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June 2004

Submissions to the Select Committee on the Employment Relations Law Reform Bill continued and, as many people wished to make oral submissions on the Bill, there was further delays. The select committee was scheduled to report back to Parliament at the end of June but the date was extended to early August.

The country's biggest media company Fairfax told the Select Committee that the Bill should be scrapped. The company disagreed with numerous clauses and it argued that the legislation would increase compliance costs, restrict the freedom of choice between individual and collective agreements and infringe on its right to manage. In contrast, the Maritime Union wanted changes to the Employment Relations Act to safeguard secure, permanent jobs and it advocated that the industry needed to be rid of casualisation. The union wanted to see the maritime workforce regulated, and New Zealand shipping given priority to carry New Zealand coastal cargo. On a different note, Margaret Long (77 years) and Elizabeth Orr (74 years) told the Select Committee to abandon the proposed repeal of the equal pay legislation (passed in 1960 and 1972) because it would weaken women's rights. The National Council of Women supported this because it would remove the process available to women to take pay equity claims to the Employment Relations Authority and the Employment Court. The submission said that women now made up 47 per cent of all employees, yet on average they earned only 84.3 per cent of the average hourly earnings of men.

Business New Zealand advised its members to watch out for 'sickies' during Queen's Birthday weekend. In an electronic newsletter to its 15,000 members, the organisation said that some firms had reported higher-than-usual employee sick leave during Easter and on Anzac Day. It blamed the new Holidays Act that required employers to pay rostered workers time-and-a-half even if they called in sick on a public holiday.

The employers received unexpected support from the unions when the President of the Council of Trade Unions (CTU), Ross Wilson, questioned the Department of Labour interpretation that the Holidays Act entitled workers to be paid time and a half when they were sick on a public holiday. The Department of Labour claimed that workers, who are sick on public holidays, are entitled to penal rates under the revised Holidays Act 2003. However, this interpretation was disputed by employer groups. Ross Wilson regarded it as 'an unintended consequence': penal rates were only intended to be paid to people who worked on a public holiday and it was now given to people who did not work on a public holiday. According to the *Dominion Post*, the Minister of Labour, Paul Swain, confirmed that he was likely to change the law.

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Westpac call centre staff walked off the job in protest at their employers' refusal to address their concerns about work and life balance. Call centre staff in Christchurch, Wellington and Auckland picketed outside the bank's offices. Finsec, the union representing the striking staff said the striking workers wanted their terms and conditions to be brought into line with their other colleagues who worked 37.5 hours a week. The call centre staff also sought a five-month agreement so they could renegotiate at the same time as other staff covered by the bank's main collective agreement.

General staff at Victoria University's library went on strike for two hours to protest against a stalled pay claim. Staff wanted a 4% pay increase (the same as academic staff) and rejected the university's offer of a 2.5% increase and a one-off \$350 payment.

More than 200 mental health nurses in central North Island issued notice of strike. Their union said the six-day strike was likely after a 10-hour mediation session between the Public Service Association (PSA) and three Health Boards ended in stalemate. For the past eight months, the two sides had been negotiating a collective agreement to cover psychiatric nurses, psychiatric assistants, community mental health nurses and forensic mental health nurses from the three Health Boards of Waikato, Lakes and Bay of Plenty. The Waikato nurses wanted a 3.4% pay rise to be backdated to October 2003, followed by a 3.4% increase in October 2004. Nurses employed by the other two health boards wanted their pay increased to match the pay levels of Waikato nurses.

Toll Holdings asked the Employment Relations Authority for an urgent hearing to prevent a planned wildcat scheduled for Queen's Birthday weekend by 50 cooks and stewards on Cook Strait ferry Arahura. The Maritime Union claimed Toll Holdings had told its members to take a big cut in pay and conditions or be made redundant. Additionally, Toll Holdings had told the union that the Arahura's stewards would no longer live in special quarters on the ship for each seven-day shift, but instead had to report for work each day in Wellington.

