

Australian government's industrial "cop" prosecutes union over Qantas strikes

Mike Head**3 November 2009**

The Rudd government's new Fair Work Ombudsman and Qantas, one of Australia's largest companies, are seeking fines, multi-million dollar compensation and injunctions against a union over a four-hour stoppage by airport baggage handlers.

The decision by the government's industrial policing agency to prosecute the Transport Workers Union (TWU) and join Qantas's bid for up to \$2 million in damages underscores the repressive character of Labor's "Fair Work" laws. They go even further than the previous Howard government's "Work Choices" legislation in outlawing virtually all industrial action.

Since the "Fair Work" laws commenced on July 1, workers seeking to take any form of action have found themselves almost immediately threatened by punitive legal sanctions, mostly enforced by Fair Work Australia, the Rudd government's new workplace tribunal (see " 'Fair Work Australia': A union-enforced straitjacket on workers"). Now the Fair Work Ombudsman (FWO)—described by Deputy Prime Minister and Workplace Minister Julia Gillard as the government's "strong cop on the beat"—has joined the fray.

Business groups regard the move as a test case, hailing it as a signal that the FWO is "flexing its muscle". Industrial relations lawyer Peter Vitale told the *SmartCompany* web site there was "a feeling going around at the time the legislation came in that the ombudsman was going to get a lot more active in enforcing aspects of the law".

Baggage handlers at four airports—Sydney, Brisbane, Perth and Adelaide—walked off the job for about four hours on March 30 in a bid to fight Qantas's outsourcing of services to cheap labour private contractors. The FWO alleges that the stoppages were unlawful because they were conducted before the handlers' enterprise bargaining agreement expired in 2011.

In its Federal Court prosecution, the agency is seeking fines of up to \$92,000 in total against the TWU, its Queensland branch and four officials, including national secretary Tony Sheldon. Qantas is also seeking fines and compensation orders, as well as injunctions against further industrial action.

This is the second prosecution launched by the FWO against the TWU this month, both against industrial action taken since the Rudd government took office. The earlier case involved brief stoppages by Qantas baggage handlers at Adelaide and Melbourne in December 2007. In that case, the TWU has already agreed to pay a \$35,000 fine and to ask its members at all capital city airports to participate in one-hour training sessions on their obligations under the Fair Work Act.

By cooperating with the first prosecution, the TWU has made it plain that the trade union movement will continue to collaborate with the government, Qantas and the FWO in their assault on the right to strike. Led by the Australian Council of Trade Unions (ACTU), the unions all voted for the Fair Work laws and are doing everything in their power to enforce them.

In response to the latest prosecution, Sheldon has accused the FWO of conducting a "vendetta", while saying nothing about his union's support for the government and its anti-strike legislation. In an attempt to cover over the fundamental issues involved, Sheldon has claimed that the March stoppage was over the threat to "national security" supposedly posed by outsourcing airport operations, not the loss of his members' jobs.

The complicity of the unions has only encouraged the FWO and the government. Last week, in a speech to the Australian Industry Group—a major employer organisation—FWO chief Nicholas Watson reported that he was overseeing a further 19 investigations into alleged

unlawful industrial action. His office has refused to provide details.

It is inconceivable that this offensive would be proceeding without the government's approval. Although the FWO is alleged to have a degree of formal "independence", Gillard has the power to issue policy directions to the agency under the Fair Work Act.

Gillard appointed Watson for a five-year term commencing in July. A former employers' spokesman in South Australia, he was the Howard government's first Australian Workplace Ombudsman (2007-09) and inaugural Director of the Office of Workplace Services (2006-07).

Gillard has maintained a noticeable public silence over the prosecutions, but they are entirely in line with the FWO's intended function. Handed a 2009-10 budget of \$160 million, it is currently being boosted to a 900-strong industrial policing agency. More than 320 inspectors exercise extensive powers to investigate and punish industrial action.

These powers are akin to those of the Howard government's notorious Australian Building and Construction Commission (ABCC), which the Rudd government has also refused to abolish. While sections of the union movement claim to oppose the ABCC, they have embraced the FWO under the slogan "one law for all".

FWO inspectors can enter workplaces and other premises, interview people, require identification and seize copies of records, documents and computer files. Any worker who fails to comply faces penalties of up to \$3,300. If they "hinder or obstruct" an inspector they can be charged with serious criminal offences.

These powers can also be invoked against anyone allegedly "involved" in unlawful industrial action—i.e., accused of assisting, advocating or being "knowingly concerned in" the action. FWO prosecutions need only prove that offences were committed "on the balance of probabilities", not the normal criminal law test of "beyond a reasonable doubt".

The FWO's "Industrial Action Policy" guidelines instruct it to protect corporate interests by prosecuting where "public interest" factors are at stake. These include "impact on the financial circumstances of a company, third parties or the national economy" and "the level of destabilisation within the company and the sector". Others factors are "any

suggestion, rumour or threats of further unlawful industrial action" and "any suggestion that a breach of the Act is 'not a serious issue' and everything is 'back to normal'."

Qantas, which was privatised in the mid-1980s by the Hawke and Keating Labor government, has since served as a spearhead of attacks on workers' jobs, working conditions and basic rights. The TWU and other airline unions have collaborated throughout, enabling the company to axe thousands of jobs, introduce part-time and casual employees, set up a two-tier employment structure, establish a low-cost carrier Jetstar based on poor wages and conditions, and contract out services across-the-board.

Last year, the flight attendants' union agreed to deep cuts to the pay and conditions of new recruits. After Qantas prepared a major strike-breaking operation, the engineers' unions negotiated a "wage restraint" package. In April this year, citing the impact of the global financial crisis, management announced that it was eliminating 1,750 jobs, taking its job losses in one year to 3,340 or almost 10 percent of its workforce. At the time Gillard made a point of praising the carrier for consulting with the unions on the job-shedding.

The wave of prosecutions being prepared by the FWO, on the government's behalf, is an attempt to pre-empt and crush resistance by airline workers and many other layers of workers who will be driven into struggle as the Rudd government and major corporations seek to impose the burden of the global crisis onto their backs.



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