CHRONICLE

February 2004

The first submissions on the Employment Relations Law Reform Bill were presented to the Transport and Industrial Relations Select Committee and employer organisations were vehement in their criticism of the Bill. They claimed that it would reduce employers' flexibility; increase red tape, government intervention and union power; it would drive many workers into collective agreements. Furthermore, it was reported that employers planned to boycott the deadline for submissions claiming that the 11-week period to make them was insufficient. Employer representatives accused the government of introducing change at a speed which was `indecent' and in breach of good faith.

The Government appeared to acknowledge the lack of support from the business community. The architect of the Bill, Minister of Labour, Margaret Wilson, was replaced by Paul Swain in a cabinet reshuffle and the *Press* noted that the Government hoped he will be able to quell business opposition which at times had been personalised against Ms Wilson. Meanwhile, the *NZ Herald* reported that Minister for Small Business, John Tamihere, told Parliament that he had not received any support from small businesses for the Bill.

While employer criticism dominated media reports they were countered by union representatives. Interestingly, the Council of Trade Unions (CTU) advocated much stronger intervention and suggested that some kind of compulsory arbitration to establish more multi-employer collective agreements might be necessary. This implied a return to the old national award system, despite the Government's explicit rejection of such a move. The *Sunday Star Times* criticised employer lobbyists for interpreting the legislation in the most extreme way possible and that the loose wording of the Bill gave them "extra scope for their paranoia".

The *Dominion Post* reported that the National Party, according to its leader Don Brash, would repeal the proposed changes if it became the government because they were "bad for the economy, bad for employers and bad for employees". Dr Brash also suggested the Bill could become a `stepping stone' to national wage awards which could be a disaster for provincial New Zealand. He claimed that unions looked at what larger centres like Auckland needed, not at the smaller provincial centres which tend to be economies of small companies, so labour laws need to be more flexible. This view was supported by the CEO of meat company Anzco Foods who told the government to scrap its controversial employment legislation. This came after the company announcing it would reopen its Waitara meat works, providing 70 jobs and up to $100 million in exports.

The *NZ Herald* reported Bank of New Zealand customers faced frustrating telephone delays during a three-hour strike by Auckland call-centre staff. BNZ spokesperson, Owen Gill, defended a 3.5 percent pay rise offer as generous, but Finsec union organiser, Geraldine Molloy, said staff wanted parity with branch employees within the bank. Finsec also began legal action in the Employment Relations Authority, saying the bank should not have paid non-members the 3.5 percent while a collective agreement remained under negotiation.

Industrial unrest in the health sector featured in several media report. The *Dominion Post* reported that a new national collective employment agreement for about 2,000 surgeons, psychiatrists and pathologists had become unstuck when the senior doctors rejected a pay offer made by the District Health Boards (DHBs). Just over half of the senior doctors took part in a ballot and voted by 84 percent to 16 percent against the offer. The Executive Director of the Association of Salaried Medical Specialists, Ian Powell, pointed to upcoming negotiations for nurses and junior doctors and said: “There is a risk of anarchy in employment relations if DHBs continue to misunderstand the needs of their health professionals”.

Nationwide, nurses started the NZ Nurses Organisation’s 2004 campaign for pay equity. Around 4,000 nurses employed by District Health Boards in the lower North Island attended meetings to discuss a new collective employment agreement, designed to give them equal pay with their Auckland counterparts.

Negotiations over the crucial multi-employer collective agreement in the engineering sector - the so-called `Metals Agreement’ - became unstuck. The Engineering, Printing and Manufacturing Union (EPMU) gave 14 days notice of stopwork meetings across the manufacturing sector when three tense days of negotiation with the Employers and Manufacturers’ Association failed to reach an agreement. The union’s claims included a 5 percent pay rise, a 37.5-hour working week and an increase in the allowance for dirty work. The agreement was expected to cover around 220 firms and 2,500 employees.

Following strike action, the meatworkers at Richmond’s Takapau plant settled their collective employment agreement and accepted a 3 percent pay increase for the next 12 months. Initially, they were offered a 1.5 percent pay rise which led to more than 500 workers staging a two-day strike in January.