Mediation failed to resolve an employment dispute threatening the transfer of the Auckland rail network to the new operator, Toll Holdings. Toll Holdings, the new owner of Tranz Rail, was seeking an Employment Relations Authority declaration that it did not have to let staff stay on a multi-employer collective agreement after their transfer to new operator Connex. The Rail and Maritime Transport Union said the around 115 staff wanted an orderly transfer, but they would claim redundancy compensation if offered less than their existing conditions.

In an Employment Relations Authority case, four long serving help-desk analysts at a Paraparaumu information technology company challenged their employer's decision to pay them less than new staff. The company had decided to leave them on their existing annual pay of about \$32,000 despite that new operators started on about \$37,000. However, the Employment Relations Authority ruled in favour of the employer.

Employment lawyer Paul Pringle said the judgment affirmed the right of employers to offer different rates of pay to people working in the same role.

Police Commissioner Rob Robinson came under fire during a Law and Order Select Committee hearing at Parliament for receiving a 25% pay increase during the past two years while his staff received only about 5% during the same period.

An Auckland company director stood by his warning to workers that they would be dismissed if they did not speak English at work. Managing Director Maurice Clist claimed that he was within his rights to insist that staff at the Fort Richard Laboratories all spoke English, even during lunch breaks. The director claimed that for safety reasons he had already ordered some workers to speak only English on the production line because the company prepared medical supplies for disease diagnosis.

July 2004

Hundreds of Central North Island mental health nurses went on strike in early July after they had rejected the employer's latest offer (see June Chronicle). The strike came after the Public Service Association (PSA) had negotiated with the region's three Health Boards – Waikato, Lakes and Bay of Plenty - over an eight-month period and been involved in four failed mediation sessions. The PSA wanted a 3.5% pay increase for Waikato nurses, backdated to October 2003, followed by another 3.5% increase in October 2004. They also wanted nurses in the Lakes and Bay of Plenty Districts to be paid the same as Waikato nurses. Following further mediation talks, the *Waikato Times* could announce that an agreement had been reached and the nurses would return to work.

The *Dominion Post* reported the start of negotiations in Wellington for a national pay deal for 20,000 nurses (see May Chronicle). If successful, it would be the first time in 13 years that nurses from the 21 district health boards would be covered by one collective agreement. The Nurse's Organisation was seeking pay equity with professions such as teachers and police, as well as fixed nurse-to-patient ratios. The union's 20% pay claim would increase base rates for graduate nurses from \$32,000 to \$40,000 and senior nurses from \$45,000 to \$60,000. It was estimated to cost the Government around \$300 million a year.

Victoria University general staff accepted a 3% pay rise, ending a six-week dispute (see June Chronicle). Secretarial and administrative staff, librarians and laboratory technicians had originally sought a 4% pay rise.

The *NZ Herald* reported a 24-hour strike at a Carter Holt Harvey plant in Northland. About 140 of the 180 workers at the site went on strike protesting against the company's refusal to pay an increased overtime payment to union members of 1.5 times the hourly

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rate. The employees had turned down the company's offer of an overtime payment of 1.2 times the hourly rate.

Both the primary and secondary teachers' unions began their collective agreement talks. The primary teachers' union, the New Zealand Educational Institute, sought a 6 per cent pay rise for around 25,000 teachers and 2000 principals (see May Chronicle). The major bargaining issues were expected to be workloads and recognition of qualifications.

The Employment Court ruled that Toll Holdings, the owner of the Interisland Ferry, could continue a restructuring programme with shift changes for more than 40 cooks and stewards (see June Chronicle). By rejecting the Maritime Union's claim that the redundancies were unlawful, the Court said its decision was conditional on existing employees being considered for the new roles, proper consultation being undertaken and any ensuing redundancy provisions being honoured.

