

CHRONICLE

February 2005

The *National Business Review* predicted that employers in industries with high union membership could expect more strikes and lockouts. This prediction was based on the latest figure of 36 stoppages for 2004, which reversed the downward trend since 2001. The *Dominion Post* also stated that the 'battle lines had been drawn' with the pay campaign – '5 per cent in 2005' - by the Engineering, Printing and Manufacturing Union being the biggest concerted push for a substantial wage rise in years.

The *Nelson Mail* reported that employees at Cold Storage Nelson were striking for a 5 per cent pay increase as part of the Engineering, Printing and Manufacturing Union pay campaign. However, a spokesperson for the strikers claimed that the strike was part of an ongoing pay dispute that coincidentally fitted with the union's national pay campaign.

The results of the latest Household Labour Force Survey (HLFS) for the December Quarter received widespread coverage in the print media. The *NZ Herald* and *The Press* reported that the unemployment rate had fallen to 3.6 per cent, the lowest among developed countries and the lowest in New Zealand since comparable records began. The number of people in the workforce increased by 4.4 per cent during 2004 as the net inflow of migrants dwindled and growth in the population slowed. The increase in jobs had a positive effect amongst groups with high unemployment rates such as people over 55, the long-term unemployed, women and Maori. Most of the growth in the quarter was in part-time jobs. However, *The Independent* cautioned that while the level of unemployment was low, economic commentators were worried about the inflationary effect of increased wages as skill shortages persist.

An article in *The Independent* suggested that the Government was indirectly subsidising some companies through its Working for Families welfare package. Companies were benefiting from the package as the welfare payments to their workers allowed them to keep paying low wages. Act's Spokesperson Muriel Newman called it "corporate welfare" in another guise and argued that these top-ups distorted the labour market.

The long running dispute at the Port of Lyttelton continued (see January 2005 Chronicle). *The Press* reported that port workers began a month-long campaign aimed at disrupting shipping after Lyttelton Port Company negotiators and union representatives failed to settle a new collective agreement. A union representative stated that employees would 'work to roster', meaning that there would be a ban on overtime and working on rostered days off. The action fell short of a full-out strike called in 2004 but aimed at disrupting the port and putting pressure on employers to improve their offer.

In another dispute, *The Press* reported that more than 1,000 Christchurch City Council staff were set to strike after a breakdown in pay negotiations. Members of the Southern

Local Government Officers' Union, which represents about 55 per cent of the council's staff, voted to strike for four hours if negotiations with the council were unsuccessful.

The Chief of Defence Forces was accused of intimidating a witness after he had sent a letter to the witness. In the letter to a Defence Force chaplain, the Defence Forces Chief expressed 'concern' about the chaplain's decision to volunteer evidence, and saying he would want to 'discuss the matter further'. His actions were referred to the Solicitor-General as a possible contempt of court. The case concerned a Waiouru Army Museum archivist who was claiming \$210,000 in damages for unfair treatment by the army. Chief Judge Goddard of the Employment Court ordered the letter to be withdrawn.

In a reversal of the normal outcome of cases before the Employment Relations Authority, the *National Business Review* reported a decision where a worker in a Christchurch convenience store was ordered to pay four weeks' wages and costs after disappearing from his job without trace. The Authority found the worker had abandoned his employment.

The Independent reported on a test case before a full bench of the Employment Court which ruled that employers and employees may keep their existing shifts and rosters around public holidays. The 65-year-old ruling that a 'day' was from midnight to midnight was redefined to be any period of 24 continuous hours agreed to by the parties. The court underlined that any re-arranging of compensation for working on public holidays could only be by collective or individual agreement. The decision was welcomed by the Employers and Manufacturers Association (Northern) as being sensible, practical and common sense.

In a further twist in the long running saga between Radio New Zealand and its former news editor Lynn Snowden (see January 2005 Chronicle), the *NZ Herald* reported that the Court of Appeal told both parties that it did not want its resources tied up in possible tactical manoeuvring in their employment dispute. The court declined to give Ms Snowden leave to appeal against an Employment Court decision that Radio New Zealand could ask her to turn up for a meeting with its lawyers.

