

A Study of Union Mergers: The Strange Case of the Police Federation of Australia.

MICHAEL LYONS* & JENNY FLEMING**

Abstract

During the 1990s trade unions in Australia were involved in an unprecedented amount of mergers that resulted in a significant reduction in the number of unions. Most of this merger activity consisted of either amalgamations or absorptions, and has been subjected to considerable research scrutiny. The merger of five separate police unions created the Police Federation of Australia. However, the Federation is unique among the union mergers in this period because it evolved from a federally registered police union, the Australian Federal Police Association, altering its rules to grant it coverage of all police in Australia. This paper examines the formation of the Federation, and suggests that both the form of the merger and the merger process are not easily explained by the existing literature. This is partly due to the limited attention past studies have paid to union federations, partly due to the circumstances of police unions in Australia, and partly due to the novel method by which the merger was conducted.

In the recent past, much academic interest has been visited on trade union mergers in Australia. This interest has been generated by the policy of the Australian Council of Trade Unions (ACTU) in the late 1980s and 1990s, and promoted by legislation of the federal Labor government, to encourage a reduction of the number of trade unions and structure unions on an industry basis. This domestic interest in union mergers has explored the motivating influences (Tomkins, 1999) and the costs and benefits (Bodman, 1998; Davis, 1999; Wooden, 1999). While the Australian studies have examined the reasons for mergers and their effect, few have analysed how mergers occur or proffered reasons for the merger outcomes with Campling and Michelson (1998) and Hose and Rimmer (2002) being notable exceptions.

* Michael Lyons is the Senior Lecturer of the School of Management at the University of Western Sydney, Australia.

** Jenny Fleming is a member of the Regulatory Institutions Network (RegNet), the Research School of Social Sciences, Australian National University, Australia.

The authors would like to thank Grant Michelson and Joan Corrie for their helpful comments on drafts of the paper, members of the Griffith University School of Industrial Relations for the feedback supplied when the paper was presented to a School seminar, the staff at the Australian Industrial Registry and the Noel Butlin Archives Centre Australian National University for their cooperation, and the staff and officers of the Australian Federal Police Association and the Police Federation of Australia for their very generous assistance.

2 Michael Lyons and Jenny Fleming

The Police Federation of Australia ('the Federation') officially came into being in 1997. The formation of the Federation warrants analysis for a number of reasons. One, it is the first time in Australian history that a *national* organisation has been established as a vehicle to represent the industrial interests of staff engaged by the various police services. This aspect alone is remarkable given that police services are constituted, organised and financed at a State level. Two, union merger 'theory' does not adequately explain the motivations for the creation of the Federation, and its structure. And three, the formation of the Federation in many respects represents a shift in emphasis of police unionism from being purely industrial organisations to something more closely resembling a 'professional' association. While the Federation national organisation could be described as a professional association, the constituent branches still pursue industrial objectives and under the rules of the Federation are completely autonomous from interference by the national body. Yet the more intriguing feature of the formation of the Federation is that the impetus for its creation appears to have come from one of the smallest and most constrained police unions in Australia: the Australian Federal Police Association ('the Association'). Without the Association the Federation could not have come into existence, for this merger was a result of the Association changing its rules rather than the traditional union combination of union merger activity. In one sense, the smallest police union in Australia 'absorbed' the other larger police unions.

This paper examines the formation of the Federation in the context of both theory and practice. In doing so the paper pays considerable attention to the role played by the Association. In analysing the 'urge to merge' among police unions in Australia the following questions are investigated: what were the primary motivating factors causing the formation of the Federation; what were the political and institutional factors that permitted the Federation to be established; and what impact does the Federation have on the effectiveness of police unions in Australia? In answering these questions the paper identifies a gap in the union merger literature regarding mergers other than complete amalgamations and absorptions. Indeed, the four necessary elements required to constitute a union merger proffered by Michelson (2000) are difficult to detect in the case of the Police Federation of Australia.

Union mergers

Union merger literature proposes a number of motivating influences for merger activity by unions: membership decline, financial difficulty, technological change and employer reorganisation in workplaces they cover, competing jurisdictional union coverage, the desire to achieve economics of scale, and the desire to improve bargaining influence (Stratton-Devine, 1992: 134; Michelson, 2000; Hose and Rimmer, 2002). Often merger parties can have differing motivations particularly when a small union desires to be absorbed by a larger union (Black et al, 1997: 137). The motivating factors for 'defensive' mergers are different to those for 'aggressive' or 'consolidatory' mergers (Undy, 1999; Michelson, 2000), unions can have 'multiple – and sometimes conflicting – reasons for

amalgamations' and other mergers (Davis, 1999: 11). These different and competing motivations seem to be apparent in the merger process which culminated in the formation of the Federation.

According to Campling and Michelson (1998: 582-84) the 'urge to merge' is a strategic decision based on external factors. But, interests of a union's leadership cannot be overlooked when analysing the internal reasons to merge or not to merge and the final shape of any merger activity (Hose and Rimmer, 2002; Michelson, 1997; Stratton-Devine, 1992: 138). Merger structures which protect the power, prestige and jobs of the existing leadership will be more attractive than those that do not (Conant and Kaserman, 1989: 246).