Negotiations between unions representing Presbyterian Support workers in Southland and their employer reached a deadlock. Pay negotiations began in March but the latest offer tabled by Presbyterian Support Southland was rejected because it was less than previous offers already turned down by union members. Presbyterian Support Southland claimed that rising operational costs such as the Holidays Act, which added a further 2% to the payroll budget, made it difficult for employers to meet union members' expectations. According to *NZ Herald*, the Auckland Company that banned its employees from speaking anything but English (see June Chronicle) also prevented union representatives from entering the premises to offer help. The Engineering, Printing and Manufacturing Union tried to enter the premises to recruit workers. However, the union was advised by the lawyer acting for Fort Richards Laboratories, that the company had an exemption under the Employment Relations Act on the grounds that the employer was a member of a religious society whose doctrine and beliefs preclude membership of any other organisation or body.

University of Canterbury faced accusations of gender bias along with female academics alleging bullying and intimidation by the predominantly male hierarchy. According to the *Press*, one lecturer had lodged a complaint with the Human Rights Commission and other female academics had complained of a male-dominated university culture where women struggled to progress. The Human Rights Commission had agreed to follow up the allegations and would attempt mediation.

National Party leader Don Brash claimed that New Zealand's strong economic run in the past two or three years masked structural problems and these prevented New Zealanders from catching up with Australian income levels. Dr Brash estimated that a family of four in New Zealand earned, on average, about \$700 a week less than their Australian counterparts and that the buoyancy in cyclical terms had nothing to do with government policies. He also suggested that recently implemented policies would actually impede the rate of growth and identified that aspects of the Resource Management Act, the

Employment Relations Law Reform Bill and the Holidays Act were the opposite of the kinds of policies required to foster long-term economic growth.

The Employment Relations Authority dismissed a case taken by two New Plymouth District Council employees where they sought the ability to avoid wearing name badges at work. The workers claimed that the wearing of full names was a threat to their safety and health but the Authority found name badges were not hazardous to an employee's health. Their union, the Engineering, Printing and Manufacturing Union, said the decision would be appealed.

A long-running employment saga at Radio New Zealand continued in the Employment Court when the broadcaster conceded that there were no medical grounds for its continued refusal to allow its news manager Lynne Snowdon to return to her job. But the question of an 'irretrievable breakdown' in the employment relationship remained under consideration by the company.

Meanwhile, another media organisation Maori Television Service (MTS) was ordered to keep paying the salary of its General Manager of Programming, Joanna Paul, even though she had been on sick leave for almost four months. After her pay was stopped, Ms Paul took her case to the Employment Relations Authority claiming that MTS had breached her employment agreement, and sought damages or compensation. The Authority found that by stopping Ms Paul's pay without consultation, MTS had not acted as a fair and reasonable employer.

August 2004

Negotiations over a new collective agreement for primary school teachers continued (see July Chronicle). Talks stalled over claims related to workload, and pay adjustments related to qualifications, experience and responsibility. According to the *Dominion Post*, the New Zealand Educational Institute (NZEI) had warned during negotiations that its members might strike if they did not get a better offer.

However, the Post Primary Teachers Association (PPTA), representing secondary teachers, agreed a three-year collective agreement with the Ministry of Education. The agreement would deliver salary increases of up to 13% over three years and was estimated to cost around \$270 millions. The PPTA claimed that it was a substantial package that would help make secondary teaching a more attractive profession and that it appeared to answer a lot of the concerns of secondary teachers.

Staff at McCain Foods potato factory in Fielding unanimously rejected what their union, the Engineers Printers and Manufacturers Union, estimated to lead to an average 23% pay cut. McCain Foods proposed to abolish shift allowance entitlements which would

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cause a significant reduction of earnings for most employees. The company rejected the union's estimated figure, stating that it was distorted.

The *Press* covered extensively a local dispute at the Alliance Smithfield freezing works near Timaru. Alliance management wanted to spend \$6.5 million at Smithfield to increase production and assure the future of the plant but had sought changes to contract rates for boning-room staff. The company announced that it would spend the money elsewhere if a settlement was not reached. This would clearly put the future of Smithfield in doubt. Negotiations broke down when the 130 boning room staff rejected the latest company proposal.

