

Submission

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Senate Review of the Cole Royal Commission into the Building & Construction Industry &

THE BUILDING & CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2003

Senate Reference Committee – Melbourne 19-21 May 2004

CEPU SUBMISSION David Mier Witness Statement



INTRODUCTION

1. I am an Organiser with the CEPU Electrical Division Southern States Branch (the ETU Southern States Branch). I am also a State Councillor of the Branch. I have held my position of organiser since June 1996.
2. I worked as an electrician from about 1980. I worked in heavy industry and in the building and construction industry in Western Australia, Northern Territory and Victoria. I have had over 20 years experience in and around the building and construction industry.
3. I was first exposed to the City Link Project in about March 1998. At that time I took over from the previous ETU organiser. I began looking after electrician members working for Transfield in its maintenance division. During that time and thereafter I saw first hand the conditions in the tunnel on numerous occasions.
4. The Cole Royal Commission focussed on the City Link Project to highlight, in its view, the misuse of OH&S for industrial purposes by unions and their OH&S representatives. In fact the Cole Commission specifically mentioned the CEPU OH&S representative as overstepping the mark in this regard.
5. Working in the City Link Project and in particular the tunnels, presented some unique and difficult occupational health and safety problems. In my view the City Link Project had the worst working conditions I have ever seen in Victoria. This was exacerbated by the reluctance on the part of the head contractor, Transfield Constructions Victoria, to promptly attend to and deal with OH&S problems. It is understandable in these circumstances that our OH&S representative may have been a bit edgy at times about

the safety of the working conditions in the tunnels especially with respect to the tagging of temporary switchboards.

6. It is my experience that members who are union activists taking on the role of shop steward or occupation health and safety representative, are often labelled troublemakers. In the building and construction industry, the result for such members can be difficulty in gaining future employment. They may even be discriminated against for ongoing employment opportunities. This is very difficult to prove. As a case in point, our ABB OH&S representative on the City Link Project was the only employee who did not go onto the next project with ABB.

Background on City Link Project

7. The City Link Project was one of the largest infrastructure projects undertaken in Australia. City Link covers 22 kilometers of road, tunnel and bridgeworks linking the north western and south eastern suburbs of Melbourne. Construction commenced in April 1996 and City Link became full operational in December 2001. The estimated cost of the project was \$2 billion.
8. Transfield Pty Ltd subcontracted the electrical and communication installation works in the City Link tunnels to electrical subcontractors including ABB Industry in the Burnley and Domain tunnels. Corke Instrument Engineering Pty Ltd was subcontracted to undertake the electrical installation works in the Burnley tunnel.
9. ABB worked at the Grant Street end of the tunnel and this end of the project was more complex for a time than the Burnley Street end where Corke Engineering was working.

Working Conditions in the City Link tunnels

10. OH&S was a problem from the start. When ABB electricians commenced on the Grant Street end, there were still major excavation works being completed in the tunnels, with

dust in the air, trucks passing by the workers and bad lighting. In fact the project Manager for ABB, Ron Smith, in his statement to the Cole Commission noted that part of the problem was that the site was not ready when ABB commenced work, with excavation still being completed, and the electricians were not used to working in such underground conditions, which were similar to working in a mine.

12. The environment in the tunnels was dark and dingy the dust was thick and the tunnels were subject to flooding. It was a hazardous work environment. The appalling working conditions were caused by a combination of diesel fumes, dust, noise, damp, water hazards and sulphur smells. Each of these elements on their own was bad enough but what made this job particularly obnoxious was the combination of exposure to all of these factors in a dark and dangerous hole in the ground. Employees were justifiably concerned about their health and welfare.
13. Most of the electrical workers who were working on the City Link Project had come off building sites. They were used to the OH&S standards of building sites. They were not used to the appalling and unusual conditions experienced on the City Link site.
14. It is not the case that the appalling conditions under which they were working are typical of work in a tunnel. Some of the employees had worked on the underground rail loop built about 20 years before in Melbourne. According to Chris Meagher, a CEPU shop steward on the City Link Project who had also worked on the rail loop tunnel, the conditions of work in the rail loop were apparently quite good. The lighting was good. If there were water leaks they were rectified. Employees were not subject to fumes or dust. They were provided with above ground crib facilities to take breaks away from the environment of the tunnel. As best as Mr Meagher can recall, none of these issues were ever the subject of any dispute or complaint. Employees were treated with decency and provided with acceptable working conditions from the start. In contrast, on the City Link Project it took some two months of constant complaint to convince Transfield to provide above ground crib facilities, an evacuation system and a communication system.