There is some uncertainty about whether or not mergers have patterns or common features (Waddington, 1994). Chaison (1982a: 199) suggests that all union merger activity is somehow 'idiosyncratic', and for this reason 'there is no general theoretical model which can be applied to the merger process' (Chaison, 1982a: 198; cf. Chaison, 1986). The different forms of mergers only emphasise the idiosyncratic nature of union merger activity: amalgamations that involve the merger of two or more unions to form a 'new' organisation, and absorptions (or acquisitions) that involve the merger of one union into another (Waddington, 1994: 452). Even with these broad categories uniformity is not guaranteed (Hose and Rimmer, 2002), as some absorptions can be closer to an affiliation rather than a total assimilation (Chaison, 1982a: 201), and some amalgamations may not result in total fusion of the merging unions (Chaison, 1982b: 141). Neither the process of formation nor the final structure of the Federation fits neatly into these categorisations.

A barrier to union mergers can be the interests of particular groups of workers and members being subsumed by the new union structure (Black et al, 1997: 138-39). The image or identity of small, autonomous, white-collar or 'professional' unions may be jealously guarded by the membership and thus be hostile to merger proposals (McClendon et al, 1995: 13). McClendon et al (1995: 19) argue that the leadership of such unions need to reassure the members that any merger will not result in a loss of membership influence in decision-making processes relevant to their interests. In addition, the target of the merger needs to be compatible with the image the membership have of their union and/or their occupation or profession (Devine and Reshef, 1998: 529-30). The formation of a federation by Australian police unions which retained the unions' separate identity and autonomy would, therefore, have attractions over other possible merger structures.

Less than complete forms of integration seem to have been neglected by the literature. The attraction of an alliance (or affiliation) over a more complete merger (amalgamation or absorption) is that it can supply all the benefits of a proper merger without many of the associated disadvantages (Chaison, 1982a: 202-3): 'loose' federations are examples of such alliances (Chaison, 1982b: 142). In one critical respect, then, federations may retain the 'identity' of the constituent unions which can be a major incentive for the membership to agree to any merger proposal (Stratton-Devine and Reshef, 1992: 134; McClendon et

4 Michael Lyons and Jenny Fleming

al, 1995: 11).

The effect of regulation must be considered with any analysis of trade union mergers. Regulation that prescribes the manner and form of mergers will help shape the outcome of merger activity, as will regulation on the general conduct of unions (Waddington, 1988: 419). In any examination of merger activity in Australia the role of state regulation is central to the analysis because of the 'complexity of union structures that arise from the federal nature of the industrial relation system' (Michelson, 2000: 110), and the almost complete regulation of union governance and conduct. Regulation was of major significance in the formation of the Federation.

According to Willman and Cave (1994: 402) unions which place a priority on administrative effectiveness (low-cost operations) will be drawn to become dependent on employers for a range of facilities and thus their representative effectiveness is potentially reduced. While it is trite to state that the objectives of trade unionism (addressing the interests of members and potential members) should not become subservient to the means to pursue those objectives (administrative effectiveness), inadequate finances, resources, and staff will be harmful to a union's capacity to achieve its industrial objectives (Davis, 1999: 15). Yet the logic of trade union administrative effectiveness (financial viability) is that the vast majority of members continue to pay for union representation but rarely consume individual (as opposed to collective) services (Willman and Cave, 1994: 403). With police unions the existence of legal defence funds for members increases the likelihood that members will consume union services (Fleming and Peetz 2005).

For reasons mentioned earlier, Australian trade unions have in the last decade or so undergone considerable merger activity (Jadeja and Maidment, 1995), which resulted in the number of unions declining from 323 in 1985 to just 132 in 1996 (Davis, 1999: 4).¹ External political and institutional influences on unions, the policies of the ACTU and federal Labor government in particular, have been found to be the dominant forces shaping merger activity, over internal factors such as a lack of administrative effectiveness (Tomkins, 1999: 70-72). Axiomatically, the formation of the Federation is partly a result of these union merger pressures in Australia in that period.

In summary, the union merger literature proposes a number of reasons for the Association to merge because of its small union status, limited organising base and accompanying administrative shortcomings. So the expectation would be that the formation of the Federation addressed these issues. But on the other hand the literature also proposes a number of reasons that would act as obstacles to a merger, particularly for the Association and perhaps even the other police unions in Australia. While the following examination of the process that resulted in the formation of the Federation does not directly challenge the union merger literature in these respects, it does detect something of a gap in the literature in terms of motivations and outcomes.

The Rise and Demise of the Australian Federal Police Association?

Prior to the formation of the Federation, the Association was the only federally registered police union in Australia. The Association came into being as a result of the restructuring of Commonwealth (federal government) law enforcement administration under the **Australian Federal Police Act 1979** (Cth) which created the Australian Federal Police (AFP). Prior to the commencement of the 1979 Act, federal policing arrangements were largely divided between two separate organisations: the Commonwealth Police Force and the Australian Capital Territory (ACT) Police Force. Two separate unions represented the industrial interests of staff within the two agencies. The union covering Commonwealth Police staff was the Commonwealth Police Officers' Association, and the union covering ACT police was the Federal Police Association (Davies, 1980: 20). In 1981 the two police unions agreed to a merger. The Industrial Registrar held it was in the 'public interest' to have only one union covering AFP officers, and officially established the Association as a registered union on 27 August 1982. The Association's membership base was expanded in 1990 by an order of the Australian Industrial Relations Commission (AIRC), under its 'demarcation powers', to grant it exclusive coverage rights for all staff employed by the AFP (AIRC, 1990a), and not just 'sworn' police.

