

CHRONICLE

October 2004

The passage of the Employment Relations Law Reform Bill through Parliament continued to make the news during October. According to the Dominion Post, the National Party claimed that one of the key aspects of the Bill was compulsory unionism by stealth. The National Party's Industrial Relations spokesperson, Wayne Mapp, stressed that the bargaining fee arrangements meant workers had to opt out, rather than into unions and that the National Party would fight its introduction. He claimed that no one, apart from the unions, wanted the changes and that the feedback from a number of submissions to the Select Committee was that if 'it ain't broke, don't fix it'.

The business press also provided substantial coverage of the Bill. The Independent claimed that Labour Minister Paul Swain sneaked the bargaining fee measure into the Bill during the parliamentary recess, through a Supplementary Order Paper. The newspaper suggested that the proposed changes made it clear that employers could not object to the inclusion of a bargaining fee in collective employment agreements. The National Business Review viewed the late introduction of the bargaining fee as a major victory for unions at the expense of fairness and balance in employment law, especially at the expense of employees who choose not to belong to unions. An Employers and Manufacturers Association survey showed that 63% of employers thought that a collective would be bad for their business and 88% of employer respondents had a negative view of multi-employer collective agreements.

There were a number of crucial negotiations in the health sector. National multi-employer collective agreement talks for nurses continued (see September Chronicle). The Dominion Post reported that "significant progress" had been made after three days of negotiations between the Nurses Union and the 21 District Health Boards. It was also reported that senior doctors had voted overwhelmingly in favour of a national collective agreement giving them six weeks' leave a year and a base salary between \$111,000 and \$161,000. Both the NZ Herald and The Press alluded to contingency plans prepared by the Health Boards as they faced a 6-day national strike by 2000 junior doctors. The doctors claimed they were being worked off their feet and wanted reduced hours in place of a pay rise. The Health Boards responded by saying that 27% more junior doctors were on duty now than five years ago and working conditions were 'pretty favourable' compared with overseas.

The ongoing dispute at the Lyttleton Port Company (LPC) continued to receive media coverage (see September Chronicle). Following the recent Employment Relations Authority determination in its favour, the LPC was hoping that this would allow a swift and successful conclusion to negotiations. However, unions held a stopwork meeting to

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update members on options which included appealing the ERA decision.

Bargaining at the Burnham Military Camp prompted a stand-off between members of two different unions. Around 60 civilian workers represented by the National Union of Public Employees (NUPE) went on strike for better pay but they felt that they were left "high and dry" by the Public Service Association (PSA) that had settled. The NUPE members wanted an 8% pay rise but the Public Service Association (PSA), which has about 800 members among the country's 2,000 defence force civilian workers, had decided to accept an offer of a 2.5% pay rise.

Primary teachers and principals voted overwhelmingly to accept their new collective agreements, which would provide an 8.74% pay rise over three years. The agreements were estimated to be worth \$420 million and would cover around 25,000 primary, intermediate and area school teachers and principals.

Salary negotiations were also successful in another part of the education sector where early-childhood teachers won their battle for pay parity with primary and secondary teachers. The collective agreement would cover around 1,000 teachers and it included a four-step pay rise to lift the salary rates to the same level as primary, secondary and kindergarten teachers by July 2008. In that period, the salary of a teacher with eight years experience and a bachelor degree in early-childhood education would rise from \$37,000 to \$56,400.

The Transport and Industrial Relations Select Committee considered changes to the controversial Holidays Amendment Bill (see June Chronicle). Under proposals put before the Committee, it was advocated that employers would not have to pay sick leave if an employee failed to produce proof of illness or injury 'without reasonable excuse'. However, it was also suggested that employers would have to pay an employee's "reasonable expenses" when they sought a medical certificate.

The Council of Trade Unions (CTU) reportedly wanted the Labour Department to widen its investigation into the pay and conditions of foreign fishermen. Minister of Labour, Paul Swain, launched an investigation into the pay and conditions of foreign crews after allegations in Parliament that some employers were making significant deductions for food and accommodation, effectively paying foreigners less than the statutory minimum wage. The CTU claimed that this was problematic in the fishing industry because few commercial fishermen were part of collective employment agreements and many were paid on the basis of each voyage's catch.