15. Although some employees had worked on the Melbourne rail loop, for many of the electrical workers, this was the first time they had worked underground. While the unfamiliar work environment of itself presented challenges, these challenges were heightened by the particular difficulties of the City Link tunnel site. This would have been compounded by Transfield's subsequent failure to address problems quickly and their apparent disregard for quite legitimate OH&S concerns.

Specific Occupation Health & Safety Problems

16. The City Link Project was afflicted by a large range of serious occupational health and safety problems. Those problems included the following:
- . inadequate communication systems for dealing with a 'man down' situation'
 - . an inadequate evacuation system
 - . inadequate lighting of the tunnel
 - . substandard first aid facilities
 - . inappropriate location of crib facilities which were initially, located inside the tunnel;
 - . the absence of a safety committee;
 - . no designated or covered walkways in the tunnel or to and from the tunnel;
 - . temporary power and lighting not in conformity with Australian standards
 - . lack of emergency lighting and exit lighting in the tunnel.

Attitude of Transfield Constructions, Victoria and Sub-Contractors

17. The working conditions on the City Link Project were quite different to anything encountered in Melbourne before and because of this, Mr Adam De Jong, a Transfield Construction Victoria Manager, considered that Transfield underestimated the difficulty

of the working conditions and in effect, lacked an understanding of the attitude of the tradesmen working under those conditions.

18. Transfield is notorious for their lack of concern about OH&S. I say this based on my experience at City Link and the dealings the ETU has had with Transfield at other sites including the Naval Dockyards, HMAS Cerebus, Melbourne Water and a construction site in Orbost. I have talked to a lot of different union officials and heard many complain about Transfield's disrespect for OH&S and the prevalence of poor industrial relations practices on their jobs.
19. The anxiety over Transfield's poor OH&S reputation was heightened by the much publicised death of Justin O'Connor on the City Link site. Transfield were prosecuted in relation to the death and were convicted and fined. At the time I was preparing my Witness Statement to the Cole Commission in August 2002, Transfield were again in trouble over OH&S and were prosecuted and fined over \$70,000 over an health and safety breach that led to a worker receiving a traumatic brain injury.
20. At times, not even the electrical subcontractor, ABB, was happy with Transfield. For instance, to control the dirt and dust, Transfield Construction introduced a water truck to spray water. However, ABB complained that this was not done frequently enough and was usually done following a complaint. In evidence to the Cole Commission, ABB stated that Transfield Construction would often take up to a week to address genuine occupational health and safety concerns in relation to the ground conditions.
21. Mr Paul Burke, the ABB Industry Construction Manager, considered there was an inherent problem with Transfield's approach to addressing OH&S and industrial relations issues raised by ABB Industry Pty Ltd.¹ He did not believe there was a management system in place to ensure that once an issue was raised with Transfield the issue would be attended to promptly or at all. In Burke's view, the CEPU OH&S representative resorted to measures designed to force Transfield to fix problems that,

¹ Paul Burke, T12299/42-43 as quoted by the Cole Commission, Final Report, Volume 15 at p.29

with proper attention, could have been fixed within half an hour.”² He also stated; *“I do not understand why Transfield did not take a more proactive approach to demonstrate their preparedness to find solutions to the workforce’s complaints.”*³

22. This concern is echoed by Ron Smith, ABB Project Manager, who in his statement to the Commission said:

*“It is my view that Transfield gave the OH&S representatives on site plenty of ammunition to complain through their inaction. Transfield were reluctant to seek advice and were quite dictatorial in what they considered was the correct approach to addressing OH&S issues. OH&S incidents would eventually be fixed, however, they created a lot of unnecessary heartache in the mean time.”*⁴

