BUILDING INDUSTRY BILL 1985

Date introduced: 20 August 1985
House: House of Representatives
Presented by: Hon. Ralph Willis, M.P., Minister for Employment and Industrial Relations

Short Digest of Bill

Purpose

To allow the Government to take action, including de-registration, against the Australian Construction Employees' and Builders Labourers' Federation, subject to a hearing in the Arbitration Commission.

Background

The Australian Building Construction Employees' and Builders Labourers' Federation (the BLF) was formed to represent the interests of various building and construction employees. Work performed by BLF members includes reinforcement fixing, concreting, scaffolding and general tradesmen assistance. There were 34,920 financial members in 1983, making the BLF the largest building union in Australia, and representing 25.6% of financial union members in the building industry.[1]

The BLF was previously de-registered from 1974 to 1976, though the de-registration was not complete as the BLF remained registered at the State level. This allowed the BLF to continue to represent its members. ACTU policy prevented the poaching of its members by other building unions. The membership of the BLF increased during the years of de-registration. The BLF was re-registered in 1976 after the Federal Secretary, Mr Norm Gallagher, gave assurances that the BLF would abide by the conciliation and arbitration process and not take direct action that would contravene the Conciliation and Arbitration Act 1904.
Since re-registration, the BLF has continued its 'guerilla tactics' aimed at forcing concessions from employers and at maintaining or increasing the range of activities covered by the BLF. Such tactics have included the interruption of concrete pours, selective bans and limitations and the use of marches and office occupations to reinforce the BLF's views. The NSW State Secretary stated, in September 1979, that such tactics were designed to cause 'the most harm to the bosses [and] the least harm to ourselves'.[2]

New de-registration moves were initiated by the Fraser government in 1981. The Government and some employers sought de-registration on the BLF's record since the BLF's re-registration. A Royal Commission, headed by Mr Winneke, Q.C., was established by the Commonwealth and Victorian governments to inquire into the activities of the BLF. Its report was presented in 1982 and was highly critical of the BLF's activities. After reviewing the material presented to the Royal Commission, Mr Winneke concluded: 'In general terms that material makes it clear that during the years referred to [i.e. since re-registration] the Federation, both in its relationship with employers and with other unions in the building industry has acted in a lawless way'.[3] However, the de-registration proceedings continued very slowly. The Government lacked support from some States, the ACTU and various employers who continued to deal separately with the BLF. A change of Government in 1983 saw the Commonwealth withdraw from the proceedings, though some employer groups continued the action. The proceedings were finally terminated in June 1984 when the employer groups withdrew.

In exchange for its withdrawal from the de-registration proceedings, the Government required the BLF to give certain undertakings, including a guarantee to proceed through and respect the conciliation and arbitration system. As well, at this time the Government, building employers and unions and the ACTU were negotiating the Building Industry Agreement, designed to bring peace to the troubled industry. A central plank of the Agreement was superannuation for building workers. However, the BLF withdrew from the industry wide negotiations and commenced direct action aimed at securing wage increases and higher superannuation benefits. When the Agreement was signed by 10 building unions in October 1984, the BLF at first refused to sign. However, pressure from the ACTU and Federal Government, which had given a commitment to take effective action against the BLF if it failed to adhere to the
Agreement, led to the BLF signing the Agreement soon after. The Agreement required signatories to abide by a 'minute of further undertaking'. This required unions to lift bans and to proceed through arbitration.

Three recent disputes have brought the BLF into conflict with other unions and various governments: the MCG Lights dispute, the Sydney Police Centre dispute, and action taken following the gaoling of the BLF's Federal Secretary, Mr Norm Gallagher.

The MCG Lights dispute centred on a demarcation conflict with the Federated Ironworkers' Association over the responsibility for installing light towers at the MCG. Following an Arbitration Commission decision on 1 June 1984, which awarded the work to FIA members, BLF picket lines were established at the MCG and the company which produced the towers. After the picket lines were declared 'not authorised' by the ACTU (which allowed other union members to cross the pickets), and the failure to prevent the towers being transported or assembled, the pickets and bans on the lights were lifted to allow an appeal against the 1 June decision. The full bench of the Commission had refused to hear an appeal till all bans were lifted.

The dispute at the Sydney Police Centre again began with conflict with another union, namely the Electrical Trades Union (ETU), and continued the site's poor industrial relations record which was estimated, by the Master Builders' Association, to have extended construction time by 19 months and costs by $20m.[4] Relations between the BLF and ETU had deteriorated following the ETU working through a previous dispute and, after a confrontation between an ETU and a BLF member, the BLF walked off the site demanding that the ETU member be transferred to another site. He was transferred but the dispute continued when the BLF demanded pay for the four days they had been on strike. When the employers refused, picket lines were established. Again, the ACTU ruled that the pickets were 'not authorised' and other unions crossed the pickets. In the following weeks 14 scaffolders were suspended and 7 builders labourers were dismissed. The BLF refused to lift bans until they were reinstated. In its strongest stand yet, the ACTU authorised other unions to perform BLF work. Under this pressure, and NSW government moves to de-register the BLF, it removed the bans and submitted the case of the 7 dismissed members to an ACTU review.
A nationwide campaign followed the conviction and sentencing, in early 1985, of the BLF's Federal Secretary, Mr Norm Gallagher, on 20 charges of accepting secret commissions. The BLF saw it as unjust that their Federal Secretary was gaol for 4 years and 3 months while employers, who were found guilty of corruptly giving secret commissions, were placed on bonds with no convictions recorded against them. Action taken included placing bans on 45 Victorian building sites, as well as walk-offs and marches. This action led to the Victorian government passing the BLF (De-recognition) Act 1985 which effectively de-registered the union in that State. Under pressure from the Federal Government, which was also threatening de-registration, all bans were lifted. However, the Federal Government has proceeded with its de-registration legislation.

Outline

The Bill provides for a hearing in the Arbitration Commission before any action is taken against the BLF. The Commission will be asked to determine whether the BLF has engaged in industrial action in breach of the commitments it has given. If the Commission determines that the BLF has breached its commitments, the Government may direct the cancellation of the BLF's Federal registration or make orders which terminate or suspend the rights, privileges or capabilities of the BLF or its members under the Conciliation and Arbitration Act or the BLF's rules.

Main Provisions

For a detailed explanation of the provisions of the Bill, refer to the Explanatory Memorandum.

By clause 2, the Bill will operate on the day it receives the Royal Assent.

The BLF is defined to include the same organisation under a changed name (clause 3).

Industrial action is defined as the performance of work in a different manner from that which is customary; bans, limitations or restrictions on the performance of work; a failure to attend work or perform work or an action that prevents others from performing work (clause 3).
If, on the Minister's application, the Arbitration Commission is of the opinion that the BLF has breached undertakings given to the Commission or the Federal Court or has acted contrary to the principles of arbitration, it is to make a declaration to that effect (clause 4).

If such a declaration is made, the Minister shall have power to de-register the BLF, make orders affecting its rules or membership (clause 5), or limit the types of work covered by the BLF (clause 8).

If the Minister limits the BLF's coverage, the Minister may allocate the coverage removed from the BLF to other unions (clause 9). If the Minister certifies that he does not intend to make such an order, the Commission may do so (clause 10).

A termination clause is included. By clause 15 the Bill shall cease to have force on a day fixed by Proclamation.

For further information, if required, contact the Economics and Commerce Group.

10 September 1985

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References

3. Ibid., p.280.

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