The *Press* also reported that up to 200 Nurse Maude walked off the job for four hours after mediation talks failed to reach agreement. The Nurse Maude Association had agreed to meet the full cost of the nurses' practising certificates but rejected claims for increased pay, weekend and on-call rates, and extra sick leave. It was only the second time that members of the NZ Nurses Organisation at Nurse Maude had gone on strike.

A strike at Ports of Auckland's container terminals could have ramifications for all ports. The Maritime Union's Auckland branch president, Denis Carlisle, said in the *NZ Herald* that workers were trying to set benchmark employment conditions that would affect all ports. Ports of Auckland had been chosen for these key negotiations because it was the biggest port in New Zealand. The union claimed that some workers had been casuals for nine years or more and were not able to organise their lives because they "lived on the end of a phone". It had proposed a scheme whereby workers moved to part-time and then to permanent positions over time. However, the Ports of Auckland wanted the right to choose staff rather than implement a system that awarded transfers by time served.

The Employment Court awarded a Hamilton legal executive \$15,000 for humiliation and distress after she took parental leave and was made redundant on her return. The Employment Relations Authority found her employer had breached the Parental Leave and Employment Protection Act when he made her redundant. The employer challenged the decision but the Employment Court Judge upheld the Authority's decision.

Following mediation, Maori Television settled its dispute with its General Manager of Programmes, Joanna Paul (see July Chronicle). This also lifted the Employment Relations Authority order for Maori Television to keep paying Ms Paul her salary despite extensive sick leave.

Meanwhile, the controversial Principal of Cambridge High School, Alison Annan, claimed that she was not sure that she had resigned. This was despite that she had told staff she had resigned, her resignation was announced to a school assembly and a statement was released to the *Waikato Times* which said "today I have resigned". Ms Annan said she had no signed letters, there was no date of resignation and she did not know if her

resignation to the board had gone through the proper process. However, the statutory manager appointed to run the school was adamant that she had resigned.

Child, Youth and Family Services (CYFS) were ordered to pay \$12,000 to a former social worker suffering cerebral palsy who had complained of discrimination. The Employment Relations Authority recommended that CYFS designate a manager to support employees with disabilities and that it should have had someone to act as a mentor for the employee in order to give practical support and help organise the necessary workplace equipment. The part-time employee claimed that CYFS had failed to provide an emotionally and physically safe workplace, and it did not provide her with the equipment she needed to do her job. She also said she was harassed by colleagues and suffered discrimination because of her disability.

A special taskforce comprised of representatives from Department of Labour's Occupational Safety and Health (OSH) Service, the Employment Relations Service and the Immigration Service found sweatshop-type conditions in several of 'ethnic' Auckland businesses. Most of the taskforce's efforts had focused on the Auckland area, where, to date, it has taken action against three 'ethnic' employers and investigated another firm.

The Engineering, Printing and Manufacturing Union announced that it would challenge the section of the Employment Relations Act which allowed Fort Richards Laboratories to prevent it from talking to staff (see July Chronicle). That particular section of the Act stipulated that if an employer was a member of a religious society then the employer could be granted an exemption from the Act. Union Secretary Andrew Little said it would ask Parliament to rescind this section of the Act as it was being used to over-ride workers' basic rights.

Air New Zealand claimed that the new Holidays Act could add an extra \$40 millions on to its wage and salary bill this year and it was estimated to increase its labour costs by 2.5 to 5% in the year to June 2005. In its annual report, the company revealed that, in the year to 30 June 2004, it took a \$17 million 'hit' from rises in labour costs that had "no corresponding gain in productivity".

September 2004

The amended Employment Relations Law Reform Bill finally emerged from the select committee process. There appeared to be 'wins' for both employers and unions. The *NZ Herald* suggested that the changes would not stifle complaints about the Bill from the business lobby but it would enable the Minister of Labour, Paul Swain, to convey an impression that the Government had been listening. The newspaper suggested that the National party's warning that the Bill would prove detrimental to growth, productivity and employers' willingness to take on workers was a difficult argument to sustain during

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a period of high economic growth, low unemployment and very little industrial unrest. Having predicted doom and gloom when the Employment Contracts Act was repealed in 2000, the centre-right opposition parties could easily be accused of scaremongering.