The *Taranaki Daily Times* reported on the Employment Court ruling that staff at the New Plymouth District Council would no longer be forced to wear badges showing their full name (see September 2004 Chronicle). The Court ruled that the council was being unreasonable in its insistence that staff wear such badges. This decision followed an appeal to the Court after the Employment Relations Authority had earlier dismissed the claims of staff objecting to wearing the badges.

March 2005

The '5 per cent in 2005' pay campaign by the Engineering, Printing and Manufacturing Union generated a raft of news reports (see February 2005 Chronicle). *The Press* reported that simmering trade union resentment over low levels of pay rises during years

of healthy economic growth appeared to have come to a head. It noted that the message from the union that it was not interested in any employer pay offers below 5 per cent, was a clear indication of a strong push for pay rises and made industrial action more likely. An article in the *Dominion Post* added that the Union had held a ballot where 95 per cent of metal workers rejected a 3.2 per cent pay offer. *NZ Herald* reported that Auckland metal industry workers planned to strike to show employers they were serious about calls for a 5 per cent pay rise.

The *Nelson Mail* reported that 100 non-union nurses at Nelson Hospital either had to make fortnightly payments of \$12 or waive their rights to a 20 percent pay rise negotiated by the Nurses Organisation. The move followed a nationwide postal ballot of nurses conducted by the union to decide whether non-union members should pay for obtaining the results of successful negotiations. The ballot meant that non-member registered nurses around the country will have a \$12 bargaining fee deducted from their pay each fortnight until the end of 2006 or remain on the old employment agreement.

The Association of University Staff (AUS) took legal action against the Vice-Chancellor of the University of Auckland, Stuart McCutcheon, after he failed to show up at a meeting to negotiate a national multi-employer collective employment agreement. Mr McCutcheon said he would only negotiate a collective agreement covering the University of Auckland, not a national multi-employer agreement. The AUS filed proceedings with the Employment Relations Authority, alleging that the Vice-Chancellor had unlawfully undermined bargaining.

The Press reported that more than 1,000 Christchurch City Council staff were threatening strike action unless their union's new pay proposal received a positive response (see February 2005 Chronicle). Council managers stated they were disappointed that the union had rejected the Council's \$2.1 million offer and they estimated that it was the equivalent of a 4.5 per cent increase in the current total wage bill for the council workers.

The Press also reported that the Chief Executive of Canterbury Employers' Chamber of Commerce, Peter Townsend, had said that it was time the port company and the unions resolved the long-running Lyttelton dispute. This was in reaction to news that union members had voted to increase the pressure on the company (see January 2005 Chronicle).

There were several media report of collective negotiations. Christchurch bus drivers held a stop-work meeting to back their call for better pay and conditions, according to *The Press*. The *Waikato Times* reported that administrative and clerical staff at the Waikato District Health Board were likely to take industrial action after mediation talks with the board broke down. *NZ Herald* reported on work bans by Stagecoach drivers and plans to launch a six-day strike.

NZ Herald reported claims by ACT MP Muriel Newman that thousands of disabled workers employed at the country's sheltered workshops could lose their jobs under the Government's Disabled Persons Employment Promotion (Repeal and Related Matters)

Bill (see December 2004 Chronicle). The Bill would require all sheltered workshops to pay workers the minimum wage.

The Independent reported that there were a record number of jobs advertised in February, fuelling concerns that a shortage of workers would fan wage inflation (see January Chronicle). The number of job advertisements in newspapers and on the internet rose 7.3 per cent from January to February, according to the ANZ Banking Group survey. When [the](#) same survey was featured in the *Waikato Times* it was noted that manufacturing industry growth in the Waikato was well above the national average but the industry was facing growth constraints because of skills shortages.

The Supreme Court allowed the CTU and Business New Zealand to make submissions when it heard Lord of the Rings model maker James Bryson's employment dispute with his former employer Three Foot Six (see November 2004 Chronicle). The case centred on whether Mr Bryson (who was made redundant by Three Foot Six) was an employee or an independent contractor.

