

CHRONICLE

February 2006

During February, a number of media reports highlighted the issue of low paying jobs and sectors. This included a Bill to abolish youth pay rates - 'the Minimum Wage (Abolition of Age Discrimination) Amendment Bill' - promoted by the Green Party MP Sue Bradford and the "Super Size My Pay" campaign calling for the minimum wage to be increased to \$12 an hour. Bradford's Bill proposes to end youth rates for 16 and 17-year-olds and ensure that the adult minimum wage would apply to all workers. She told a rally in front of Parliament that youth pay rates were "totally unjustified".

The Unite union staged a rally in Auckland as part of a campaign to raise the minimum wage for thousands of workers in the fast-food industry. Unite was negotiating with fast-food employers McDonald's and Restaurant Brands New Zealand. An *NBR* article commented that Unite was a 'new union' that has been ramping up militant action at precisely the time when older unions are starting to resemble part of the establishment. The *Dominion Post* and the *Press* reported that after fast-food outlets, Unite will focus its sights on hotels, petrol stations, call centres, commercial cleaning and car park companies. The union run by former Alliance Party leader Matt McCarten is one of the first to successfully try to unionise low-paid casual workers.

The flow-on from the nurse's pay rise in 2005 continued with other groups in the health sector arguing for pay parity. Plunket nurses, Community Karitane and Kaiawhina Maori community health workers were offered a 13% pay increase in three installments by their employers. The Nurses Organisation said the offer was the first step in achieving pay parity between primary healthcare nurses and district health board nurses. In another development, the *Dominion Post* reported of a potential staffing crisis in the primary health providers unless nurses working for General Practitioners were paid the same as their hospital counterparts. The Nurses Organisation was negotiating with more than 650 primary health providers to seek a pay increase for 3,000 primary healthcare nurses.

The *Press* reported that the dispute between bank workers and Westpac ended after staff agreed to an offer which included a 5.2% increase in pay as well as the development of a new pay progression system. Before Christmas 2006, the dispute had escalated into strike action by 1,700 union members (see December Chronicle).

The *Dominion Post* reported that the kindergarten teachers' union reached a "stop-gap" contract settlement with the Education Ministry. This followed strike action in December 2006 when employers announced plans to increase the hours of contact time (see December Chronicle). The settlement included a working party which will deal with the issues of contact hours and term breaks. The settlement stated that the employers must consult fully before changing their opening hours.

Over 750 meat inspectors, members of the Public Service Association (PSA), took industrial action by only fulfilling mandatory meat inspection duties in support of a

5% pay increase. The PSA said the action was being taken in response to an employer pay offer that was not good enough.

The saga at Air New Zealand continued with the focus of media attention being on a vote rejecting a proposal by the union representing maintenance engineers at Christchurch (see January Chronicle). In January, the airline had accepted a counter-proposal from the Engineering, Printing and Manufacturing Union (EPMU) and the Aviation and Marine Engineering Association. The Christchurch based members rejected the restructuring proposal by the airline and the EPMU by a narrow majority. The national airline vowed to return to a plan that would see them outsource wide-body aircraft heavy maintenance and this would result in 507 job losses, on top of 110 cuts announced in December. However, a fresh ballot of members of the Aviation and Marine Engineers' Association (AMEA) resulted in a different outcome when the majority of engineers supported the proposal.

In another development, the *Press* reported that Air New Zealand's 122 aircraft cleaners were taking legal action to prevent the airline from contracting out their jobs. The airline said it planned to hire a commercial contractor to manage the cleaning of aircraft cabins between flights in Auckland, Wellington and Christchurch. This was expected to result in saving of over \$1.5 million. The current aircraft cleaners would be given the opportunity to transfer to the new cleaning services provider or take redundancy.

The *NBR* reported on the Court of Appeal decision that two women dismissed by the Inland Revenue Department (IRD) in July 2003 for accessing the tax files of family members, should remain dismissed (see December 2005 Chronicle). The court found that the employees had the code of confidentiality drawn to their attention and received training on it. They were under an obligation, therefore, to acquaint themselves with the requirements and to comply with it.

The political storm over the TVNZ Board entered the employment arena when the former chief executive Ian Fraser threatened to take TVNZ to the Employment Relations Authority if the board did not respond to his satisfaction. The issue arose after the board removed Fraser from his role as chief Executive Officer because of evidence he gave to Parliament's finance and expenditure select committee during its inquiry into TVNZ in December 2005.

The case of the Lord of the Rings model-maker James Bryson remained in the media spotlight after the *Dominion Post* reported that Mr Bryson lost his bid to take a personal grievance against film company Three Foot Six, because he did not bring the personal grievance within 90 days of the grievance happening. The Employment Relations Authority was not satisfied that Mr Bryson's evidence satisfied the requirement that he had taken "a positive step" to put his employer on notice of his grievance and he did not put anything in writing.