The *NZ Herald* reported that the unions recorded some important 'wins' with the Bill: they had made progress in preventing non-union staff 'free-loading' on workplace benefits and the Bill would make it more difficult for employers to induce employees to refrain from taking part in collective bargaining. There was also a stricter definition of the 'reasonable grounds' on which employers can refuse to conclude a collective agreement. The 'wins' for employers included the removal of a clause that could have dragged them into multi-employer collective agreements. The controversial clause about 'passing on' benefits was clarified to avoid any suggestion of a breach of the law though the clause still intended to stop employers offering similar terms and conditions to staff on individual contracts as those negotiated for the collective agreement. There was also further clarification regarding employers' duty to divulge commercially sensitive information about their business operations.

There were two further twists to the debate over the Bill. First, the *Dominion Post* reported that the Minister of Labour, Paul Swain, had hinted that he might revamp the rules to make it easier to sack new employees; many small employers had concerns about the procedure for dismissals. Mr Swain's reported comment was: "once this bill is passed I will be looking at ways to give better guidance around these issues." Second, Leader of the National Party, Don Brash, was reported, rather surprisingly, as saying that his party would review the Employment Relations Act, if in government, but he thought the business community was 'broadly happy' with it. In Parliament, the Government claimed that Dr Brash's comments were at odds with a promise he reportedly made last October to scrap the Employment Relations Act.

The Bill sparked fresh tensions between the Government and employers and particularly the law change which allowed employers to possibility to deduct a 'bargaining fee' from the pay of non-union workers caused a stir. Employer representatives accused the Government of trying to stifle debate by slipping the measure in unannounced in the middle of the parliamentary recess. However, Labour Minister Paul Swain said the proposed change had been signalled by the select committee when it was considering the Bill. He also pointed out that employers would first have to agree to the arrangement and there would then have to be a ballot of all staff over whether the fee should be paid and finally, individual workers, who decided they did not want to pay the fee, would not be required to do so. Employers argued that the 'bargaining fee' option would have two detrimental effects: it would increase compliance costs in workplaces where workers agreed they wanted to pay the bargaining fee and, according to Business New Zealand, workers would be pressured into paying the fees.

The *Sunday Star Times* criticised business lobby groups claiming that their lobbying was

a repeat of their dismal performance when the Employment Relations Act was going through Parliament in 2000. The article argued that while unions kept offering to move to a more enlightened agenda on skills training, workplace productivity and other issues critical to our economic future, business lobby groups kept rebuffing them, dragging the debate back to the dark ages of confrontational industrial relations through misleading and inflammatory rhetoric.

On the other hand, Charles Baird, a professor of economics at California State University, said at a Business Roundtable event that he found a lot in the bill objectionable and predicted that it could stifle New Zealand's economic growth. Professor Baird suggested that the Employment Contracts Act was a better piece of legislation and was a "wonderful model" for the civilised world.

Secondary teachers accepted with a large majority a new three-year agreement (see August Chronicle). The agreement included pay increases ranging from 8.74% to 13.1% over the three years as well as a targeted middle management package addressing pay and workload issues. The Post Primary Teachers Association (PPTA) evaluated that the new agreement would make secondary teaching a more attractive and worthwhile profession, that it would lead to real improvements in working conditions and paved the way for a long-term solution to recruitment and retention.

Meanwhile, the primary teachers' union, NZ Educational Institute (NZEI), said that the \$420 million pay offer from the Government was likely to be accepted by teachers, though a key part of the claim remained unsettled. As part of the offer, primary teachers would be given time out of the classroom, as well as pay increases, and the promise of more teachers. An important aspect of the claim was for an increase in the amount of 'management units' allocated to schools each year. NZEI wanted an increase in the number of units, but had not been able to make progress on that issue.