Further;

*“Transfield also were very reactive and confrontational in their approach to resolving industrial relations issues. Transfield tended to blame the subcontractors and/or their employees for any industrial relations problems.”*⁵

23. Cole noted⁶ that an independent consultant was engaged to review OH&S management and operational systems. The resulting report found that the OH&S systems in the tunnels were not satisfactory. Even Cole concludes on the evidence that particularly with respect to the Grant Street end of the tunnel, OH&S conditions; *“... with both excavation and electrical works proceedings simultaneously in close proximity were unsatisfactory and inadequate.”*⁷

² Paul Burke, T12301/20.

³ Statement of Paul Burke to the Cole Royal Commission, document 02.0741.0080.0001 at p.3

⁴ Statement of Ronald Smith, Project Manager for ABB Industry Pty Ltd, document 038.0958.0778.0020 at par. 4.

⁵ Statement of Ronald Smith, *ibid*, at par.7

⁶ Final Report of the Royal Commission into the Building and Construction Industry Volume 15, p.30

⁷ Final Report, *ibid*.

24. Despite all these statements critical of Transfield's handling of the OH&S and industrial problems, Cole accused CEPU shop stewards of "*taking matters into their own hands and ordering men to 'down tools'*".⁸ Cole also accused the CEPU of rarely adhering to the dispute resolution procedures under the relevant EBAs and for OH&S under the Act.
25. Yet according to the evidence of ABB Project Manager, Ron Smith, that 99 per cent of the OH&S issues identified by the CEPU/ETU OH&S representative "*were genuine, particularly in relation to the temporary electrical supply boards which did not comply with the Code of Practice.*"⁹
26. As a result the morale of employees was poor, they were angry that their welfare was not treated seriously and that genuine OH&S concerns were rarely or slowly acted upon. In my experience the vast majority of employers would have had no difficulty addressing the concerns and complaints which the employees on City Link had. Basic facilities such as a proper evacuation system and crib facilities where employees could get some relief from the underground conditions were fiercely resisted by Transfield. The problem extended to the electrical contractors although I could usually reason things through with ABB. I had difficulties with Corke Engineering.
27. The combination of the worst conditions of work I have ever seen and the involvement of Transfield made this job a nightmare from both an OH&S and an industrial perspective.

Specific Claims about the CEPU/ETU OH&S Representative

28. In its Final Report, Cole splits its consideration of the City Link project into "Justifiable OH&S issues" and "Unjustifiable Issues". It is here that the evidence of Cole's bias in reporting its conclusions is to be found.

⁸ Final Report, *ibid*, p.28

⁹ Final report of the Royal Commission into the Building and Construction Industry Volume 15, p.29

29. Justifiable OH&S issues

29.1 Ground conditions

There is general agreement that the working conditions were unpleasant and difficult. It seems Cole accepted my evidence and that of the CEPU/ETU OH&S representative concerning the working conditions in the tunnel. No criticism is made of the role taken by the OH&S representative in this regard.

29.2 Temporary Switchboards

29.2.1 Cole notes that there was considerable evidence regarding the failure of temporary switchboards to meet the requirements of AS 3000 and the Code of Practice for Temporary Electrical Installations. Cole stated:

"It was the responsibility of Transfield Constructions Victoria to ensure that they [the temporary switchboards] did [comply]. I am satisfied that that they did not, with many needing repair or replacement. Disruption to power supplies due to boards being rendered inactive caused considerable dissent and delay."¹⁰

29.2.2 Mr Paul Burke¹¹ and Mr Ron Smith¹², in their statements to the Cole Commission, noted that ABB employees had legitimate concerns in relation to temporary power supplies and temporary boards on site not meeting the Code of Practice. The temporary power boards required repairs and, as late as April 1999, were causing problems on site. Mr Burke said that it was common industry practice for safety representatives to cut the plug leads so that the appropriate testing on the leads and power tools was done. On this Project, Mr Sharp did this when the testing was overdue, and Mr Burke asserts his actions were not an act of sabotage, rather, they made Transfield Construction test the leads. Bill Sharp, in his statement, noted many

¹⁰ Final Report, volume 15, p.31

¹¹ Construction Manager, ABB Industry Pty Ltd

¹² Project Manager, ABB Industry Pty Ltd

of the problems with the switchboards could have been rectified within half an hour, but Transfield Construction argued the point, sometimes for up to a week.

