

Hadgkiss of Death?

The Fight Ahead for Australian Unions

John F. Zoidberg

On the front page of The Age's print edition for March 28th, 2014, a short exclusive revealed the existence of a 2013 cabinet-in-confidence report from the former Victorian government building industry watchdog, Nigel Hadgkiss, to the Victorian government that urged the government to consider applying to have the Construction, Forestry, Mining and Energy Union (CFMEU) deregistered. This suggestion is reported to have been made in response to serious allegations of corruption within the union.

The article's authors (Nick McKenzie, Richard Baker and James Massola) also cited a small number of alleged attempts by "senior union officials" to intimidate industry figures who may testify at the upcoming Royal Commission into union corruption and to influence media reporting of corruption allegations. The article's allegations follow the general pattern of accusations and insinuations made against unionists in ABC and Fairfax reporting for some months but take on a much higher level of importance when considered against the revelation of suggestions to deregister the CFMEU.

McKenzie, Baker and Massola were correct in their acknowledgement that the cabinet-in-confidence suggestion to consider deregistering the CFMEU would anger the union, especially when considering who wrote the original report. Beginning his career in the Hong Kong Police Force, Nigel Hadgkiss moved to the Australian Federal Police where he rose to the rank of Assistant Commissioner. From there he joined the National (later Australian) Crime Commission and was soon promoted to become the National Director (Intelligence). His successes and expertise in intelligence and organised crime policing saw him seconded to the Building Industry Taskforce (BIT) and its successor, the Australian Building and Construction Commission (ABCC), and where he acted as Director and Deputy Commissioner, respectively.

It was in these positions that Hadgkiss became a notorious figure in recent labour history. A 2005 report from the BIT stated that the Australian construction industry was "plagued by a culture of civil disobedience, coercion, intimidation, threatening behaviour and contempt for the law". This report was crucial to the process of converting the Taskforce into the ABCC, which had substantially greater powers of coercion and secrecy. However, the BIT and Hadgkiss in particular were not beyond reproach themselves: in 2004, a former undercover police officer testified before the Federal Standing Committee on Legal and Constitutional Affairs that Hadgkiss had employed illegal listening devices as a matter of routine when working as chief investigator for the 1994 Wood Royal Commission into the New South Wales Police Service.

The same year, 300 construction workers at Grocon's Eureka Towers project walked off the job following the discovery of a listening device in the shop steward's office, with the allegation that the device had been planted by the BIT. As well as the initial shock of discovering they were being surveilled, workers were horrified to realise that confidential counselling sessions that had been held in the shop steward's office following the death of a co-worker had been intercepted by the device. At the same time, allegations against Hadgkiss and the BIT were being made in the Senate, again to do with the use of covert listening devices on building sites.

Still in 2004, workers in Adelaide accused the BIT and Hadgkiss of "[sitting] on their hands" when it came to worker safety: in one incident, CFMEU secretary Martin O'Malley alleged that BIT officers had attended the offices of a company working on the Federal Law Courts building "to make certain workers hadn't been paid for sitting in the sheds for half an hour while a safety concern was addressed."

Strong voices of protest were also heard in Melbourne after the announcement that the BIT would seek access to workers banking and financial records to check they had not been paid during safety audits conducted following deaths on site. As CFMEU official Jesse Maddison stated at the time, "[the BIT] sees the process as a form of industrial action and says, therefore, it is unlawful to pay workers, or for workers to receive payments..." In doing so, Hadgkiss and the BIT sought to have "agreed industry procedure aimed at preventing further deaths declared illegal". Though the BIT's attempt was rejected by the Federal Court (with Justice Marshall declaring the attempt "foreign to the workplace relations of civilised societies, as distinct from undemocratic authoritarian states") there was a long wait for workers who faced up to \$12,000 in fines and for the CFMEU, which faced the possibility of a \$66,000 fine for supporting the post-mortem safety audits.