The Dominion Post reported that remuneration for top executives were rising at almost double the pace of that of the average worker. A Victoria University study showed that, on average, chief executives' remuneration had increased by 7% a year since 1997, while the average wage for workers' rose 3% over the last year. Thus, the average chief

executive's pay had leapt from \$249,000 in 1997 to \$355,000 in 2002, compared with the \$38,900 average pay for workers. CTU President, Ross Wilson, said the pay difference was hypocritical, as it was executives who had lobbied against moves to improve workers' conditions through the Employment Relations Act and the Holidays Act.

An Australian union stalwart Max Ogden claimed in a Dominion Post article that unions in New Zealand had a better chance of surviving than their seemingly brasher, tough-guy Australian counterparts. He stated that "Australian unions are not showing anything like the level of sophistication" found amongst New Zealand unions, who looked strategically at the bigger picture. Mr Ogden also claimed that Australian unions largely remained trapped in the narrowly focused "labourist" model as they chased higher pay without thinking where the money came from. Kiwi unions had shifted focus, he said, to a European-style social-democratic model with a commitment to helping businesses create wealth in a growing economy.

A personal grievance dispute between the NZ Police and former Superintendent Alec Waugh turned slightly bizarre when NZ Police contested a minor pay-out sought by Mr Waugh. According to the Dominion Post, NZ Police opposed granting the reinstated superintendent a 'bonus' for cleaning toilets on top of the \$1 million net compensation he won for his five years out of the police. Mr Waugh was seeking a rehearing on part of his successful compensation case. The sum included about \$14,000 Mr Waugh earned in a job cleaning toilets; this was used as an example of how badly Mr Waugh had fared after being forced from the police over since-quashed charges of expenses fraud.

A long-serving Mt Eden prison guard was awarded \$6,500 in a personal grievance case prompted by management searching his car for drugs. However, the Employment Relations Authority also found that he had not taken the necessary steps to familiarise himself with the department's new search policy for all staff, visitors and inmates. He was on holiday when the new requirements were e-mailed to staff, and he deleted the messages, unread, when he returned to work. The Authority accepted that the guard had suffered humiliation, loss of dignity and injury to his feelings, but dismissed further compensation claims.

The Dominion Post reported that four long-term employees at a Paraparaumu information technology company had been successful in their appeal against an Employment Relations Authority decision, preventing them getting paid as much as new recruits (see June 2004 Chronicle). The Unisys New Zealand help-desk analysts had challenged a company decision to leave them on existing annual pay of about \$32,000 when new operators, employed in 2003 to do the same job, started on \$37,000. Judge Shaw of the Employment Court ruled that Unisys should increase pay rates to within 10% of market rates and reimburse the difference between what the plaintiffs had been paid and the reassessed salary, backdated to April 2003.

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Business continued to attack changes to the holidays legislation (see October Chronicle). The Dominion Post reported that New Zealand's biggest meat company PPCS had been hit with a \$6.5 million hike in labour costs as a result of the changes to holidays legislation. Changes to how statutory holidays were applied had doubled the cost to the company to around \$5 million a year and sick pay changes would add \$4 million to a payroll of \$130 million, according to PPCS Chief Executive Officer Stewart Barnett. While the company thought that the timing of the changes was wrong, it also made the interesting observations that it had no issue with improving workers' conditions and that the changes were not extreme by international standards.

The country's 21 district health boards and its junior doctors reached an interim settlement, which still required ratification by doctors and individual health boards. This followed the threat by the doctors' union, the Resident Doctors Association, to hold a six-day strike at the end of October (see October 2004 Chronicle).

The Open Polytechnic faced possible strike action when negotiations stalled: the Open Polytechnic had offered a one-off cash payment equal to 2.5% of staff salaries but staff wanted their salaries to be increased by at least the same amount.

Strike action was adverted amongst workers in Taranaki's onshore oil exploration industry when they settled their bargaining over new employment terms and conditions. The dispute was settled when workers won a pay rise of 5% for 18 months, backdated to September 1, and a substantial allowance for working with new hazardous substances such as synthetic mud. Originally, the Engineers, Printers and Manufacturers Union demanded a 10% rise in pay rates while the employer had offered 3.5%.

The Marlborough Express reported that Marlborough rest homes were struggling to retain and recruit workers since their wages were below those paid to vineyard workers. A spokesman for the region's operators said a large number of people leaving rest home work were heading for the vineyards but, at current funding levels, rest home operators could not afford to pay more.

