I was told if you don't like what's happening here, the front gate's out there, go and find it. [Colin']

More important was the role of the *supervisor* - the level of management with whom unionized employees have the most frequent and important interactions. CoalCo took the view in March 1997 that "a good measure of supervisors will be how many AWAs we get" [Evidence].

As one worker described it:

To the best of my knowledge...the more people they got to sign AWAs, it went on their performance appraisal and gave them a bigger chance of getting a pay rise... It's only a small mine site and all the foremen knew who'd go to union meetings, who'd talk about unions, who don't talk about unions... [Alan']

By November, the role of supervisors tightened, and they were instructed that black list employees were unlikely to meet expectations.

## INFORMATIONAL METHODS

Oh it's all glossy, very glossy but when it gets down to reality the gloss goes off it. [Barry']

Orwell's *1984* highlights the importance of information in maintaining the hegemony of the Party, and individualising employers recognise that selective use of information is critical to underpinning and clarifying the symbolic message passed through relational measures and employment practices. So the final set of corporate actions relates to the direct communication of information and the means by which that information may be transmitted.

## EXCLUSIVIST INFORMATIONAL METHODS

The crudest form of exclusivist information is the *threat*. These were used in various ways to encourage people to take the voluntary redundancy package. Some concerned loss of income:

They kept on saying well if you don't turn around and accept the offer we're going to put you on permanent day shift. [Alan']

Others concerned the lower level of benefits under the compulsory retrenchment package:

the people that they targeted, were union people, it was like you take the redundancy package or we'll wait until 1st July 1998 and we'll sack you.. [Daryl']

*Rumours* also apparently spread once the sackings took place:

Not long after we got the sack, they must have been planting the rumours around but my wife went to the school one day, to take the kids and people were asking "Oh I heard you were leaving town". I'd say that's where they were trying to spread rumours. [Colin']

## DUAL INCLUSIVIST AND EXCLUSIVIST INFORMATIONAL METHODS

The use of *language* is important. Individualising employers often use *propaganda*. At CoalCo there was a regular newsletter:

When the case first started, there was always mine management spruiking [advertising] about how the case was going, putting up their little papers they used to print themselves and everything about the court case was in there, and it's all stopped now; they're on the back foot. [Fred']

The term *doublespeak* - 'incongruity between what is said or left unsaid and what really is' (Lutz 1997:21) - describes another aspect of individualising employers' behaviour: their denials that they wish to stand in the way of employees' right to join a union while actually doing it. Thus, in relation to the workers from the store and first aid areas who were redeployed into jobs formerly occupied by blacklisted union members:

According to the company in the court case, [CoalCo] were quite happy if they wanted to be a union member, but they were never offered that. [Alan']

It is seen in how individualising corporations seem not to know about employees' union status - so how could they be trying to deunionise?

In the court case, none of them ever knew that I was the [union] vice president, so that was a bit unusual. [Alan']

CoalCo tried to excuse the exclusion of the blacklisted workers from the selection process for the new BMine as "mistakes" that had applied also to other applicants, though no examples of these were given. The tribunal was not impressed:

To find that the errors which took place in assessing the applications by the former [CoalCo] employees occurred across the board implies a breathtaking level of incompetence in the selection process. Such a finding is clearly at

odds with [MineCo's] standing as a highly successful international company.  
[Decision C]

Even less sustainable was CoalCo's position on the issue of the black list. First, it withheld information about the black lists from the employees and union. Then, when the document discovery process was underway as part of the tribunal proceedings CoalCo was summonsed to provide all relevant documents and it failed to produce the black list. This later led the tribunal to note that it "cannot seriously be submitted" by CoalCo that it was unaware that the black lists existed when the summonses were issued. Third, after its existence was revealed by the "whistleblower" witness from administration, the company produced documents in which the words "black list" had been overwritten and the meaning of the passage changed. Hence in one document "Black List are unlikely to achieve 7 or 8" (meets expectations) was changed to look to have read: "Rating List are very likely to achieve 7 or 8". In another "Black List for Maint" was changed to "Rating List for Maint" and "Advise Black/ Blue List (DY to do)" was changed to appear as "Advise Rating/ Blue List (DY to do)". The evidence in the tribunal on the "obliteration" of the term black list was described by one mineworker thus:

We had a forensic expert....He give evidence on it that all you had to do was hold it up to the light and you could read it...In the commission they put it on an overhead projector and you could see straight through it...that was all part of the dishonest approach through the whole thing. ['Daryl']

Finally, when the rating list dissolved into the black list, CoalCo claimed that the black list was called a black list solely because of the colour of the ink used, and had no negative connotations. It submitted that:

"Because numbers needed to be reduced by about a third, colour coding was introduced to differentiate between groups of employees using the colours of blue, red and black, and in maintenance, brown". [Evidence]

The tribunal politely but firmly dismissed that idea [Decision B].

## **RESISTANCE**

While the company used thorough and sophisticated strategy, it has nonetheless failed to achieve its goal of full individualisation. Approximately a third of the workforce is still unionised. The key element in this failure has been due to employee resistance. What form did this resistance take?

## EFFECTS ON WORKERS AND RELATIONSHIPS

Retrenchment leads to loss of confidence, depression and feelings of helplessness (Lipsig-Mumme & Nielsen 2004). It feels:

oh wonderful, (bitter laugh) yeah. No it's not a nice feeling at all. ['Daryl']

So an important part of the process following retrenchment was the revelation that it was unrelated to their performance:

We can see how it was done and you realise you weren't really [] as bad as they made out. ['Barry']

The most obvious direct impact on employees was financial. Some were able to find regular work but with a major drop in income. For others it was an even bigger struggle:

We can pick up seasonal work now and again, but there's just been a drought on for three years. ['Fred']

The impact on workers' families is debilitating:

It puts a strain in the house. It has for me anyhow. Everybody's got a short fuse because you can't read the future. ... Sometimes you get a bit short of temper and the family's sort of stepping on one another's toes. ['Colin']

This extended to children:

We're not affected as much as [some others], 'cause they've got children at school and they've had a fair bit of pressure put on them by the other kids, the AWA kids. There's a tendency to be I suppose a bit cruel. ['Barry']

The role of spouses was critical. All those who spoke about it referred to how their spouses were "very supportive" and had "backed me through the whole thing".

Understandably, most workers were bitter about others who had signed AWAs, and friendships had been broken:

They still want the conditions, they still want the clothing the housing, all those things, that the old fellows fought, they still take all them ('George')

The company is trying to make it all rosy for them whilst we're still out here. [If] they get rid of the union, what's the story then? What happens to their conditions? ['Colin']

## EFFICACY AND ACTS OF RESISTANCE

The blacklisted workers maintained a strong sense of solidarity, though not without some cracks:

One of them went - he sort of broke, he took off. I said you don't want to give in, just stand your ground. Was too [hard] for him, he just couldn't handle that demeaning sort of thing. ['Barry']

One of the most remarkable mineworkers kept diaries of everything that happened. These became very effective tools of resistance, particularly when the case came to before the tribunals.

I'd just whip my diaries out...It's pretty hard for a foreman to keep a file on eighteen blokes in a shift, where you can keep a file on him ['Barry']

The experience has radicalised some it has involved:

*Were you an activist in the union before this happened?*  
... I hadn't actually had much to do with the union. I belonged to the union. ['Colin']

The union played a central role in supporting and organising resistance. This is partly because the union has a strong strategic capacity enabling it to foresee contingencies:

I think the union has been keeping people going... ['Daryl']

The union also has built up the resources to enable it to fight MineCo in the tribunals and in the courts. It has been able to represent blacklisted workers in CoalCo and elsewhere in a number of cases. In 2001 it was able to obtain an order from a tribunal member for the reinstatement of the blacklisted workers at CoalCo on the grounds that the dismissals were harsh, unjust and unreasonable. It was in this case in that black list was uncovered.