The formation of the Federation

The Association's national executive committee endorsed the concept of a national law enforcement union in 1986 (AFPA, 1986: 21). The 'umbrella' police organisation then in existence, the Police Federation of Australia and New Zealand (PFANZ), was not a registered trade union under any industrial legislation in Australia, and had a purpose akin to a lobby group. Despite this, the October 1988 PFANZ federal council meeting resolved that a 'police federation' be registered under the federal industrial statute (AIRC, 1992: 2). Instead of attempting to register a new union, the means adopted was the August 1991 rule change application of the Association. The substance of the application was the alterations to the union's industry description (Rule 2) and membership eligibility criteria (Rule 3) to give it national coverage (see AIRC, 1993). To assist the creation of an 'industry' union for police, the federal department of industrial relations approved a grant, to further the government's workplace reform and union rationalisation polices, of \$125,000 to help with the establishment of the national police union.²

A police 'super union' with a potential membership base of all personnel working in the police services of Australia was, perhaps not unexpectedly, considered by some police unions as a threat to their own membership base and even organisational autonomy, if not survival. For example, the union representing commissioned police officers in Queensland argued that it would be 'at risk' if the rule variation was approved by the AIRC (AIRC, 1992: 3). A 'terms of settlement' was negotiated among the Association and State police unions. Objections from non-police unions were withdrawn after the

6 Michael Lyons and Jenny Fleming

Association agreed to vary the proposed rules so that it was made clear that the new Rule 3 referred to only sworn State police officers and not 'civilian' employees.

The withdrawal of the objections by the unions did not, however, mean that the application was unopposed. The governments of New South Wales and Queensland lodged formal objections as did the police commissioners from the Northern Territory and New South Wales, while the governments of Victoria and Western Australia and the chief commissioner of police in Victoria were granted leave to intervene in the hearings. Importantly, the AFP management also made formal objections to the application. On 15 November 1993 the AIRC approved the Association's application in the modified form.

Soon after the 1993 decision the objectors indicated their willingness to lodge appeals to the full bench of the AIRC and a 'stay order' was issued against the decision (AIRC, 1994). The appeal by the State governments against the Association's rule alterations was finally decided in March 1997 and the 1993 decision was affirmed (AIRC, 1997a). The final phase in the formation of the Federation was the formal change of name of the Association to the Federation. In order to facilitate this a 'Deed of Agreement' between the Association and the State police unions concerning the structure and membership of the federation was negotiated in late 1996.³ In April 1997 the Association's national council unanimously resolved that the union change its name to the Police Federation of Australia by making another rule alteration application under s.204 of the *Workplace Relations Act 1996* (Cth).⁴ The application was lodged on 5 June and attracted no opposition from other unions, police managements or the States, and was therefore approved on 19 August 1997 (AIRC, 1997b). With this decision the Federation came into existence.

The role of the state

Two important related factors resulted in the formation of the Federation: the role of the state in the process and the institutional arrangements in Australia regarding the registration of trade unions. The role of the state was also critical to the initial step of the union to expand its coverage to include 'civilian' employees within the AFP (AIRC, 1990a). So without the intervention of the state the transformation of the Association from essentially an occupational union dealing with the one employer in the early 1980s to – in a legal sense at least – a national police union in the late 1990s would have been unlikely. For instance, the 1991 rule change application was justified on the basis that the union had to conform to the statutory policy (s.193 *Industrial Relations Act 1988*) of reducing the number of 'small organisations' registered under the Act (see Jadeja and Maidment, 1995).⁵ Moreover, the legislative policy of encouraging the establishment of industry-based unions and union rationalisation provided the Association with a relatively easy path to achieve its objective. The application was made pursuant to s.204 of the *Industrial Relations Act 1988*, which supported the creation of 'industry-based' unions. The legislative policy of the Act was central to the application being approved, for the registration of the PFANZ as a new union would have been 'cumbersome and

time consuming' and 'contrary to the spirit of the legislation' with a logic of reducing the number of trade unions in Australia (AIRC, 1993: 153). And ironically, the union 'de-amalgamation' provisions of the *Workplace Relations Act 1996* (Cth) were central to the final agreement among police unions over the Federation's structure as the existence of these provisions supplied an 'exit option' to the constituent unions. But on the other hand it could equally be argued that the state was as much a hindrance as it was a help to the Association: it took almost six years for the rule changes to be finally approved from the time of lodgment in August 1991.

The Association's urge to merge

One of the suggested motivations for union merger activity is a decline in potential and/or actual membership. Table 1 shows the membership density of the Association during the period of the merger. Despite its limited membership base (only those staff employed by the AFP) the Association has a membership density that would be envied by other sectors of the labour movement. So while the proportion of staff who are members of the union has declined over the last decade, due perhaps to the unwillingness of non-sworn staff to join, the share of the workforce who are members would not suggest that this is a motivating factor for merger activity. A density rate of over 70 per cent would not usually be considered as a catalyst to merge, even if this did represent a decline.⁶

TABLE 1: Australian Federal Police Association membership, selected years.

	1990	1998	1999	2000
AFPA members	2318	2020	2127	1965
Potential AFPA members	2700	2549	2517	2750
<i>Union density rate</i>	86%	79%	85%	71%

Sources: AFP Annual Reports (1998; 1999; 2001); AIRC (1993); AFPA National Executive minutes.

Note: excludes temporary staff.