The Evening Standard reported on an impasse in collective agreement negotiations when workers at the McCain Foods plant in Feilding rejected concessions of any sort, including pay cuts. When negotiations started the company sought considerable pay adjustments since it maintained that the potato-processing plant was underperforming after three poor growing seasons, and, without pay cuts, the plant might have to close (reported in August 2004 Chronicle).

In a split decision, the Court of Appeal ruled that a model-maker from Lord of the Rings

film production was an independent contractor and not an employee. Two of the judges found that the agreement, signed by the model-maker, was in accordance with contractor status and that the usual industry practice was to employ people on contract. The judges also said: "Further, common sense suggests that any lessening in the competitive advantage of New Zealand's film industry will have the tendency to reduce the work which will be carried out in this country."

The managing director of an Auckland baby products company, who set up a rival business with his wife, was ordered to pay \$295,000 to his former employer. The managing director had set up the company after The Warehouse approached him, in his role as managing director, about importing cheaper products. Instead of passing the information on to his company, he used the opportunity to import the desired products through his own company.

The Employment Relations Authority found that a former Auckland-based Pitcairn Island commissioner was unjustifiably dismissed but his "serious misconduct" contributed to his sacking. The Authority ordered that the commissioner be paid \$16,000 in lost wages and compensation, which was 50% of what he would have received but for his misconduct. The sudden dismissal was found to be procedurally and substantively unjustified but evidence showed there had been a breakdown in the relationship with which made it impossible for him to continue his job.

A former Air New Zealand captain with assault and aviation convictions failed to get his job back pending a hearing of his claim that he was unfairly dismissed. In declining the application, the Employment Relations Authority said that safety was "a paramount consideration" to Air New Zealand and that five aviation convictions from his use of a flying boat without airworthiness documentation amounted to serious misconduct, which might warrant dismissal.

An unpopular meat inspector, fired for not doing his job properly, successfully challenged an Employment Relations Authority decision against him but his bad behaviour prevented him from getting his job back or any payout. In a written decision the Employment Court said that the meat inspector's summary dismissal was unjustified but as the case was "far from ordinary" his behaviour ruled out remedies. While management had made efforts to help improve his work, he continued to fail to meet standards and antagonised his workmates.

The Corrections Department was ordered to reinstate a Manawatu Prison manager who was dismissed after an inmate died in a jail cell. The Employment Relations Authority ruled that the dismissal was unjustified and the manager had met all specified requirements of an on-call manager. As well as reinstatement the Department was ordered to pay him \$15,000 compensation.

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Another Corrections Department employment dispute involving a former Napier probation officer who claimed that a judge had sexually assaulted her, reached a conclusion when she was ordered to pay \$3,560 costs for her failed personal grievance case. The woman had sought \$50,000 from the Corrections Department for alleged humiliation, loss of dignity and injury to feelings after she was medically retired from her job 18 months after the alleged assault.

The NZ Herald reported on the Employment Relations Authority endorsement of the sacking of a worker for serious misconduct. The worker refused to allow his fingerprints to be scanned for identification when clocking on and off, based on that this would violate his religious and ethical beliefs. Subsequently, the worker lodged a complaint with the Human Rights Commission alleging discrimination of his religious beliefs.

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In a major policy change, the National Party had decided to revise its opposition to the introduction of four weeks' statutory annual leave in 2007. The National Party had previously criticised changes to the Holidays Act as imposing an unacceptable cost on business and the economy. The change in stance was thought to be based on the unpopularity of repealing the increase in statutory annual leave as well as the realisation that by the time the party may come to power four weeks' annual leave would probably be entrenched in many employment agreements.

Both the Dominion Post and the Press reported that the CEO of Business New Zealand, Phil O'Reilly, had claimed that some businesses could lose money if they were open on public holidays because the Holidays Act could double pay rates for some workers (see also June Chronicle). He also added that the companies may not even be aware of the potential costs because the complexity of the new law made it hard to understand what employers were liable for over the Christmas and New Year period. The President of the Council of Trade Unions, Ross Wilson, dismissed the concerns as just "rhetoric" and that the extra rates were "not a huge cost item".

Despite the news of an increase in the statutory minimum wage to \$9.50 an hour, the Dominion Post reported that the Council of Trade Unions was disappointed. The CTU wanted the adult statutory minimum wage to be lifted to about \$11 an hour as it argued that this would restore the minimum wage to just over 50% of the average wage as it was in 1987.

A proposed law change that would guarantee the 4,000 disabled people working in sheltered workshops the minimum wage may have adverse effects: it could lead to the closure of sheltered workshops, according to the IHC Society. The government claimed that the current law (where some workers earn as little as \$5 per week) is outdated and that people with disabilities should have the same employment and minimum wage rights

as others employees.