The workers suffered a setback when the company appealed to a full bench of the tribunal. The tribunal confirmed that the dismissals were harsh, unjust and unreasonable. Yet, astonishingly, it upheld the appeal on the grounds that, in effect, it had no knowledge of which other workers were of inferior performance to those who were dismissed and so, as the company was using as many employees as it needed, it would be forcing the company to undergo another round of redundancies if it ordered their reinstatement. Moreover, the company was not forced to make any payment in lieu of reinstatement, as it had been paying the blacklisted workers a salary to stay at home while the appeal was underway (it had refused to allow them to work on the premises) and this amount was, by now, greater than the statutory maximum compensation that the tribunal could order.

Appealing the reinstatement decision of the single tribunal member had enabled CoalCo to prevent the blacklisted workers from returning to the workplace. Had they been at work when the appeal was heard, it is difficult to imagine the appeal bench not dismissing the appeal, given the bench agreed their dismissals were harsh, unjust and unreasonable. Justice delayed was justice denied.

In 2003, however, the union had a major victory. It won a decision ordering that future recruitment decisions give preference to the blacklisted workers. Two of the blacklisted workers began working at BMine in the following year.

On 1 March 2004 another four of the blacklisted workers walked through the gates at AMine to recommence work. The entrance was lined with a guard of honour formed by local union members and supporters. In July 2005, after over \$10 million in legal fees had been expended, the case was finally settled to the workers' satisfaction. The conservative state now plans to prevent workers from obtaining redress against unfair dismissal where part of the reason for dismissal was 'operational requirements' (redundancy). Lawyers from MineCo's legal firm reportedly helped draft the package of legislative 'reform'.

A key feature of this union is that it goes beyond these critical planning and representational roles and has a heavy workplace and 'organising' focus, with much decision making power decentralised in the hands of local union delegates and members. Moreover, the workplace focus engendered the development of a strong collective identity, which in part was built upon identity with the local area:

I think it was determination and believing that what you were doing was right. That's about it. It was just we are all local people, basically...They picked on the wrong sixteen ... We had no intentions of going anywhere. [Barry']

Perhaps most notably, the workplace focused union has succeeded in developing very strong cooperative values – the workers have a clear sense of their collective principles and what they will stand up and fight for:

You don't sell out your mates, eh? [Fred']

## **CONCLUDING REMARKS**

The experience at CoalCo shows the lengths to which an individualising employer will go in an attempt to secure total managerial prerogative. The drive for individualisation is, at its heart, an attack upon rights at work. It seeks to create a monoculture that might comprise individuals with different sets of skills but amongst whom there is a single, common set of values that exclude unionism. The symbolic and the real effects of employment practices, relational practices and informational

practices are all aimed at removing freedom of association and replacing it with uncontested, union-free control.

The battle of CoalCo is between a large, powerful corporation with close friends in government, with a purposive strategy of deunionisation, and a small but well resourced and strategic 'organising' union. MineCo has been implementing its strategy in other mining sectors since the early 1990s, and had enjoyed considerable success against different opposition. But now it has moved into territory occupied by a union that has a stronger history of organising. It is encountering real resistance. This comment of one mineworker sums it up:

I've often said to my wife "Do you think I should've signed an AWA? ...and she's said "no". I've had the full backing of my wife and kids. It's a matter of pride and principles and when you get tarred with being a poor performer and you're trying to clear your name. They can affect your job possibilities for life, by having this blacklist. So until you get that sorted out - cause people that are always at you to move on with your life - but how can you while that is still hanging over your head. I can't give up now. Otherwise I would've signed an AWA the first time. [Colin<sup>1</sup>]

## NOTES

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