However, an issue connected with the membership level might have induced the merger activity of the Association: finances. For example, in 1995 the Association leadership acknowledged that for the period 1990-94 its expenses were greater than its income, and that situation was likely to continue in the future.⁷ Arguably, the main reason for this was the legal assistance fund for members.

The rules of the Association permit legal assistance to be granted for acts or omissions done or allegedly done 'in the execution of a member's duty' (Association Rule 69(c); now Federation Rule 113). Access to the fund is discretionary as the union 'may' furnish assistance but is not obliged to (Association Rule 69(b); Federation Rule 113(b)). The existence of the fund places a high degree of uncertainty over union finances as the costs of the fund cannot be forecast with precision. A number of public inquiries into

8 Michael Lyons and Jenny Fleming

police operations in Australia during the 1990s identified numerous instances of alleged misconduct by AFP staff. The legal assistance fund was used to finance the defence of the resulting terminations and/or criminal charges of its members (see, for example, *Alan Taciak v Commissioner of the Australian Federal Police*). To cover the costs of some very expensive cases the Association resorted to selling assets. In order to limit the costs of the fund not only are the merits of the individual applications assessed, but so too is the impact the case would have on the financial position of the Association.⁸ In addition, the union now requires members to pay an 'excess' to limit both the number of applications and costs of the fund.⁹ While one could assume that the discretionary nature of the fund would go some way to limit the exposure of the union to financing legal matters on members' behalf, this is not always the case. For example, one member who was denied legal assistance was successful in suing the union for breaching its obligations to members.¹⁰ So, lack of economies of scale may have motivated the merger activity of the Association.

The Association after the merger

With the alteration of its rules the Association was transformed from a single employer union to an industry based union. However, it would be a mistake to conclude from the official public record that changes to its legal status under the federal industrial statute has also meant changes to the Association's conduct. In a very real respect little has changed to the Association's coverage and functions. Under the rules of the Federation the union representing the industrial interests of staff employed by the AFP is just one branch of the national police union. While under the rules the union's official title is the Police Federation of Australia and referred to in the rules as 'The Federation' (Rule 1), the federal (Australian Federal Police Association) branch is still defined as 'The Association' (Rule 1A). The rules grant the Federation's federal council the authority to make policy and alter the rules except in the case of branch policy or rules (Rules 14, 15(a) (b)). Importantly, even the council's powers are not extended to the policy and rules of the 'Australian Federal Police Association Branch' as Rules 15 and 111 make it clear that the powers of the Federation federal council are limited with respect to the Association. Further, the rules of the 'federal organisation' provide for a high degree of branch autonomy by including an entrenchment provision (Rule 35(a)), and the rules of the Australian Federal Police Association branch contain a 'double' entrenchment provision (Rule 54(a)). Therefore, in all practical respects, the Federation is what the objectors to the 1991 rule change application claimed it would become: an 'association of associations' rather than a 'real' national police union (AIRC, 1993: 152).¹¹ So, notwithstanding the long process of changing the rules, structure and name of the only federally registered police union in Australia, the federal branch still operates in the same manner as the Association did prior to the merger.

The fact that the legal changes to the Association have resulted in no real practical differences to the function of the Australian Federal Police Association branch, evaluating the 'merger' process in terms of the literature becomes problematic. The motivations often

cited as influencing the 'urge to merge' – particularly for 'defensive' mergers (Tomkins, 1999: 62) – do not appear to have been overcome by the formation of the Federation. The Australian Federal Police Association branch is still restricted to its limited membership to staff employed by the AFP. One indication that the formation of the Federation has not resolved any of the factors that induce a defensive merger can be seen with the plan of the Association in July 2001 to introduce a 'bargaining fee' for non-members (see Orr, 2001).¹² In short, the merger activity of the Association in the 1990s has failed to address any of the issues usually considered factors inducing a merger. Arguably this outcome is also found with many of the union mergers in Australia in the 1990s, but for significantly different reasons (Griffin, 2002).

With little or no change having been made to the practical situation of the Association, it is possible to argue that this process has not only failed to address the administrative problems common to small unions but instead has placed the Association in a more vulnerable position. Potentially, the only assets that the Federation has are those of the Australian Federal Police Association branch. Consequently the legal and constitutional issues surrounding the so called '*Moore v Doyle problem*' – State based branches of federally registered unions operating in parallel with State registered unions – indicate that the assets and membership of the State branches of the Federation are those of the State unions and not the Federation (see Michelson, 1997). The fact that all the branches of the Federation except for the Association have exemptions from reporting to the Industrial Registrar because they 'did not have any financial affairs in a financial year' (s.271A Workplace Relations Act 1996 (Cth)) supports this view. In short, the assets of the Association may be under some threat of control by the federal council of the Federation, the entrenching provisions notwithstanding. The prospect that the federal council of the Federation could control the policy, finances and assets of a branch is the main reason why the Queensland and Western Australian police unions did not – at the time of the merger – affiliate as branches of the Federation.¹³

The risk that at some time in the future the Association branch could be fully absorbed by the Federation, did not go unnoticed by the leadership of the Association. In order to protect the union from such an eventuality it has entertained the prospect of creating separate entities to shield its assets from the Federation federal council, and to expand its organising base. One such entity, the Australian Law and Justice Association (ALJA), was initially designed to defend the union from 'asset stripping' by the Federation.¹⁴ The ALJA was also conceived as a vehicle with which to expand the union's organising activity and act as an additional source of revenue.¹⁵ The ALJA was designed to be 'a specialist industrial and professional organisation' in the field of federal law enforcement, and assist 'outside agencies, minor like unions and individuals' which are outside the coverage of the Association: customs officers, protective services, and other federal criminal investigative and intelligence gathering agencies.¹⁶ It should be noted that the current roles of ALJA are significantly different from those originally conceived. In short, the Association has pursued a range of measures to improve its administrative and

10 Michael Lyons and Jenny Fleming

representative effectiveness even after the formation of the Federation. This implies that the merger activity of the Association cannot be easily conceptualised within the framework of union merger literature, in terms of motivating factors or outcomes.