There was widespread reporting on the long running negotiations (see February, April, May, July, September Chronicles) between the nurses' organization and their employers as the negotiations edged closer to a resolution, with an offer of a \$380 million national pay deal being unveiled. It was reported that the agreement, one of the biggest settlements in public sector history, was due to be ratified by Nurses and midwives in February 2005. The deal would bring pay rises of between 20% and 30% and an independent inquiry into staffing levels was also part of the agreement. However, the Dominion Post suggested that the agreement raised fears that private sector nurses would be left behind and that it would make it harder for the private sector to retain nursing staff.

Skill shortages continued to dominate media coverage with the NZ Herald reporting that Stagecoach was recruiting bus drivers from Samoa and was looking as far as India to fill staff shortages. The Corrections Department recruited 71 prison guards from Samoa to fill some of its current 300 vacancies.

The Westpac Bank claimed in the Dominion Post that skill shortages were one of the biggest factors holding businesses back with businesses being unable to expand to meet demand. A tourism and hospitality industry report revealed critical job shortages that could damage the sector as domestic and inbound travel expands. It was projected that 16,500 employees would be needed to fill new jobs created in the accommodation, food and beverage areas by 2010.

The Dominion Post reported on a scheme where fruit and vegetable growers co-operated with employment services in order to combat a severe labour shortage in the Kapiti Coast and Horowhenua area. The scheme involved creating a database of available workers and a list of farms and orchards that needed staff. Workers would be able to move from farm to farm for longer periods, depending on the demand.

The Press unveiled that 100 Air New Zealand employees were under investigation for breaches of internet policy breaches; this followed the sacking of 8 staff in late November. Unions labelled the move over-zealous and said that it was worrying other airline employees.

The Inland Revenue Department was accused of intimidating a staff member who wanted to testify before the Employment Relations Authority in support of two colleagues sacked from their Wellington service centre jobs in July 2003 (see April 2004 Chronicle). An employee, who was also an executive member of the in-house union, was told that he would have to obtain IRD permission before giving evidence on behalf of the two women. In its ruling, the Employment Court found that the women should be reinstated upholding an earlier Authority ruling. The judge agreed with the Authority finding that an unjustified dismissal had taken place because three other IRD employees who had committed similar breaches were given final warnings rather than being dismissed.

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The Court of Appeal, confirming an Employment Court ruling, dismissed an appeal by the NZ Herald over the issue whether union members could be encouraged to leave a collective agreement while it was in force. The case was sparked by the Auckland newspaper's decision to tell two senior journalists that they would have to leave the collective if they wanted a pay rise.

The NZ Herald and The Independent reported that the Workplace Productivity Challenge report suggested that the main ways workplace productivity could be increased were through investing in capital, achieving economies of scale, investing in innovation and technology and adopting better business practices. The Government had already set aside up to \$2.5 million a year to implement the group's recommendations.

A recent study on working time in households revealed that overall, there was an increase in the total average number of hours worked. The National Business Review published the study which found that there was a noticeable increase in the hours worked by older couples (those aged 50 and over) with well-qualified couples working longer hours than those with no formal qualifications. Couples with young children were also working longer hours, especially where both were well-educated. While some employees said they were working too hard and would prefer to have greater leisure time, many were happy to do the long working hours.

The NZ Herald reported that an Employers and Manufacturers Association survey showed significant pay rises for some workers, especially electricians who recorded average wage increases of 11.2%, lifting their average annual wage to \$48,694. The survey found that on average wages had increased by 3.5 per cent in the year to July, slightly less than the 3.8% increase of the previous year. The President of the EMA Northern, Alisdair Thompson, claimed that the successive pay rises showed that further law changes, which gave workers more bargaining muscle, were not needed.

The NZ Herald published a graduate survey that indicated future 'brain drain': around 31% of this year's surveyed graduates would immediately leave New Zealand in favour of employment in Europe, Britain, the United States, Asia or Australia. The survey also found that 67% of surveyed students planned to live and work in a different country by the time they were 30 years old. In light of current skill shortages, it was surprising that the lack of enthusiasm for employment in New Zealand was sparked by fears about employment prospects within New Zealand.