29.2.3 In evidence, ABB also noted this tendency on the part of Transfield Constructions and the Transfield-Obayashi Joint Venture¹³ (TOJV) to argue the point rather than just fix the problem. Cole noted that under the governing licensing laws, electricians are required to make unsafe work situations inoperable. Sharp was such an electrician. Workcover agreed with his assessments on the risk associated with the switchboards¹⁴. Transfield's failure to conduct regular checks was unacceptable. Without this testing, the boards represented a serious potential OH&S hazard.

29.2.4 With respect to this issue Cole found:

"I am also satisfied that Sharp, the OH&S representative, was justified in taking action to render non-conforming boards inoperative even if this caused disruption."

29.3 Stairs and handrails

Again Cole found in favour of the union's OH&S representative. Cole concluded; *"it seems clear on the evidence before me that the stairs were inadequate and unsafe and that Sharp was entirely justified in testing them. If stairs when shaken disintegrate, they should not have been there. That this became an issue causing industrial confrontation is indicative of the industrial climate on the site."*

29.4 Evacuation alarms

29.4.1 City Link was plagued with occurrences of false alarms and emergency evacuations. The evacuation alarm caused considerable disruption because it was a major exercise to evacuate the tunnels. Evacuation periods ranged from 40 minutes to the loss of an

¹³ Transurban Pty Ltd contracted the engineering and construction work on the City Link Project to Transfield-Obayashi Joint Venture (TOJV). In turn, TOJV subcontracted parts of the Project to Transfield Pty Ltd.

¹⁴ See the summary of the evidence given by Cole in the Final Report of Royal Commission Volume 15, Victoria part 1 at pp32-33.

entire day's production. Cole found that with the majority of evacuations, Sharp was right that the system was not up to standard a great deal of the time. This was primarily caused by a lack of will on the part of Transfield Construction to recognise deficiencies in the system of the management of the system. Cole concluded that despite claims that ABB employees were deliberately setting off the alarms, on the evidence, the triggering of the alarms was due to defects in the system not acts of the employees.

30. Unjustifiable OH&S issues

30.1 Sharp safety gear

It was found that on one occasion Sharp was not wearing his personal protective equipment, safety helmet, glasses and reflective vest in the tunnel.

30.2 Sharp – security guards

On one occasion Sharp partially blocked the tunnel entrance while he investigated the introduction of major security changes which had been introduced without consultation. Sharp maintained no vehicles were trying to exit and there was no danger and that the cars were removed after about half an hour. Cole found this was an unnecessary action and created a potential danger.

On another occasion, Cole found Sharp misused his position as OH&S representative by disregarding the exit points for different traffic accessing the site.

COLE CONCLUSIONS

31. Cole concluded about the City Link Project:

31.1 There were justifiable OH&S concerns on the City Link Burnley and Domain tunnel sites relating to the working conditions which were in part due to the unique conditions caused by working in the tunnels.

31.2 A number of temporary switchboards on site did not comply with the Code of Practice and that CEPU OH&S representative, Bill Sharp, was justified in treating this matter as an OH&S issue.

31.3 Other OH&S issues raised by the OH&S representative, Bill Sharp, were justifiable.

31.4 Faulty wiring or similar technical problems within the evacuation system alarms caused a large number of emergency evacuations of the tunnels.