The role of the Federation

At the time the Association's rules were altered to allow the formation of the Federation the national president of the Association outlined to the membership why this particular structure for the national police union was adopted:

...the structure that will now be created is totally different from the Police Super Union originally proposed...By using the AFPA Rules we intend to create an alternative choice that protects our financial and industrial autonomy whilst expanding our political influence...we intend to create a peak lobbying body...to lobby and influence politicians and the public in the interests of national & international [sic] law enforcement (Hunt-Sharman, 1997: 1, emphasis in the original).

Under the rules of the Federation it has the potential to be a powerful industrial and political influence in the field of law enforcement (see Figure 1). In 2001 the Federation reported a membership of 31,430 and with the affiliation of the Queensland and Western Australian police unions as branches its membership will constitute over 90 per cent of the more than 47,000 sworn police in Australia (O'Rourke, 2003).¹⁷ It would appear however, that industrial unionism is not the main function of the Federation as a national entity. Rather it seems that its purpose is that of a professional association for police and law enforcement personnel, while industrial activities are left to its autonomous branches and/or the State police unions (Fleming and Lyons, 2002). This much becomes clear as status, standards and professionalism objectives were added to the Federation's rules during the merger process (see Rules 4 (u), (w), (x) and (aa)). These objectives have all the hallmarks of an organisation which functions as a professional association for police and not one that operates as an industry based union. The fact that the Federation also pursues 'professional issues' on behalf of the New Zealand Police Association strengthens this conclusion (Burgess, 2004).

Discussion and Conclusions

In analysing the formation of the Federation in the context of a union merger something of a gap in the literature can be identified. In a review of the union merger literature Michelson (2000: 111) concludes that for a merger to take place it must contain four features:

- a) a combination of two or more separate trade unions;
- b) the combination has legal status;
- c) a loss of autonomy and control for at least for one of the unions, even if this is only slight; and
- d) this loss of autonomy and control can be identified as occurring at some point in time either during the combination or shortly after.

As to the first feature, point (a), this is uncertain. While in a formal sense the State police unions combined to form a federation, in a practical sense they still function within the respective State industrial relations systems, are still registered organisations under the State industrial statutes, and have no federal industrial instrument regulating the working conditions of their memberships. To that end, it does not appear that the first feature has been fully satisfied.

As to the second feature, point (b), this is again uncertain. Clearly the date of the formation of the Federation can be identified, either the date when the AIRC refused the appeals to the Association's 1991 rule variation application or when it approved the change of name to the Federation. But again it is doubtful that a legal combination had taken place. Rather, it was the Association which expanded its membership coverage by changing its rules. The State based police unions had no formal part in the legal process because State based unions are not recognised by federal industrial law. Or as AIRC Deputy President Williams put it: 'there is no organisation currently registered which purports to represent the area of membership covered by the application' (AIRC, 1993: 133). To that end, it does not appear that the second feature has been fully satisfied.

As to the third feature, point (c), any loss of autonomy – even if only minor – is hard to detect. The rules of the Federation make it quite clear that the branches are autonomous, and the double entrenching provision found in the rules of the 'Australian Federal Police Association branch' only emphasises this point. To that end, the third feature does not appear to be satisfied.

And as to the last feature, point (d), this is a matter of conjecture. While the rules of the Federation contain the possibility that the autonomy provisions could be changed at some time in the future, it would need the concurrence of the Australian Federal Police Association branch ((Rule 54(a)), the concurrence of the other branches to reduce their own autonomy (Rule 35), the concurrence of the federal council (Rule 15), and finally the concurrence of the Industrial Registrar to change the objectives of the Federation (Rule 4(z)). While it is the view of the Association that the potential for such an outcome exists (see earlier), the likelihood of all four hurdles being cleared is slim. To that end, the fourth feature does not appear to be satisfied.

But to argue that no real merger took place would imply the rule changes of the Association were of little or no consequence. The objections to the rule changes from the State police unions, other unions, the State police managements, the State governments, and the AFP management during the process obviously suggest that they were of consequence (see AIRC, 1992; 1993; 1997a; 1997b). Just as Michelson (2000: 108-10) notes that some union merger studies fail to differentiate between amalgamations and absorptions and thus skew our understanding of merger activity – and too quickly to make generalisations (Hose and Rimmer, 2002: 540) – it may be that the Federation represents a form of merger that has rarely been scrutinised: an affiliation or alliance (Chaison, 1986: 59).

12 Michael Lyons and Jenny Fleming

While Chaison (1986: 59-61) indicates that affiliations are an alternative to other mergers (amalgamations or absorptions), the form of merger produced by the Federation must be classified as something stronger than an alliance among police unions in Australia because of the single union structure (see Chaison, 2001: 248-50). It is for these reasons the formation of the Federation cannot be easily explained by the union merger literature.