These incidents and accusations predate the establishment of the Australian Building and Construction Commission, which still haunts the memories of Australian unionists. Despite the near total failure of the Cole Royal Commission into the Building and Construction Commission, which at \$66 million is Australia's most expensive Royal Commission, and the limited successes of the BIT the Howard Government proceeded with the establishment of the ABCC and the provision of sweeping powers of coercion that rivalled those provided to police and intelligence agencies engaged in anti-terrorism.

The ABCC conducted secret interrogations of workers, barred access to legal representation and restricted the ability of workers to choose their own legal representatives. The conduct of interrogations led by Hadgkiss were like sessions of a kangaroo court, complete with the arrangement of the room to look like a court of law and Hadgkiss “ruling” on points of law. Such rulings included the decision to throw lawyer Jo Boots out of the room and leave her client without representation (as she had already represented another worker from the same firm), and each session began with a warning that “revealing the contents of any questions, answers, or documents seen, to anyone outside the hearing, was forbidden”. Failure to attend interrogations carried the penalty of a fine or time in gaol so it is no surprise that of the over 200 workers who were coerced into interrogations, only five refused to comply.

One such worker who defied the ABCC was Ark Tribe. According to The Australian, Tribe was one of a number of workers who “stopped work at a project at Flinders University to discuss safety concerns at an off-site meeting.” A petition was delivered to the site boss, who lodged a complaint with the ABCC and the ABCC demanded Tribe present himself for interrogation in order to explain the proceedings of the stop-work meeting.

After refusing to present himself for interrogation Tribe was charged and brought before a real court. Rather embarrassingly for Hadgkiss, Tribe was acquitted after Justice Whittle found that Hadgkiss as Deputy Commissioner lacked the necessary authority to coerce a worker to appear for interrogation. More than that, for a notice to be issued it was necessary for the Commissioner “...to form a belief on reasonable grounds that the defendant had information relevant to an investigation or was capable of giving evidence relevant to an investigation...” which, as there was no evidence the Commissioner had taken steps “to assume conduct of the investigation” meant that the charges against Tribe were doubly invalid.

How unfortunate for Hadgkiss, who made his name with the allegation that the Australian construction industry was plagued by “coercion, intimidation, threatening behaviour and contempt for the law”.

Yet it was not until 2010 that Ark Tribe was found not guilty and by that point Hadgkiss had already worked two years as the Executive Director of the New South Wales Office of the Director of Public Prosecutions. It would appear that with the exception of a complaint made by a staffer following Hadgkiss’s presentation of a novelty “boob-apron” to a fellow worker during his time at the ODPP these years were comparatively uneventful.

Then, in March 2012, Hadgkiss was appointed as the Director of Victoria's new Construction Compliance Code Unit. Ostensibly designed to ensure compliance with the Victorian Code of Practice for the Building and Construction Industry, as well as to proactively enforce Health and Safety requirements, the CCCU functions as a devolved ABCC. During his 18-month tenure, Hadgkiss sought to revive a ban on union stickers and flags at work sites, to remove restrictions on the use of casual and part-time labour, to ban union site inductions and limit union access to work sites. Combined with the focus on promoting proactive health and safety practices, Hadgkiss declared that he was aiming to create cultural change within the industry:

“I sincerely believe that these Guidelines will help to deliver safer and more cost effective projects in our State, eliminate unlawful activity on constructions sites and promote a healthier culture across the industry”.

In its function as a government regulator with an active role in the process of tendering for government projects, the CCCU is well placed to attack unionism. Amongst the CCCU's powers is the ability to review the industrial agreements under which employees are engaged to work on government projects and to review previous performances and practices in order to inform current suitability for tenders. It was with these powers that the CCCU banned Lend Lease and its subsidiaries from working on State government projects, as the company had negotiated a “sweetheart deal” with the CFMEU to guarantee certain rights and labour ratios. Other companies who had or were considering similar arrangements with the union were warned from proceeding lest they also faced a ban from government tenders.