Striking wool-pullers at PPCS Finegand wanted the meat-processing company to `open its books’ to prove it could not afford to meet their pay demands. The workers were seeking pay parity with other PPCS plants and this was their second strike action in February.

With the amendments to the Holidays Act due to come into force on April 1, the *Press* reported that the Chief Executive of Employers and Manufacturers Association, Paul

Winter, stated that the law forced employers to do what most were happy to grant on a discretionary basis. The *Dominion Post* reported that other employers claimed that the new Act will enable widespread `abuse' of bereavement leave provisions. The Employment Relations Manager of the Employers and Manufacturers Association (Northern), Peter Tritt, suggested that leave would be limited only by the number of deaths each year, about 28,000 and proposed that the Government should have confined bereavement leave to the death of close relatives.

A report by the Catholic charity Caritas raised fears that New Zealand children are being exploited and put in danger at work. The survey found 39 percent of the children surveyed (between the age of 7 and 17 years) had some form of paid work. The *Sunday Star Times* argued that the survey had uncovered some `Dickensian child-labour practices' which "raised questions about the failure of parents to monitor their children's working lives and to understand the laws relating to children in the labour force".

March 2004

There were several reports of submissions on the Employment Relations Law Reform Bill and again attacks by employer organisations featured prominently (see February Chronicle). Business New Zealand's Chief Executive, Simon Carlaw, argued that the bill signalled a return to compulsory bargaining, compulsory arbitration and national awards. He also suggested that the Bill could increase employment-related compliance costs by 30 to 50 percent.

The *Dominion Post* reported a new survey conducted by the Employers and Manufacturers Association (Central), which found that almost three-quarters of companies in central New Zealand believed that the Bill will hurt businesses. The Auckland Chamber of Commerce argued that Bill was fundamentally flawed, had too many compliance costs and possibly breached the International Labour Organisation's collective bargaining conventions. Michael Barnett, Chief Executive of the Chamber said if the Bill had been tested for compliance costs "it would never have seen the light of day".

According to the *Press*, a South Island retailer estimated that the Employment Relations Law Reform Bill in its current form would force it to shed 70 jobs from its 525-strong workforce. However, this was based on the assumption that the firm would be required to pay employees in all of its 25 outlets the same hourly rates.

On the other hand, union submissions supported the Bill, though many found that it was not going far enough. The financial sector union, Finsec, wanted parts of it strengthened further and it argued that the process of free-riding was prevalent in the banking sector. Finsec also claimed that the Employment Relations Act had made insufficient progress in addressing the inherent inequality of bargaining power and it wanted the `contracting

out' protection of vulnerable workers to be extended to cover all workers.

The CTU President, Ross Wilson, launched a blistering attack on big business and its criticism of the Government's employment relations reforms: "…it is one-eyed of big businesses to applaud everything the Government does for them and attack everything the Government does for low-income workers, such as better workplace health and safety and improved holidays." Instead Wilson argued that the position of workers was considerably better than two years ago. The main economic issues facing New Zealand were infrastructure and investment in skills and social development policies were part of the solution as they were helping people to get the skills and motivation to work. According to Wilson, the biggest single challenge facing the nation was to recognise that what was good for workers was not necessarily bad for business.

There were signs that the intense lobbying of business was having an impact on government thinking about the Bill. The media furnished several rumours that influential Cabinet ministers had indicated they were prepared to make substantial changes to the legislation to take account of submissions from business. *NZ Herald* reported that some of its sources had suggested that the Bill came close to not being introduced in the first place and that senior economic ministers had foreshadowed that the Bill would have to be revisited. Minister for Small Businesses, John Tamihere, said the Government was "all ears" on the Employment Relations Law Reform Bill: "We're obliged to follow that process through and have a look at what the weight of submissions are saying."

The Engineering, Printing and Manufacturing Union accepted reluctantly a renewal of its multi-employer collective agreement - the `Metal Agreement' - following protracted negotiations (see February Chronicle). Union Secretary, Andrew Little, claimed, according to the *NZ Herald*, that employers drove a harder bargaining than usual: "It was the most aggressive response from employers in the 12-year history of this document". In view of inflation and high employment, the union had originally sought a 5 percent pay rise but it had to settle for 2.9 percent and it did not achieve its demands for more employee participation in health and safety. The settlement was expected to cover directly 2,500 employees in 220 firms. However, the relatively modest pay rise could have significant flow-on effects as the `Metal Agreement' often set a benchmark for other negotiations in the manufacturing sector.