Turning to the motivations to merge (or affiliate), the usual reasons discussed in the literature have not been addressed as far as the Association is concerned. The fact that the union has considered other means to overcome the administrative and financial difficulties it does face, the establishment of the ALJA and non-member bargaining fees for example, suggest that other reasons need to be found. In the search for these reasons it would be impossible to dismiss the institutional arrangements and legislative policy operating in Australia at the time the application to change its rules was made in 1991. Certainly there was some fear within the Association that the union would not meet the minimum membership threshold of 10,000 for registration that then prevailed under the federal industrial statute (Hose and Rimmer, 2002). The State police unions might have been motivated by the prospect that a non-police union, with federal registration, could have sought to alter its rules to have constitutional coverage for State police and emergency service personnel under the legislation (for example, AIRC, 1990b).

In that context, the form of the merger, a federation, becomes easier to understand (Chaison, 1986: 61). For the State police unions, the danger that a more complete form of merger represented to their separate identity and, perhaps more importantly, their power and influence over State government policy making helps explain the federated structure (see AIRC, 1993: 149-50; Fleming and Lafferty, 2001). And as already discussed, potential loss of organisational autonomy and its (aspirational) identity as a specialist in federal law enforcement influenced the Association. However, with this analysis it is a demanding task to try to categorise the merger activity process leading to the formation of the Federation. There is some evidence to suggest that the police union merger activity was defensive (at least for the Association), or consolidatory (for the State police unions), or even aggressive (for the largest police union in Australia – the Police Association of New South Wales) (Fleming and Lyons, 2002). Nevertheless, the fact that the outcome of the merger has resulted in no identifiable change to the conduct of the individual police unions implies that it may not have been any of the above. It also could be argued that the formation of the Federation does more to highlight the barriers to union mergers than advance our understanding of reasons for them.

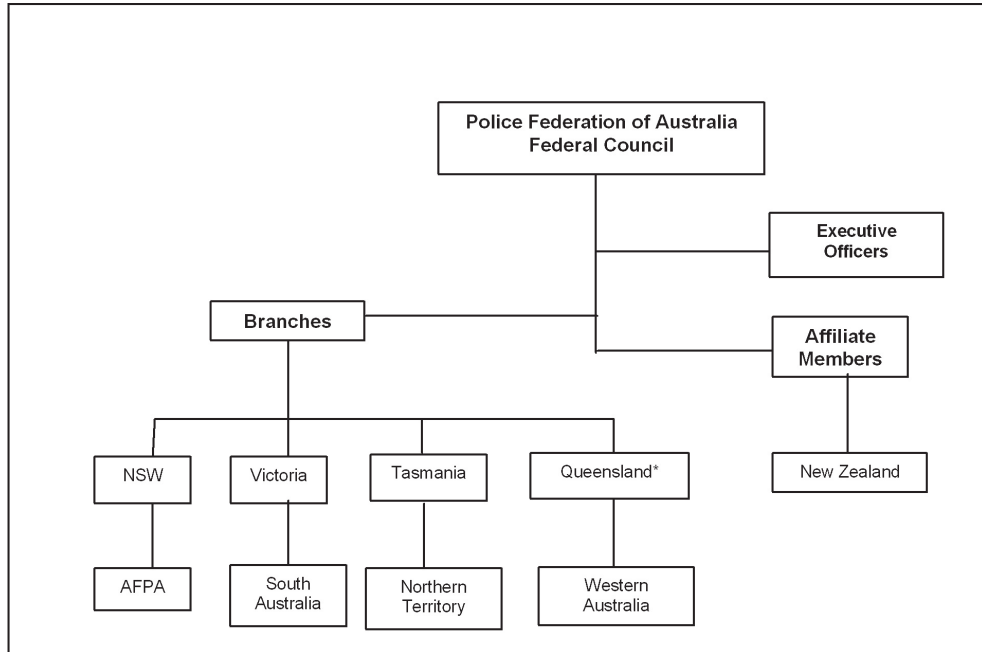
Therefore the importance of the Federation for trade union merger 'theory' is that more innovative methods of analysing union merger behaviour are required, otherwise significant developments in union structures might be overlooked. In the context of this case study of the Police Federation of Australia, the importance of more subtle forms of merger activity needs to be recognised: 'The merger agreement should be viewed as a

compromise solution to often conflicting goals of economy, and the preservation of the interests of union members, officers, and staff' (Chaison, 1982b: 149).

This case study not only has lessons for the form or 'what' of union mergers, but it also has lessons for the 'why'. Certainly external-environmental factors were influential but they alone are insufficient to explain all merger behaviour. As this case study has suggested, the union rationalisation and industry based union policies of the ACTU and the federal Labor government might have prompted the 'urge', but it was mostly the internal union considerations (fear of loss of autonomy and identity) which explain the actual 'merge'. In that sense the integrated strategic choice-resource dependency model of Campling and Michelson (1998) goes a long way in helping us to understand the process that resulted in the Federation. The police unions desired 'agency', but their choices were restricted by the desire to retain control of the resources critical to survival (autonomy and identity). Put simply, both external and internal factors helped shape the merger process that concluded with the formation of the Federation.