A nationwide survey published by the Public Service Association (PSA) showed that 31 per cent of prison staff were actively seeking other employment while 91 per cent wanted to quit the Corrections Department. The PSA claimed that the Prison Service needed to recruit 1,800 new staff in the next three years to cover for attrition, to staff new prisons as they are commissioned and to allow for additional beds within existing prisons.

Government plans to boost the labour supply by trying to attract expatriate New Zealanders to return did not have much of a chance to succeed, according to a *NZ Herald* article. As the majority of expatriates live in Australia where incomes are much higher – around \$170 a week after tax on average – it was unlikely that many expatriates would return.

The *Dominion Post* reported the retirement of Chief Judge of the Employment Court, Tom Goddard. Tributes flowed from many business and union leaders. Business New Zealand's Chief Executive, Phil O'Reilly, said that Chief Judge Goddard had been a 'good leader' in a time of transition for the country's employment court. National Secretary of the Engineering, Printing and Manufacturing Union, Andrew Little, said that with the benefit of objectivity, Judge Goddard had "generally got the balance right".

The Independent reported that Air New Zealand was appealing an Employment Court ruling it claimed would allow pilots to double-dip on statutory holidays. According to the Employment Court decision, the payments can be made in spite of a separate annual leave entitlement agreement in the pilots' collective agreement. The New Zealand Airline Pilots Association (NZALPA) was seeking clarification of whether the airline's agreement with NZALPA should be subject to the Holidays Act 2003.

April 2005

The Employment Relations Flexible Working Hours Amendment Bill, which is promoted by the Green Party, would give employees the right to apply for flexible or part-time hours where they have fulltime care of children under five or disabled children up to and including 18. According to *NZ Herald*, Chief Executive of Business New Zealand, Phil O'Reilly, said that his organisation was already working with the Government on providing family-friendly workplaces and the Amendment Bill promoted unnecessary compliance costs.

Industrial action by unions seeking wage increases featured prominently in the media during April. In the *Dominion Post*, the President of the Council of Trade Unions, Ross Wilson, provided a snapshot of recent actions when he stated that employers who resisted fair claims for better wages and conditions could expect industrial action and the "...current action by university staff, bank workers, bus drivers, hospital workers, furniture and manufacturing workers and metal workers is the result of out-of-touch employers misjudging the determination of their own staff."

Dominion Post reported that thousands of ANZ Bank staff had rejected an employer offer which included a 3.75 per cent pay increase. About 3,700 ANZ Bank staff walked off the job for two hours to attend stop work meetings.

The Press reported that Lyttelton port workers voted overwhelmingly in favour of a three-year deal with their employer, marking an end to industrial action (see March 2005 Chronicle).

The *Dominion Post* suggested that the '5 per cent in 2005' pay campaign was gaining momentum as thousands attend stop work meetings, picketed their workplaces and planned strikes. More than 2,500 people gathered at a rally in Auckland organised by the Engineering, Printing and Manufacturing Union with a further rally planned for Christchurch. Staff seeking wage rises picketed the Palmerston North Hospital and a furniture factory in Auckland. Interestingly, *The Press* reported that the Engineering, Printing and Manufacturing Union would back down on its 5 per cent pay claim if an employer could prove they could not afford it (see March 2005 Chronicle). The union claimed that pressure had already been taken off two employers who had proved they were not able to raise wages by 5 per cent.

The disruption for tens of thousands of Auckland bus passengers was avoided after a wave of rolling strikes was called off to allow a return to pay talks. While unions representing almost 1,000 drivers at the Stagecoach bus company were set to continue action, the employer and union parties agreed to seek Employment Relations Authority mediation.

The Press reported that The Christchurch City Council had pulled out of pay negotiations with more than 1,000 staff (see March 2005 Chronicle). The Council threatened to take

the union to court for breaching good faith bargaining rules. Instead the Employment Relations Authority ordered the two parties to begin mediation.