However, another survey concluded that most workers were confident that their jobs were secure. This survey found that only 13% of the 974 surveyed employees thought that there was an impending chance of unemployment; this compared with 41% 14 years ago. President of the Council of Trade Unions, Ross Wilson said he believed the change could be attributed to the more 'inclusive' workplace environment in New Zealand.

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In the Dominion Post, the National Party's Industrial Relations Spokesperson, Wayne Mapp, stated that a National government would review the Holidays Act (see December 2004 Chronicle). A key focus would be the provisions stipulating a time-and-a-half payment and day in lieu, with a view to scrapping them. Mr Mapp said that the National Party favoured giving workers a choice between the extra payment and the extra day off.

It was reported in both the Dominion Post and the Waikato Times that the business community was waiting for a court case to clarify when they had to tell employees they were selling the business. There was widespread concern amongst businesses about changes in the Employment Relations Amendment Act which required employers to tell staff about any plans to sell and to give staff an opportunity to comment before a decision is made.

The ongoing dispute between the Lyttelton Port Company (LPC) and the waterside unions continued with a three day meeting in a bid to resolve their protracted dispute (see May 2004 Chronicle). The Press reported that the talks had broken down and workers had given a month's notice of pending industrial action.

Maori Television Service (MTS) was cleared of discriminating against a former Pakeha employee who claimed she was forced to resign. The employee complained to the Employment Relations Authority that she resigned because she no longer felt able to perform her role; she was not allowed to travel to overseas film festivals with other station managers and MTS had failed to properly discipline an employee she was having difficulties with. The Authority found that the allegations, that MTS had discriminated against her on the grounds of ethical belief, colour and race, were "utterly without foundation".

The Employment Relations Authority ruled that a woman was unjustifiably dismissed and ordered the former owners of a Wellington Kebab shop to pay her nearly \$15,000 for lost wages and humiliation. It was alleged that the woman was sacked because she had refused to marry a friend of her boss.

The Independent reported that the Inland Revenue Department planned to appeal an Employment Court ruling requiring it to reinstate workers sacked for accessing family members' computer files (see December 2004 Chronicle).

The long-running saga at Radio New Zealand (see September 2004 Chronicle) took yet another turn when Radio New Zealand and its retired Chief Executive, Sharon Crosbie, were named in a defamation action filed by the former Head of News, Lynne Snowdon,

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who claimed damages of almost \$1.5 million. Ms Snowdon had been on sick leave on full pay since the breakdown in her work relationship with Ms Crosbie in 2002.

In another joint effort to overcome shortages in the Horticulture Industry, the Southland Times reported on a joint initiative between Work and Income NZ, the Immigration Service, Inland Revenue and the Central Employment Trust in Central Otago. The scheme was designed to assist with the picking of an expected record 700 tonnes of export fruit. A free phone service for people wanting work had been getting an increasing number of inquiries.

The Dominion Post reported that illegal workers were still getting seasonal jobs in Hawke's Bay, with immigration officials catching 20 in the past two months. A spokeswoman from the Hawke's Bay Fruitgrowers Association said that the fact employers were taking on illegal workers each year did the industry no favours and these 'rogue' employers undercut honest employers and exploited illegal workers. While the problem was blamed on New Zealand's labour and skills shortage, a contractors' group aimed to raise the standards of seasonal worker employment with a new picknz website.

The death of well-known unionist Bill Andersen featured prominently in the media. Mr Anderson, who took part in the 1951 waterfront strike, was for many years President of the Auckland Trades Council and he was, at the time of his death, President of the National Distribution Union and leader of the Socialist Party of Aotearoa.

In his annual Orewa speech, the leader of National Party, Don Brash, said that under a National government unemployment benefits would only be paid if the recipient did community work or approved training. As part of a policy to encourage employers to employ people perceived to be risky, a National government would introduce a 90-day trial period so employment could be ended without penalty. Brash claimed that New Zealand's "deeply entrenched" welfare dependency had little to do with the availability of jobs and everything to do with systemic, structural problems in the welfare system.

The NZ Herald highlighted the difficulties of young refugees seeking permanent jobs with a focus on an Afghan refugee from the Tampa. It was reported that poor language skills and a lack of New Zealand work experience were big obstacles for young refugees seeking permanent jobs and discrimination also seemed rife.

The Government unveiled plans to increase childcare support, including care in the home, in an effort to encourage more women to join the workforce. The Government was looking at British moves to increase paid parental leave to one year and provide 'dawn to dusk' out of school care.

Erling Rasmussen and Colin Ross
The University of Auckland