The *Dominion Post* reported that senior doctors were offered a collective agreement that would give them six weeks leave a year and a base salary of between \$111,000 and \$161,000. If accepted, it would be the first national agreement for senior doctors since 1992. Under the proposed agreement, District Health Boards would have to consult with senior doctors before undertaking any review impacting on the delivery of services.

Nurses rejected a \$329 million pay offer from the government and talked of possible strike action after a breakdown of negotiations. Their employers estimated that the offer of increases ranged from 6.1% to 27% over three years, that it was fair and as much as they could afford. But the Nurses Organisation said the offer did too little to close the pay gap between nurses and police and secondary teachers. At stopwork meetings, nurses instructed their union to obtain a better offer or give notice of industrial action.

The ongoing dispute between the Lyttelton Port Company (LPC) and its unions went

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before the Employment Relations Authority (ERA) after the LPC management and the combined unions struggled to come to agreement on one particular clause. The clause stipulated the number of part-time staff as opposed to full-time or casual workers the Company is able to employ at any one time. The union was concerned that the LPC was seeking to increase the number of part-time workers at its disposal, while LPC was concerned that the union interpretation of the clause could see the pool of part-time workers fall significantly. The Authority ruled that LPC's ability to employ new staff to restore the size of the pool following dismissal, resignations or full-time appointments was not limited by the clause in the expired collective agreement.

Ports of Auckland watersiders staged a four-day strike to contest the use of casual and part-time staff (see August Chronicle). The Maritime Union estimated that enough work existed for up to 14 people to become full-time. The company said that the union was backing away from an existing agreement that caps the use of casuals, who provide vital flexibility. It also argued that it needed flexible staffing because work at the port had more peaks and troughs now that larger ships were arriving.

The *Dominion Post* reported that employers would be able to demand a medical certificate from their employees at any time if they believe sick leave is being abused, under planned changes to the Holidays Act. This was in response to employers' concerns that enhanced sick leave provisions introduced last year had led to an increase in leave taking. Where a medical certificate was required an employee would choose which doctor to consult, but the cost would be borne by the employer. The planned change drew a sharp response from Council of Trade Unions President Ross Wilson who said it was time for employers to "put up or shut up" with hard evidence to support their claim workers were abusing sick leave.

But the Chief Executive of Business New Zealand, Simon Carlaw, said that despite employers' concerns, the Government had done nothing to review a problem that had arisen because of a late amendment to the definition of pay in the Holidays Act. What the act now calls "relevant daily pay" included elements of overtime, bonus and incentive payments and left employers effectively paying bonuses to staff who were off sick or on bereavement leave. The Minister of Labour, Paul Swain, said government policy was that if people could not get to work because they were sick or bereaved they should not be deprived of their income through no fault of their own.

The Employment Relations Authority ordered Air New Zealand to reinstate a worker who was sacked after admitting he may have played golf while on sick leave. The worker said he remembered a day when he went home sick with flu and stress over his mother's death and his wife told him to play a round of golf. The company concluded that he had played while on sick leave but the Authority found that Air New Zealand had acted unfairly by failing to consider whether the worker took days off to play golf, or was genuinely sick and later felt well enough to play. It had also failed to look into his claim that he was

stressed and had taken more than three months to resolve the problem, which did not fit with its argument that his conduct was serious enough to warrant being fired.

As a result of a hearing before the Employment Relations Authority, the Cambridge High School Principal, Alison Annan, won back her \$100,000-a-year salary but was not allowed through the gates of Cambridge High School (see August Chronicle). Under the ruling, she was banned from actually going to the school, but would collect her salary until a full hearing into her personal grievances in October. Subsequently, a confidential settlement was reached through mediation and Ms Annan resigned her position effective from 3 December.

Radio New Zealand head of news Lynne Snowden was back in court trying to stop her dismissal despite her winning an earlier court agreement allowing her to return to work (see July Chronicle). Her lawyer, Rob Moodie, asked the Employment Court in Wellington yesterday to declare that RNZ could not proceed with a meeting to consider if her employment relationship had irretrievably broken down. The decision was reserved.

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