Australian union officials arrested on blackmail charges for imposing bans

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Police arrested two senior Australian construction trade union officials last weekend, in front of their families, and charged them with the serious criminal offence of blackmail over union black bans in 2013. The arrests, and the draconian methods used to carry them out, are primarily directed against the working class, rather than union officials who have opened the door for such measures.

Construction Forestry Mining and Energy Union (CFMEU) Victorian state secretary John Setka and his deputy Shaun Reardon face up to 15 years' jail if found guilty. Their supposed "crime" is allegedly threatening to escalate bans against Boral, a major company, if it did not stop supplying concrete to Grocon, a construction firm in a dispute with the CFMEU.

The use of the criminal law to punish industrial action is a bid to wind the clock back to the days of the nineteenth century when workers were imprisoned under the Combinations Acts in England for forming organisations to fight employers for higher wages. It was not until the early twentieth century, as the result of bitter struggles by workers, that industrial action received immunity from criminal liability.

News of the arrests was splashed across the front pages of newspapers around the country yesterday in a clear attempt to legitimise this unprecedented move and intimidate workers with the prospect of criminal charges for striking or taking any other form of action against employers.

Possible criminal charges against Setka and Reardon were first mooted by the federal Liberal-National government's trade union royal commission last December. The police laid the charges a year later despite a blackmail charge against CFMEU official John Lomax being dropped on legal grounds in Canberra two months ago.

Federal and Victorian state police from a special taskforce called Heracles, set up to pursue royal commission allegations, detained both men for about two hours before they were released on bail. They appeared in Melbourne Magistrates' Court today, where they pleaded not guilty.

Several thousand workers protested outside the court against the charges, although the CFMEU denied calling any stoppages for the demonstration, in line with its commitment to enforcing the Fair Work laws, introduced by the previous federal Labor government, which ban all strikes except during union-employer enterprise bargaining periods.

Blackmail is commonly thought of as seeking personal gain by coercive, underhanded means. However, Setka and Reardon were charged under section 87 of the Victorian Crimes Act, which defines blackmail in sweeping terms as making "any unwarranted demand with menaces" with "a view to gain for himself or another." The only defence is to prove that there were "reasonable grounds" for making the demand and that the "menaces" were "proper means" of reinforcing the demand.

Labor Party leaders refused to condemn the criminal charges and essentially lined up behind the prosecution. Victorian Premier Daniel Andrews said he would not run a "commentary" on the case that would not serve anyone's interests, "least of all anyone who is proven to have done the wrong thing getting a punishment they deserve."

Federal Labor leader Bill Shorten said he would not pre-empt the case. Anxious to demonstrate to big business that a future Labor government would crack down further on industrial action, Shorten also released a new blueprint, calling for new coercive investigative powers in the hands of industrial law regulators and a doubling of penalties for all workplace law breaches. Any person sentenced to a jail term of longer than 12 months would

be legally barred from holding a trade union post.

As with the royal commission itself, the Labor leaders are exploiting revelations of corrupt union officials to bolster police powers to punish any action by workers that threatens corporate interests. While criticising the royal commission as a political stunt by the federal government, Shorten is moving to embrace the thrust of its recommendations, which are due to be released soon.

The Labor governments of Bob Hawke and Paul Keating from 1983 to 1996, working in the closest collaboration with the trade unions, were directly responsible for opening the door for punitive measures against strikes and other forms of industrial action. For more than a decade, the penal powers of the arbitration commission were a virtual dead letter after a general strike erupted in 1969 over the jailing of tramway union leader Clarrie O'Shea.

Central to the Accords between unions and the Labor government was the suppression of industrial action by workers in the name of making Australian businesses "internationally competitive."

Along with the Australian Council of Trade Unions (ACTU) betrayal of the year-long struggle by sacked South East Queensland Electricity Board (SEQEB) in 1985–86, one of the crucial turning points came in 1985, when the unions isolated a struggle by meatworkers at Mudginberri in the Northern Territory. As a result, the meat union agreed to enforce a two-year ban on strikes, and pay $2.5 million in damages to the company under "secondary boycott" Trade Practices laws enforced by the Hawke government.

The Mudginberri sellout opened the door to escalating punitive law suits, starting with the imposition of common law damages over picketing at Dollar Sweets in 1986 and a fine of $280,000 against the plumbers' union in 1987 for implementing work bans.

Then came the Hawke government's deregistration of the Builders Labourers Federation in 1986. It was a move to end militancy on construction sites, with the complete backing of the ACTU and the Building Workers Industrial Union, the forerunner of the CFMEU.

As well as enforcing these and other attacks on workers' struggles, the unions broke up elected shop committees and any other forms of rank-and-file organisation that presented obstacles to their pro-business collaboration.

These betrayals paved the way for the Coalition government of John Howard from 1996 to 2007 to deepen the assault on workers' rights through its system of enterprise bargaining and individual contracts encapsulated in the WorkChoices legislation.

Under the Rudd-Gillard Labor governments of 2007 to 2013, the unions helped draft and impose the current Fair Work laws, incorporating all of the anti-strike measures contained in WorkChoices. The unions enforced this legislative straitjacket in the working class, driving down the levels of stoppages to historic lows, while paying heavy fines—from their members' funds—for any breaches by their members.

Earlier this year, the CFMEU itself paid $9 million to Boral and $3.55 million to Grocon to settle lawsuits over the 2012–13 dispute. While it involved daily pickets of a key Grocon site in Melbourne, that dispute illustrated the contemporary role of the unions.

Behind the bogus show of militancy, the aim of the CFMEU officials was to maintain their position as quasi-labour relations managers on the city's major construction sites. They insisted on appointing the health and safety delegates on the site, rather than allow workers on the job to elect them. These representatives, who are paid by the construction companies, function as an additional layer of union bureaucrats, helping meet construction deadlines and clamping down on any wildcat industrial action.

While major companies went along with such arrangements during construction booms, Grocon represents firms who are unwilling to bear such overhead costs as economic conditions worsen.

Decades of unions collaborating with management and suppressing rank-and-file activity, combined with repressive laws enacted by Labor and Coalition governments, have now created the political conditions for a dramatic escalation of the attacks on workers, via the return of criminal prosecutions.