It is worth recalling the allegation that Hadgkiss saw the practice of engaging in safety audits of worksites following worker deaths as unlawful, even though it was a practice agreed to by unions and employers. The Construction Code and particularly the Implementation Guidelines are emphatically anti-union and any claims of unlawful behaviour should be seen as coloured by this bias, in a very similar manner to Premier Denis Naphine's statement that East-West Link protesters were free to protest so long as they did it legally, shortly after changing the law to attach a two-year gaol sentence to protesting. Unfortunately for Victorian workers it would seem that Hadgkiss learned from accusations that he and the BIT were unconcerned with worker safety and so cynically used the label of health and safety to quietly reintroduce BIT-style union repression.

It was in his position as Director of the CCCU that Hadgkiss wrote the cabinet-in-confidence report to the Victorian government urging consideration of deregistering the CFMEU. The Age's revelation of the report is significant for many reasons but not least because it is a clear sign that the fight against the CFMEU is being escalated. Whereas the 2003 Cole Royal Commission into Corruption in the Building Industry imposed major fines it did not consider deregistration of the CFMEU as an appropriate response. Secondly, Hadgkiss was appointed as the Director of the Fair Work Building and Construction Commission (FWBCC) only weeks after Tony Abbott's rise to Prime Ministership. Though the FWBCC is somewhat toothless when compared to its predecessor (the ABCC), Abbott and his government have flagged the reinstatement of powers enjoyed by the ABCC and revoked following the collapse of the Ark Tribe case and the fall of the Howard government.

Yet even without the ABCC's massive powers of coercion it is clear that the FWBCC under Hadgkiss will operate with severe hostility towards the CFMEU and one cannot reasonably expect any level of impartiality or objectivity from an agency under the direction of a man whose career has largely been oriented towards trashing the CFMEU and who has actually recommended the deregistration of the union. Then again, as the FWBCC and its various predecessors and siblings exist as instruments of capital to limit and destroy worker democracy, one could not reasonably expect impartiality or objectivity at any point in their existence.

In the wider scheme of things, the Hadgkiss report exists merely as evidence of the escalation of efforts to quash the CFMEU. This is in itself unsurprising: capital has roundly opposed or sought to limit the power of worker democracy since the inception of unionism in Australia and this battle has been a major feature of Australian society since the 1860s. The CFMEU, being the largest union in the country and remaining somewhat militant, is a prime target for capitalists as were the Waterside Workers Federation and Dockers and Painters before them.

The lacklustre response to continual efforts to undermine unionism with allegations of corruption is a testament to the weakness of the union movement, especially given that equal and more serious allegations of (and convictions for) corruption and criminality amongst the middle classes. The record breaking fine imposed upon Alcoa in January for bribery and corruption carried out by Alcoa of Australia to secure markets in Bahrain; revelations that ANZ has financed a Cambodian sugar plantation linked to child slavery, forced evictions and relocations carried out by a former Khmer Rouge battalion; the Australian Water Holdings scandal which has implicated the Assistant Treasurer and former Howard advisor, Arthur Sinodinos but also the NSW Labor Party and a host of corrupt businessmen; and

the ongoing pre-selection chaos in the Victorian Liberal Party (not to mention the use of access to abortion as a bargaining chip for currying favour with independents and fanatical Catholics).

One might even consider continued efforts to proceed with the construction of the unpopular East-West tunnel link in an atmosphere of extreme secrecy, poor business plans and police repression as part of this list and remember the profound backfiring of the Costigan Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (FSPDU): though the Commission did find evidence of criminality and violence amongst the FSPDU it pointed out that wealthy individuals encouraged this activity by employing corrupt members for their own criminal ventures including drug trafficking, the production of pornography and murder. More importantly, however, the Commission found that businessmen were employing FSPDU members in order to carry out “bottom of the harbour” tax evasion schemes with Kerry Packer being the most prominent businessman implicated. Ironically, it was Packer’s own Bulletin which had led the charge for a Royal Commission into FSPDU corruption.