The *Evening Standard* reported that university staff were seeking a national collective agreement and that they sought a major catch-up in pay. However, the universities rejected these claims from the union, the Association of University Staff (AUS), and each university wanted to negotiate separately. It was also unlikely that the union's pay demand would be met as it sought salary increases of 10 percent a year for the coming three years for academic staff, and 10 percent for the first year for general staff (see September 2003 Chronicle).

There were several media reports that some businesses were threatening to ignore the new Holiday Act because they were confused about some of its key provisions. However, there was little sympathy from the Minister of Labour, Paul Swain, who said that he would take a dim view of any business that flouted the law. Chief Executive of the Employment and Manufacturers' Association (Northern), Alasdair Thompson, estimated that around 70 percent of businesses already failed to comply with aspects of the Employment Relations Act and the cost and complexity of the new holidays legislation would not help.

The *Dominion Post* reported that workplace stress was being routinely tagged on to workers' personal grievance claims. Employment lawyer Karen Spackman said that claims of stress was becoming a regular feature in personal grievance cases and in disciplinary matters. "When there is an allegation of misconduct or poor performance made by employers, we're finding that stress is being brought up as a defence by workers in almost every case". However, she argued that it was too early to evaluate whether last year's change to occupational safety and health legislation would lead to an increase in legal prosecutions based on stress (see May 2003 Chronicle).

Waikato Times raised the issue of smoking in the workplace in a new way. It quoted one of Waikato's biggest employers as having a preference for non-smokers over smokers because "they're more valuable as employees". A survey conducted last year revealed that almost half of the surveyed non-smokers resented smoking workmates because of the amount of time they spent on `smoko breaks' and around 55 percent believed that the breaks resulted in decreased productivity. According to the article, the Human Rights Commission had stated that smoking was not a human right and it was, therefore, not discriminatory for employers to advertise for people to be smokers or non-smokers.

The *Press* reported that bonuses and incentive payments now accounted for more than 20 percent of chief executives' salaries, according to an annual salary and wage survey from the Canterbury Chamber of Commerce. Incentives were not just confined to executive pay packets with more skilled and semi-skilled workers being paid by performance.

Finally, a Taupo firefighter made headlines when he lost his bid for reinstatement in a dismissal case at the Employment Relations Authority. He was dismissed for driving a fire engine to serve a trespass order on his tenant and then getting his crew to remove her belongings. The Authority said the Service's decision to dismiss him "was a decision open to a fair and reasonable employer in all the circumstances".

April Chronicle

The submissions on the Employment Relations Law Reform Bill moved into their third month and employer criticism of the Bill continue unabated. At a special Select Committee hearing in Auckland, around 200-odd members of Employer and Manufacturers Association (Northern) appeared en mass before the Committee.

One employer predicted that rolling stoppages or `mini-strikes' would be one of the outcomes if union access to workplaces was increased. It was also predicted, by the Chief Executive of the Employers and Manufacturers' Association (Northern), Alasdair Thompson, that New Zealand's employment relations were about to be bogged down in a legal quagmire if the Bill's new applications for `good faith' came into play.

A survey in the *National Business Review* found that the current disapproval of the Employment Relations Act amongst the public was lower than that of the Employment Contract Act in 1990s. However, the disapproval of the Employment Relations Act had increased slightly from 24 percent shortly after the Act's enactment to the current 29 percent.

Westpac Bank admitted that it had passed on union-negotiated terms and conditions to non-union employees. This confirmed a point raised by financial sector union, Finsec, during select committee meetings in March (see March Chronicle). Westpac claimed that outlawing `free-riding' would be its worst nightmare.