In conclusion, this study also has lessons for unions in their efforts to balance administrative and representative effectiveness, and how they adopt the most appropriate structure for this balance. In many respects the Association should be a union in a high state of vulnerability. It is small, it has a very confined membership base, and it lacks economies of scale. Yet it is in a position that other unions would envy; a membership density of over 70 per cent. What financial difficulties it does have do not appear to be due to its 'vulnerabilities', but are a unique feature of being a police union with a legal assistance fund. Moreover, the union, in its efforts to craft a niche for itself as a specialist industrial organisation in the field of federal law enforcement has identified these vulnerabilities not as weaknesses but as strengths (AFPA, 2002). In their study of a small trade union Black et al (1997: 146) conclude that a union is not automatically weakened by being small if it fosters a sense of community between the membership and the union; this could equally apply to the Association.

FIGURE 1: Structure of the Police Federation of Australia



* In the process of becoming a branch of the Federation at the time of writing.

Notes

- ¹ The Australian Bureau of Statistics ceased collecting trade union statistics in 1996 (Griffin, 2002).
- ² Noel Butlin Archives Centre, ANU, Australian Federal Police Association National Executive Minutes File N137/568; National Executive meeting 14-15 May 1992, item 4.23.
- ³ Australian Industrial Registry File 200V, Australian Federal Police Association file 13, folio 605.
- ⁴ The *Industrial Relations Act 1988* was significantly amended in 1996 by the *Workplace Relations and Other Legislation Amendment Act 1996* (Cth), and it also restyled the Act to the *Workplace Relations Act 1996*.
- ⁵ Australian Industrial Registry File 200V, Australian Federal Police Association file 8, folio 436; letter from J.G. Brown dated 6 June 1991.
- ⁶ Australian Federal Police Association National Executive Committee meeting minutes 30 July 1998, item 8.
- ⁷ Australian Federal Police Association National Council Committee files, National Council Committee meeting 30-31 March 1995.
- ⁸ Australian Federal Police Association National Executive Committee files, National Executive Committee meeting minutes, 20-21 February 1996, item 14.11; see also National Executive Committee meeting minutes, 26-27 August 1997, p. 4.
- ⁹ Australian Federal Police Association National Executive Committee files, National Executive Committee meeting minutes, 19-20 October 2000.
- ¹⁰ Australian Federal Police Association National Executive Committee files, National Executive Committee meeting minutes: 19-20 February 1998, item 5; 11-12 March 1998, p. 2.
- ¹¹ Australian Federal Police Association National Executive Committee files, letter from Phillips Fox Solicitors to AFPA national president (J. Sharp), dated 28 July 1995.
- ¹² Australian Federal Police Association National Council Committee files, Special National Council Committee meeting minutes, 23-24 July 2001, p. 6. The insertion of s.298Z into the *Workplace Relations Act* by the *Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Act 2003* has placed an effective prohibition on non-union member bargaining fee clauses in federal collective agreements.
- ¹³ Australian Industrial Registry File 200V, Australian Federal Police Association file 13, folio 613; letter from Gilshenan and Luton Solicitors on behalf of the Queensland Police Union of Employees to the Industrial Registrar, 14 August 1997. The Western Australian Police Union of Workers formally joined the Federation in 2003. At the time of writing the Queensland Police Union of Employees is in the process of joining.
- ¹⁴ Australian Federal Police Association National Executive Committee files, 1996 discussion paper 'Making the Most of Opportunities'; National Executive Committee meeting minutes, 12 May 1997, p. 1.
- ¹⁵ Australian Federal Police Association National Council Committee meeting minutes, National Council Committee meeting, 17-18 October 1996, report by Principal National Industrial Officer 'Agenda for AFPA Renewal', pp. 5-6.
- ¹⁶ Australian Federal Police Association National Executive Committee files, National Executive Committee meeting minutes, 'Confidential Report to the National Executive Meeting of 15 July 1997: National President's Report'.
- ¹⁷ The New Zealand Police Association is an 'affiliate' of the Federation and not a branch. There are about 7,000 sworn police in New Zealand (New Zealand Police, 2003).