Alongside accusations of and convictions for funding slavery, ripping millions of dollars out of state and federal treasuries and bribing members of a Royal Family to secure business deals, allegations that CFMEU officials may have received free house renovations and building supplies seem somewhat quaint and is indicative of the gulf between capital and the working classes.

Yet exposing and highlighting this gulf and endemic corruption and criminality amongst the middle classes is made difficult by capital’s control of political and cultural power. This cultural hegemony also has a drastic impact on the report and perception of both sides when accused, with a notable example being the lingering accusation of co-operation between the CFMEU, organised crime figures and bikies and of violence and unfair tactics as endemic features of construction union activities during a dispute with Grocon and its CEO, Daniel Grollo, in 2012. Say nothing of the fact that Grollo is himself the step-brother of well known criminal bikies or that his cousin, Gianni Grollo, was recently linked to the Bandidos bike gang in Queensland after they allegedly threatened a hairdresser over a \$100,000 debt owed to a building and construction firm part-owned by Gianni Grollo. Organised crime has no place in the union movement but it would be foolish and wrong to continually assert, as the capitalistic press is wont to do, that it is confined to the unions.

Some misguided journalists (formerly of the radical left) have argued that by exposing corruption the Left might hope to clean up the unions and get on with the

good fight. Yet in an atmosphere of unbridled hostility towards worker democracy and the imminent revival of the ABCC looking to be the Damoclean sword above unionism's head, such attitudes are naïve and dangerous. Corruption, where it exists in the union movement, needs to be addressed and dealt with but it currently exists as capital's excuse to destroy unionism. Organised crime, communism and undue foreign influences have all featured as excuses to attack the exercise of worker democracy with varying levels of success and new excuses and campaigns will be found until capitalism is destroyed.

This has been made clear by over a century's worth of attacks by capitalists and their sycophants upon the basic exercise of worker democracy as an excuse to be rid of unionism: where employers should apparently feel free to pay workers what the market dictates and devolve responsibility for worker health and safety to the individual, even if that results in entrenched poverty and the regular mutilations and deaths of workers, the simple act of withdrawing one's labour without the consent of an employer is seen as an act of tyranny or even terrorism.

An excellent example of this attitude came in 1930 after the suggestion was made that Prime Minister Scullin might revoke preference of employment to strike-breakers during the Great Depression. The Geelong Advertiser declared in response that "with the exception of rabid extremists who are either in the ranks of the Communists ... or the borderline thereof, all classes were tacitly committed to [keeping the wheels of industry moving.]" and that the services provided by strike-breakers during the 1928 waterfront workers strike were akin to overseas service in the First World War. If promises of preferencing strike-breakers were not honoured, "irresponsible and unpatriotic individuals" would be encouraged to disrupt production again and "the people [would] be discarding their most powerful weapon – the determination of law-abiding citizens to risk everything to maintain the essential services of the State."

84 years later and the sentiment remains alive. As does employers' desire to see the working class fall in line behind capital and, as the Master Builder's Association wrote in 1998, their dissatisfaction with the "...lack of identification on behalf of employees with the interests of their particular employer." In 1931 almost exactly the same words were used by the Adelaide Chamber of Commerce as growing militancy amongst the unemployed and the tenuous position of Australia's economy struck fear into the capitalists' hearts as they worked themselves into a lather over the possibility of a socialist revolution on the horizon.

Thus the most recent attacks on the CFMEU cannot be seen as independent of history and must be considered as the latest chapter in the long struggle

between the working classes and capital. Despite the failure of several Royal Commissions, the BIT and ABCC to find and convict unionists of organised crime and corruption the accusations carry weight which the capitalist press is more than happy to keep in the fore. In Nigel Hadgkiss the CFMEU has a formidable and powerful enemy who has begun to learn from previous mistakes and who has the backing of a government that operates swiftly and with high levels of secrecy. If a strong response is not forthcoming and the wider community fails to show solidarity with the CFMEU and other union bodies, the decimation of unionism in Australia may be assured.