Union organiser with the NZ Nurses Organisation, Laila Harre, stated that paying nurses what they were worth might cost the taxpayer $22 million in the first year but that the move had the potential to save the health system $100 million a year in staff turnover costs. Around 4,000 nurses, midwives and health assistants settled their multi-employer collective agreement. The agreement covered staff in seven Lower North Island district health boards and increased pay by an average of 10 percent (see March Chronicle). The agreement brought pay rates closer to those paid in other parts of the country and around 75 percent of members voted to accept the settlement. Finally, pay talks resumed for about 2,000 senior doctors employed by district health boards and these negotiations had been running for 12 months.

The *Press* reported that Air New Zealand had achieved a two-year agreement with its engineers when the engineers' union, the Engineering, Printing and Manufacturing Union (EPMU), accepted a further adjustment to the employer offer. The agreement included a pay rise of 3.75 percent in the first year and a 3.25 percent rise in the second year. EPMU's National Secretary, Andrew Little, said that Air NZ had avoided an escalation of its dispute by withdrawing a contentious bargaining claim and by increasing the pay offer.

Industrial unrest in the tertiary sector continued when union members across seven of the country's eight universities voted in favour (by 79 percent) of sector-wide industrial action. Massey University management and staff announced plans for two full-day strikes on April 28 and May 25. Full or partial strike action was also planned for May 6, 14 and 17.

The National Party criticised the Post Primary Teachers Association (PPTA) and suggested that it might re-introduce bulk funding if it gained political power. In response, the PPTA warned of industrial action since its members would have "no option but to fight industrially".

A Porirua real estate company only avoided a substantial fine when it finally complied with the terms of a settlement with a former staff member. The Employment Relations Authority had explicitly warned the firm last month that the employee could ask the Employment Court to impose penalties - including a fine of up to $40,000 - if the firm did not pay the amount owing.

Westpac Bank was censured by the Court of Appeal for not doing enough to find a new job for a redundant Wanganui bank manager. A position in Palmerston North was not offered to the manager, despite it being a substantially similar position and within "reasonable commuting distance" from Wanganui.

An Inland Revenue employee, who looked up the tax files of her children and a man she bought a property from, lost her dismissal case at the Employment Relations Authority. In its finding, the Authority accepted that the employee was hard working and conscientious and that her breaches were not deliberate or for personal gain. However, she had demonstrated a fundamental failure to grasp and apply the obligation of privacy and confidentiality.

The Employers and Manufacturers Association (Northern) claimed that business was paying out at least $12 million a year to settle personal grievances claims arising out of employee dismissals. It arrived at the figure by extrapolating from the $1.25 million of awards made by the Employment Relations Authority last year. While awards had increased in value by 17.3 percent in 2003, compared to 2002, it was also found that just 57 percent of personal grievance claims arising from redundancy - 31 cases out of 54 - were decided in the employee's favour.

With the introduction of the new provisions of the Holidays Act, the Wellington Regional Chamber of Commerce claimed that many small businesses could be forced to close when an week's extra annual leave came into force in 2007 (see January Chronicle). Meanwhile, Restaurant Association's Taranaki Branch President, Craig MacFarlane, said that diners, charged with a 15 percent surcharge during Easter, had been quick to accept the extra charge. However, he pointed out that many other restaurants had chosen to

close during the Easter break: it was estimated that about 30 percent of restaurants and cafes, which normally would have opened on Good Friday or Easter Monday, stayed closed.

Following the recent high-profile random drug-testing case at Air New Zealand (see November 2003 Chronicle), the *Dominion Post* reported that around 9 percent of random drug tests on workers conducted by the Institute of Environmental Science and Research (ESR) proved positive. The ESR undertook drug-testing programmes for more than 400 companies (involving more than 700 sites) and the most common drug detected was cannabis.

May Chronicle

The select committee hearings about the Employment Relations Law Reform Bill continued. New Zealand's largest cleaning company, Spotless Services was particularly concerned with proposals about free-riding and transfer of undertakings and claimed that they were unclear and open to abuse. Spotless also stated that it deals with different unions and queried how it could negotiate them without being guilty of supporting free-riding.

The *Independent* reported that employers were accusing the government of a lack of good faith in the bargaining process, claiming that the government was "looking after its union mates by introducing the amending legislation". Employers argued that they had been hit by a bipartite agreement, negotiated behind closed doors by the previous Minister of Labour, Margaret Wilson, and the President of the Council of Trade Unions, Ross Wilson. They wanted the new Minister of Labour, Paul Swain, to shelve the legislation and begin a round of genuine tripartite negotiations.