Nearly 90 per cent of Solid Energy's employees walked off the job, crippling New Zealand's coal production. Unions said that employment relations at the state-owned coal business were at their lowest ebb for more than a decade.

The *Nelson Mail* reported on the first case dealing with harmful work-related stress under the 2003 Health and Safety in Employment Amendment Act. Nelson District Court Judge David McKegg stated that "[t]here will always be stresses in a job, but they must not become health-threatening. Where employees have stressful work conditions and special medical difficulties advised to the employer, then immediate remedial action is required." The company admitted liability and was fined \$8,000.

Dominion Post reported that a Christchurch firm – Works Infrastructure - was ordered by the Employment Relations Authority to pay more than \$8,000 to an employee who was forced to take a drug test. On hearing of an allegation that the worker and a colleague had been smoking marijuana their manager told them they would have to take a drug test. The two workers were not provided with details of the allegation or details of the drug test, but were told it was positive. The Authority determined that the way Works Infrastructure had dealt with the drug allegation and the way in which it had obtained the worker's consent had disadvantaged him.

The study by the Employers and Manufacturers Association found that disaffected employees stood a better chance of winning a personal grievance claim outside Auckland. The study analysed decisions by the Employment Relations Authority during 2004. The Association claimed that dismissal laws introduced last year had made the process more complicated and employers perceived the selection of Authority members for hearings as a lottery.

It was reported in the *Dominion Post* that the Supreme Court had reserved its decision on model maker James Bryson's appeal against the Court of Appeal decision determining that he was a contractor (see March 2005 Chronicle). The five Supreme Court judges were told that two of the Court of Appeal judges appeared to agree he was an employee but were deflected by what was said to be standard industry practice and the wording of a one-size-fits-all 'crew deal memo' containing terms for the employment relationship.

The Employment Relations Authority ruled that Air New Zealand was entitled to dismiss a captain after an investigation was launched when the firm discovered assault and aviation convictions against him (see November 2004 Chronicle). The Authority noted that the Civil Aviation Authority's review was not into the pilot's fitness to be an employee, and the airline was entitled to inquire into his conduct from a different perspective. The airline said that cases of assaults in 1996 and 2001 were unrelated wilful breaches of aviation regulations, casting doubt on his ability to make sound judgments consistently when under pressure.

May 2005

In light of this year's general election, the National Party started to set out its employment relations policies. In *NZ Herald*, the party suggested that union militancy had increased through the powers given to it in the Employment Relations Act and this would be curbed in a new law called the Employment Agreements Act. Among its provisions, this Act would remove stress as a ground for employees to take action against their employer under health and safety laws. Industrial relations Spokesperson, Wayne Mapp, argued that it had become an "easy option in employment disputes for an employee to claim work-related stress as the reason for non-performance". The party would also review statutory holiday pay and intended to introduce the option of a no-risk 90-day probation period for new employees.

There was extensive media coverage of the dispute between Auckland bus drivers and their employer Stagecoach. In May alone, there were 3 new twists to the dispute. First, it entered a new phase when the unions decided to continue with the six-day strike, despite a recommendation from the Employment Relations Authority that they accept a company pay offer. Authority member Alistair Dumbleton said the company was commercially and financially justified in rejecting the drivers' demand for an immediate rise to \$16 an hour, up from the current \$13.94. Second, Stagecoach sought a binding ruling from the Employment Relations Authority on how much its drivers should be paid. This was the first such application for a binding pay determination under The Employment Relations Amendment Act 2004. But Stagecoach faced a high legal hurdle since it needed to persuade the Authority that the unions had committed a serious breach of good faith; otherwise, the Authority could not make a binding decision. Third, Stagecoach announced that it would re-enter pay negotiations with the drivers' unions when the six-day strike had finished.