COLE FINDINGS

32. Despite all this Cole found this case study illustrated:

32.1 *“That OH&S is frequently given insufficient attention by employers and employees but is also, frequently misused for industrial purposes by union and their officers.”¹⁵*

But no specific detail of this misuse by employees was given. Neither is the employer specifically cited for its behaviour. In all the detailing of “Unjustifiable OH&S issues” there is no evidence of employees giving OH&S insufficient attention. Indeed the evidence with respect to the CEPU/ETU OH&S

¹⁵ Emphasis added

representative is quite the opposite. At times he is said to have been over zealous in his attention to the OH&S site issues. To accuse employees in this manner without supporting facts, smacks of the same bias Cole has exhibited towards unions and their members throughout the Commission proceedings. However, time and time again there is evidence of Transfield's failure to attend to legitimate and serious OH&S problems but the same cannot be said for employees. Further, there is no evidence of even *infrequent* misuse of OH&S for industrial purposes by employees on this Project.

32.2 There was *“conduct by an OH&S representative which was an abuse of his position.”*

However, no specific instances of this abuse is detailed. It can readily be seen from the above that the only real “abuse” of Sharp's position that was detailed by Cole was his failure to wear safety gear on one occasion, the partial blocking of the tunnel on one occasion and the misuse of a tunnel exit point on another occasion. While these are serious matters, they do not constitute an abuse of Sharp's position.

32.3 There was *“conduct was an OH&S representative and employees on site which did not promote safety and which had the potential the endanger the safety of personnel on site.”* Again no details were given to support this allegation.

33. Overall, these findings are indicative of the approach of the Cole Commission. Irrespective of the facts of the used as a case study, Cole finds a way to twist those facts to make the union and its representatives look bad. If there were instances where an OH&S representative “abused” his position no account is taken of factors that might mitigate the so-called abuse and the reason for it. With respect to the City Link Project, quite clearly Transfield's failure to act reasonable and promptly to OH&S

problems forced the OH&S representative do to things that in other circumstances he would not have needed to do.

34. Once such action is put into the perspective of an employer's failure to promptly attend to legitimate and serious OH&S problems and breaches, the picture is quite different. But Cole fails to link the repeated failure on the part of the employer to act to the actions of the OH&S representative. Even the subcontracting employers, ABB, agree that Transfield's failure to attend promptly to unique and legitimate OH&S problems was a huge problem. Yet somehow the union's OH&S representative comes out second best in this blatant negligence on the part of the employer.

Discrimination against union activists

35. I note the evidence of the Construction Manager for ABB Industry Pty Ltd, Paul Burke, that Transfield requested that ABB appoint "more cooperative" employees¹⁶. This is code for getting rid of "troublesome" shop stewards and OH&S representatives on the job. This evidence is consistent with what happens in the building and construction industry where builders and sub contractors often conspire to discriminate against shop stewards or occupational health and safety representatives by having them removed from the site. They are also often reluctant to employ known activists seeing them as "troublemakers" with the result that active shop stewards and OH&S reps can find it difficult to gain employment in the industry without the help of the union.
36. Our OH&S representative for ABB on City Link, Bill Sharp, was undoubtedly seen as a troublemaker. According to Chris Meagher, our ABB shop steward on City Link, ABB said they were finding it increasingly difficult to work with Transfield because of the role of Bill Sharp. Ultimately, he was pressured to leave before the end of the job and according to his statement to Cole, he was the only ABB representative on the site who did not go onto the next job.

¹⁶ Statement of Paul Burke, Construction Manager, ABB Industry Pty Ltd, doc 002.0741.0080.0001 at par.22

37. This result is indicative of what can happen to employees who are union activists or who are seen to be too zealous in the pursuit of their duties. In reality there was very little in the Cole Report about Bill Sharp's action on this Project that warranted criticism. In fairness, the criticism for a failure to adhere for OH&S standards should fall squarely on the shoulders of Transfield Constructions and to a lesser extent, ABB Industry.
38. There is no doubt that the City Link Project involved unnecessary lost time and productivity. As I have stated there was a combination of unusual elements which afflicted this job. There is no doubt in my mind that if decent working conditions had been provided from the outset, much of the lost time and many of the problems could have been avoided. The City Link Project is NOT atypical of industrial relations in the building and construction industry in Victoria.