The Meat Industry Association predicted a decreased in productivity and profits and increased industrial disruption, according to the *National Business Review*. The meat industry employed nearly 20,000 people, most of whom were unionised and covered by collective agreements. The Association claimed that the proposed reforms would "tilt the balance too far towards collective bargaining, in favour of third-party politics, and destroy a large part of enterprise differentiation through compulsory arbitration and multiparty collective agreements and even a possible return to national awards".

The Business Roundtable in its submission asked the Government to park the Bill, and start a new reform process instituted with genuine consultation among all stakeholders, including business. The Business Roundtable expressed concerns about several aspects of the Bill, including changes to the definition of good faith, changes to personal grievance provisions, measures promoting unionism and collective bargaining, and the provisions relating to the transfer or sale of a business. It also suggested that a probationary period

for newly hired workers should be introduced as well as a maximum salary bar on unjustified dismissal claims

The *Press* reported that the Vice-President of the Marlborough Chamber of Commerce, Chris Elphick, had resigned because of his dissatisfaction with its `unbalanced' representation of business views. Mr Elphick wrote an article for the Chamber's newsletter in which he argued that the Employment Relations Law Reform Bill would help "create conditions for fair and respectful working relationships and that good employers would have nothing to fear from them". The article was an attempt to provide some balance in the debate after the chamber had earlier circulated, according to Mr Elphick, "almost entirely negative" views on the legislation.

Nurses employed by 21 district health boards voted in favour of negotiating a national multi-employer collective employment agreement and they primarily sought `fair pay' and improved staffing levels (see April Chronicle).

Around 240 workers employed by the Lyttelton Port Company returned to work after a stop-work meeting when negotiations for the collective agreement stalled. The port company's use of permanent part-timers had been a stumbling block.

The *Press* reported that thousands of Christchurch primary school teachers stopped work to discuss a 6 percent pay claim by their union, the NZ Education Institute (NZEI). The claim could cost the Government $120 million and it would increase the starting salary of a teacher with a three-year Bachelor of Teaching degree from $36,256 to $38,431.

Canterbury University staff settled their collective employment agreement when they accepted a 3.5 percent pay increase for both academic and general staff. Originally, academic staff had sought seeking a 30 percent increase over three years, while general staff were after a 10 percent rise in 2004 (see April Chronicle).

As part of her personal grievance claim against the Corrections Department, a Napier probation officer claimed that she was harassed by a District Court Judge in a motel unit. The employee was suing the department for $50,000 for stress, humiliation, loss of dignity and injury to feelings after she was `medically retired' 20 months after the alleged incident in April 2001. She argued that the department had not supported her adequately after the incident and this had impacted on her recovery from post-traumatic stress disorder and prolonged her return to work indefinitely.

After his employment relationship soured, a South African hydraulics engineer was ordered to reimburse the airfares which had been paid by the company that brought him to New Zealand. The Employment Relations Authority found that his employment contract specified that he would have to repay the cost of the airfares if he left the company within four years.

The *Press* reported that Chambers of Commerce had found that small and medium enterprises were more likely to face severance grievances than bigger companies, because employees bank on the owners' preference for an easy settlement. The report said that claimants knew that the companies had no in-house legal counsel, and neither the time nor the money to follow through to court. Thus, even if the company had a good case, it is usually tempted just to settle in order to resolve the issue.

According to the *Dominion Post*, a survey conducted by Kelly Services found that nearly a third of all New Zealand employees were on some kind of performance-based pay. The survey found that 32 percent of workers were covered by arrangements where part of their salary was tied to performance targets. A further 17 percent of employees were keen to adopt performance-based pay and felt, if that happened, that they would be more productive. Only about 12 percent of Australian employees were on performance-based pay.

The *Waikato Times* reported that, in the past year, more than 170 New Zealanders had asked the Occupational Safety and Health Service to investigate their employers after submitting complaints about stress. This included 39 serious harm notifications where people said they had been exposed to mental stress, 32 notifications where employees said they suffered mental stress, and 104 notifications where employees said they had been exposed to stressful situations in the workplace.

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