In the dispute between the Association of University Staff (AUS) and the University of Auckland (see April 2005 Chronicle), the Employment Court ruled that the University of Auckland had to participate in negotiations for a national multi-employer collective agreement. The Court said that the law did not allow the statutory process to be "short-circuited ... as the university intends". This was only a partial victory for the unions since the court dismissed claims that the university had acted unlawfully and a compliance order was necessary.

In the Christchurch City Council negotiations, staff withdrew a 24 hours strike over their stalled pay talks (see April 2005 Chronicle). According to *The Press*, an e-mail ballot of members resulted in more than half of the union's 1,000 members voting against the strike proceeding.

The negotiations at the ANZ and National Bank were still unresolved and the *Dominion Post* reported that staff were taking another round of actions: staff would walk off the job with little or no notice in rolling strikes at randomly selected branches throughout the country.

Academic staff at Waikato Institute of Technology threatened strike action following a 3.25 per cent pay offer. The Association of Staff in Tertiary Education (ASTE) said the Wintec's offer of 3.25 per cent this year, followed by 3 per cent next year, was "not acceptable". There were also difficult negotiations at five other North Island polytechnic institutes.

Health sector staff also experienced difficult negotiations. *The Press* reported that 140 Christchurch rest-home workers were planning a three-hour strike in protest against low pay rates. Union advocate Lynley Mulrine said members wanted an increase of between 2.8 and 5 per cent and the employer Qualcare had offered less than 1 per cent. According to the *Dominion Post*, nine district health boards tried to prevent medical radiation technologists from going on strike. The boards filed a request for an urgent hearing with the Employment Relations Authority over contingency plans to prevent loss of life during the dispute. However, the Association of Professional and Executive Employees (Apex) decided to call off the strike as negotiations started again. As Apex was seeking significant pay rises - \$30,000 to \$40,000 according to media reports - it was unclear whether a settlement was in sight.

A further development in the long-running dispute between Radio New Zealand and its former news chief arose when Ms Snowdon sought immediate reinstatement at the Employment Relations Authority. She also took a personal grievance action against Radio New Zealand which had dismissed her last month. This came after a two-year standoff and with Radio New Zealand alleging the relationship had irretrievably broken down (see March 2005 Chronicle).

In a case against Maori Television, the complainant was ordered to pay \$3500 in costs over her failed employment dispute (see January 2005 Chronicle). The complainant had alleged that she had been discriminated against because she was not Maori. The Employment Relations Authority determined that her claims of discrimination were "utterly without foundation" and that she had resigned of her own will.

The country's top military officer Air Marshal Bruce Ferguson was reported as being deeply sorry over a letter to witnesses in an Employment dispute (see April 2005 Chronicle). He escaped being prosecuted for contempt of court, despite a ruling of the Solicitor-General that there was a case to answer. The court awarded the complainant \$20,000 damages from the Defence Force for the intimidation, and that included a punitive sum for intimidation of a witness.

The Press reported that Inland Revenue was ordered to pay \$5,350 to two staff members it dismissed for improperly accessing their families' tax files (see January 2005 Chronicle). The department was seeking leave to appeal against an Employment Court order to reinstate the women, who were dismissed two years ago.

There were several media report of sub-standard working conditions and pay levels. *NZ Herald* reported that workers in the Horticulture Industry in Northland were on bin rates that earned only about \$9 an hour. One worker claimed that "[i]t's like slave labour

because it's \$40 a mandarin bin and sometimes it can take you hours to fill that." Despite Northland's chronic unemployment, Kerifresh has just hired 20 workers from Samoa for their permanent workforce, mainly to prune and pick lemons throughout the year.

Many job-seeking skilled migrants experienced difficulty in getting their first job because employers would often say that they have 'no New Zealand experience'. However, a work experience scheme brokered by the Auckland Chamber of Commerce had recorded many successes. So far, 1,500 new migrants have found jobs after going through the programme; 40 per cent with the company with which they did work experience.

Finally, a report released by Minister of Labour, Paul Swain, made serious allegations about the treatment of foreign workers on foreign charter vessels. Foreign fishermen were being underpaid, beaten and forced to work in sweatshop conditions, according to the *Nelson Mail*.

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