References

- AFPA (Australian Federal Police Association) (1986), 'National Executive Minutes', *AFPA Journal*, October/November.
- AFPA (2002), 'Submission to the Senate Legal and Constitutional Affairs Committee Inquiry in the Australian Protective Service Amendment Bill 2002', 4 June.
- AIRC (Australian Industrial Relations Commission) (1990a), *Decision – Federal Police Operations*, Matter C No. 27031 of 1989, Williams, Cohen JJ & Oldmeadow C, 1 November 1990, M Print J5280.
- AIRC (1990b), *Decision – Federal Firefighter's Union*, Matters R 81, 82, and 83 of 1988, Moore DP, 28 March 1990, S Print J1879.
- AIRC (1992), *Reasons for Decision – Australian Federal Police Association*, Matter D No. 30008 of 1991, Williams DP, 21 October 1992, Print K0243.
- AIRC (1993), *Decision – Australian Federal Police Association*, Matter D No. 30018 of 1991, Williams DP, 15 November 1993, M Print K9881.
- AIRC (1994), *Stay Order*, Matter D No. 30008 of 1991, Polites SDP, 27 January 1994, Print L1399.
- AIRC (1997a), *Decision – Federal Police Operations*, Matter D No. 30018 of 1991, Boulton J, Polites SDP, & Simmonds, 17 March 1997, M Print N9501.
- AIRC (1997b), *Decision – Australian Federal Police Association*, Matter D No. 30017 of 1997, Williams SDP, 19 August 1997, M Print P4171.
- Alan Taciak v Commissioner of the Australian Federal Police*, (1995), 131 Australian Law Reports 319.
- Black, J., Greene, A. and Ackers, P. (1997), 'Size and effectiveness: a case study of a small union', *Industrial Relations Journal*, 28 (2): 136-148.
- Bodman, P.M. (1998), 'Trade union amalgamations, openness and the decline in Australian trade union membership', *Australian Bulletin of Labour*, 24 (1): 18-45.
- Burgess, M. (2004), Personal communication, Chief Executive Officer, Police Federation of Australia, 29 June.
- Campling, J.T. and Michelson, G. (1998), 'A strategic choice-resource dependence analysis of union mergers in the British and Australian broadcasting and film industries', *Journal of Management Studies*, 35 (5): 579-600.
- Chaison, G. (1986), *When Unions Merge*, Lexington: D.C. Heath and Company.
- Chaison, G. (2001), 'Union mergers and union revival', in L. Turner, H.C. Katz and R.W. Hurd (eds.), *Rekindling the Movement. Labor's Quest for Relevance in the Twenty-First Century*, Ithaca: Cornell University Press.
- Chaison, G.N. (1982a), 'A note on the critical dimensions of the union merger process', *Relations Industrielles*, 37 (1): 198-206.
- Chaison, G.N. (1982b), 'Union mergers and the integration of union governing structures', *Journal of Labor Research*, 3 (2): 139-151.
- Conant, J.L. and Kaserman, D.L. (1989), 'Union merger incentives and pecuniary externalities', *Industrial Relations*, 10 (3): 243-253.
- Davies, G. (1980), 'Case Study: The formation of the Australian Federal Police Force 1978-1980', document number D3F3, Australian Federal Police Association files, Deakin, ACT.
- Davis, M. (1999), 'Is bigger better? Union size and expenditure on members', *Journal of Industrial Relations*, 41 (1): 3-34.
- Devine, K. and Reshef, Y. (1998), 'Union merger support. A tale of two theories', *Relations Industrielles*, 53 (3): 517-532.
- Fleming, J. and Lafferty, G. (2001), 'Police unions, industrial strategies and police influence: some recent history', *International Journal of Employment Studies*, 9 (2): 131-140.
- Fleming, J. and Lyons, M. (2002), 'The formation of the Police Federation of Australia: an alternative choice', in Forbes-Mewett, H., and Griffin, G. (eds), *Unions 2002: Future Strategies for the Union Movement*, Monograph No. 15, National Key Centre in Industrial Relations, Monash University, Melbourne.
- Fleming, J. and Peetz, D. (2005), 'Essential service unionism and the new police industrial relations', *Journal of Collective Negotiations*, forthcoming.
- Griffin, G. (2002), *Union mergers in Australia: top-down strategic restructuring*, Working Paper No. 80, National Key Centre in Industrial Relations, Monash University, Melbourne.
- Hose, K. and Rimmer, M. (2002), 'The Australian union merger wave revisited', *Journal of Industrial Relations*, 44 (4): 525-544.
- Hunt-Sharman, J. (1997), 'Briefing to all AFPA members from the National President Jon Hunt-Sharman, AFPA Rule Changes – Police Federation of Australia', 10 September.
- Jadeja, R. and Maidment, E. (1995), 'The super unions: amalgamations and archives, 1904-1994', *Labour History* 68 (May): 173-180.

16 Michael Lyons and Jenny Fleming

- McClendon J.A., Kriesky, J. and Eaton, A. (1995), 'Membership support for union mergers: an analysis of an affiliation referendum', *Journal of Labor Research*, 16 (1): 9-23.
- Michelson, G. (1997), 'Out of tune? Union amalgamations and the Musicians Union of Australia', *Journal of Industrial Relations*, 39 (3): 303-331.
- Michelson, G. (2000), 'Trade union mergers: a survey of the literature', *Australian Bulletin of Labour*, 26 (2): 107-127.
- New Zealand Police (2003), *Report of the New Zealand Police for the year ended 30 June 2003*, presented to the House of Representatives.
- O'Rourke, N. (2003), 'Report on the PFA women's advisory committee', *WA Police News*, December: 38 & 45.
- Orr, G. (2001), 'Agency shops in Australia? Compulsory bargaining fees, union (in)security and the rights of free-riders', *Australian Journal of Labour Law*, 14 (1): 1-35.
- Stratton-Devine, K. (1992), 'Union merger benefits: an empirical analysis', *Journal of Labor Research*, 13 (1): 133-143.
- Tomkins, M. (1999), 'Trade union amalgamations: explaining the recent spate of mergers in Australia', *Labour and Industry*, 9 (3): 61-78.
- Undy, R. (1999), 'The British merger movement: the importance of the "aggressive" unions', *Industrial Relations Journal*, 30 (5): 464-481.
- Waddington, J. (1988), 'Trade union mergers: a study of trade union structural dynamics' *British Journal of Industrial Relations*, 26 (3): 409-430.
- Waddington, J. (1994), 'Raising trade union membership concentration, 1892-1987: the relative effects of mergers and membership change', *British Journal of Industrial Relations*, 32 (3): 449-464.
- Willman, P. and Cave, A. (1994), 'The union of the future: super-unions or joint ventures?', *British Journal of Industrial Relations*, 32 (3): 395-412.
- Wooden, M. (1999), 'Union amalgamation and the decline in union density', *Journal of Industrial Relations*, 41 (1): 35-52.