

Australia: Court case against West Gate workers ends in plea bargain

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On August 17, following pre-trial discussions with defence lawyers, police prosecutors dropped the most serious criminal charges against 12 workers involved in an industrial dispute earlier this year on one of Australia's major construction sites—Melbourne's \$240 million West Gate Bridge upgrade project.

The Westgate Bridge dispute arose when 39 workers were sacked on February 27 after the construction company John Holland refused to recognise a wage deal struck by the Construction Forestry Mining Energy Union (CFMEU) and the Australian Manufacturing Workers Union (AMWU) with labour hire subcontractor Civil Pacific Services. John Holland insisted on a previously negotiated deal with a rival union, the Australian Workers Union (AWU), paying wages that were nearly \$10 an hour lower.

The 12 men originally faced more than 80 charges including indictable offences such as “reckless conduct endangering serious injury” and assault with a weapon, namely a motor vehicle—charges that carried potential jail terms of up to three years.

The majority of the charges related to one incident that occurred during the protracted and bitter dispute. The incident was seized on by the political and media establishment, including federal Workplace Relations Minister Julia Gillard, to brand the strikers as criminals and thugs.

On April 1, about nine picketing workers decided to follow a Land Cruiser transporting scab workers from the site. After some kilometres, the Land Cruiser—that had been specially provided by John Holland—was forced to stop. It reportedly sustained minor damage when one of the following cars clipped it.

Documents lodged with the Federal Court by the Australian Building and Construction Commission (ABCC), as part of a civil action against the West Gate workers, attempted to present what happened as a “life

threatening car chase” and gave the impression that substantial violence followed. In reality, the only “violence” actually alleged involved the throwing of eggs and verbal threats via mobile phone.

As part of the witchhunt against the strikers, Gillard repeated media claims that the pickets had worn balaclavas during the incident to disguise their identity. The claim was proven false when it was revealed that the only people using such head gear were scabs removing barricades from a site entrance.

Speaking after the main charges were dropped, defence lawyer Rob Stary commented to the WSWs: “The evidence was never as strong as was reported in the media. The charges were overstated and embellished. The ABCC described the incident as a ‘life-threatening car chase’ but that was never born out by the evidence.”

However, the outcome was not the victory that Stary has claimed it to be. While the most serious charges have been dropped, several of the men were required to plead guilty to lesser charges. One entered a formal guilty plea to the charge of offensive behaviour, which usually carries a fine but can result in a prison sentence. Three others will have offensive behaviour cases adjourned to a magistrate's “diversion” court where no criminal conviction will be recorded. Another three will plead guilty to traffic offences—dangerous or careless driving.

One of the workers, Julio Pizarro, has already been convicted over a separate incident where he was accused of kicking a car at a location away from the bridge site. He pled guilty to intentionally causing damage and two counts of unlawful assault and was ordered to pay \$1,886.14 in fines and undergo 50 hours of community service.

At the same time, the ABCC, the federal government's building industry policeman, is continuing to pursue a civil claim against the 12 defendants. It will also push ahead with a civil action in the Federal Court seeking

finances of some \$7 million against the CFMEU and Australian Metal Workers Union (AMWU) over the alleged conduct by picketers during the dispute.

Stary also indicated that most of the workers—he thought 8 or 9—had been blacklisted and had not worked since the April 1 incident.

The attitude of the CFMEU to the court case flowed from its agenda from the outset of the dispute. The union has sought all along to demonstrate to the Labor governments and construction employers that it is the most reliable agency to suppress the opposition of workers to the drive to impose sweeping attacks on jobs, wages and working conditions.

The decision to seek a plea bargain, rather than launch a public campaign to defend the 12 men, was primarily aimed at burying the issue and defusing a potentially explosive confrontation between building workers and the federal Labor government of Prime Minister Kevin Rudd.

There is widespread hostility among construction workers to the Rudd government's decision to retain the ABCC, which was established by the former Coalition government. The body will stay in place until 2010 when it will be transformed into a specialist division of the government's Fair Work industrial tribunal with similar punitive and coercive powers to harass and prosecute construction workers.

While the West Gate dispute initially arose out of John Holland's attempt to enforce inferior pay, the company, with the backing of both state and federal Labor governments, decided to exploit the conflict to establish a new benchmark in work relations that could be imposed on other construction projects.

The Rudd government gave full rein to the ABCC to use its extraordinary policing powers to bring charges against the unions and the workers involved. Throughout the dispute, ABCC inspectors sought to intimidate and harass strikers by following them, taking photographs and recording their conversations in preparation for charges.

The Victorian state Labor government dispatched hundreds of police—many in full riot gear—to the site to attack picketing workers and to escort scab labour on and off the site.

The response of the CFMEU and the Australian Manufacturing Workers Union was to isolate the strikers then shut down the dispute by reaching a deal with the rival AWU. The two unions signed off on a virtual no-strike agreement promising not to “threaten, organise, encourage, procure or engage in any industrial action” and to pay a combined \$650,000 to charities every time

the deal was breached.

Not content with this sell-out agreement, John Holland has applied to Fair Work Australia (FWA) for an order to bar the CFMEU from the site, insisting that the AWU have sole coverage. In a further provocation on July 24, the company sacked the CFMEU site delegate Canice Lynch without warning or providing cause.

Regardless of the outcome of the company's application, the union deal sets a dangerous precedent across the entire construction industry. The CFMEU is demonstrating its commitment to enforce Labor's draconian industrial relations regime, which effectively makes any form of resistance by workers to attacks on their jobs and living standards illegal and subject to the full force of the law.

Having struck the deal, the CFMEU worked to ensure that the national Labor Party conference went off without a hitch. It cancelled a planned mass protest by building workers against the Labor government's retention of the ABCC and instead led a few hundred workers to a nearby venue, safely out of sight of the conference itself.

Afterwards, CFMEU delegates in the conference, along with every other union delegate, voted for the Rudd government's workplace regime, complete with its arsenal of anti-strike provisions and the new construction industry policing agency, and backed its pro-market economic agenda.

Far from being a victory for the workers involved, both the construction unions and the Rudd Labor government have utilised the John Holland West Gate dispute as a precedent for intimidating and suppressing any struggle in defence of jobs and working conditions, along with any opposition to the Labor government's industrial relations regime.



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