In another case, the *Press* reported that the Employment Relations Authority allowed a policewoman who claimed that she was given improper and intrusive internal medical examination during a police medical could apply to have her case heard despite its historic nature. The officer was sent for a recruitment medical in 1989

which allegedly included breast, vaginal and rectal examinations. When talking to fellow officers, she found her examination had been far more intrusive than theirs.

March 2006

The *NZ Herald* reported that a Bill allowing employers to freely dismiss workers in the first three months of their employment – ‘The Employment Relations (Probationary Employment) Amendment Bill’ - passed its first parliamentary obstacle by 63 to 58 votes after support from the Maori Party. The Bill, sponsored by the National Party’s Spokesperson on Employment Relations Wayne Mapp, aimed at giving employers a 90-day trial period during which they can dismiss employees without a personal grievance claim being taken against them.

A further amendment to the Employment Relations Act 2000 was introduced into Parliament by the Government. The amendment intended to give greater protection to vulnerable employees (such as those engaged in food catering and cleaning and in orderly, caretaking and laundry services) in the event of a restructuring. The amendment was designed to cover the gap exposed by the Employment Court of so-called “second generation contracting” which can occur when an organisation has contracted out part of its business/operations to one contractor and then subsequently the contract moves to a new contractor.

Both the *Press* and the *Dominion Post* reported Government plans to rewrite the 1958 Police Act which will include changing long-standing police disciplinary procedures which were now recognised as being draconian. The existing employment conditions required Police to be suspended from duty and face a lengthy hearing and disciplinary process, which was out of step with modern employment relations legislation and approaches.

The Equal Employment Opportunities Commissioner, Dr Judy McGregor was reported in the *NZ Herald* as saying that the right to have flexible working hours should be available to all men and women who want to find a balance between work and family interests. Dr McGregor made a submission to the Parliamentary subcommittee on the proposed legislation (“the Employment Relations (Flexible Working Hours) Amendment Bill”). She stated that the legislation, which would give parents the right to ask for a change of work hours, was too narrowly focused: “Currently only parents of children under five and parents of disabled children under 18 are covered by the Bill. But what about parents of primary-school age children or dependent adult disabled children, or workers who care for their elderly parents? Their need for flexible arrangements can be just as great.”

The *NZ Herald* reported that the Government has dropped plans to exempt firms with up to five employees from having to offer the KiwiSaver workplace savings scheme to employees. As originally designed, the scheme would not have applied to “micro” businesses, which represent about 86% of all firms and 23% of employees.

The *NBR* reported on the impending implementation of the Workplace Relations Act (also called “Work Choices”) in Australia with its detailed restrictions on trade union activity and workplace agreements. The regulations spell out prohibited content in

workplace agreements including restrictions on the use of independent contractors, provisions for unfair dismissal procedures and a wide range of conditions that support the activities of trade unions. Australian Labor leader Kim Beazley has condemned the changes as “regulations of infamy”.

The *Dominion Post* reported that Plunket nurses voted overwhelmingly in favour of a 13% pay rise, which would bring their salaries in line with those of public hospital nurses. The rise will take the salary of a fourth-year Plunket nurse working a 38-hour week from \$47,430 to \$53,860.

Inmate employment instructors at the Department of Corrections went on a nationwide 24-hour stop work strike. The President of the Corrections Association New Zealand (CANZ) said that members had been negotiating for an increase in pay for more than two years. Union members were asking for the same pay rates the department was paying eight non-union instructors.

Warnings of industrial action by junior doctors were raised during March. The Resident Doctors Association (RDA) tabled 19 demands including increased pay and limits on working hours as it sought to renew a national collective agreement, which had expired in January. The RDA claimed that pay rates for junior doctors had not increased for four years and the sector faced recruitment and retention problems with a number of junior doctors opting to take locum positions.

The *Manawatu Standard* reported on the reinstatement of a Palmerston North man who was dismissed for playing golf during working hours. The Employment Relations Authority determined that the man should be reinstated as a technical sales representative and be awarded back pay and costs. The company claimed that the employee was dismissed for “theft of company time”, playing golf while he was supposed to be working. However, the employee argued golf was part of his job and that he always worked more than the required 40 hours a week, and the job was not 9 to 5 position.

The *Press* reported that the Government employment agency, the Community Employment Group, which was disbanded because of loose spending on community grants, had cost taxpayers an additional \$3.4 million to disestablish after two-thirds of the staff opted to take redundancy payouts. The Government disbanded the Community Employment Group in 2004 and transferred its \$23m budget to the Ministry of Social Development after a string of controversial grants to community organisations had featured in media reports.

The *Dominion Post* reported on threats by the Labour Department to prosecute retailers at a Lower Hutt shopping mall unless they improved staff facilities. Staff at the mall complained that mall policy meant they were unable to sit down during shifts and could not use the toilet if it meant leaving a shop unattended. Others staff complained of having to eat lunch in their cars because the shopping mall had no meal room facilities.

Lincoln University researchers claimed that once-a-day milking for farmers and sharemilkers would have a positive effect on the quality of life of both employers and employees on farms. Their research had found that employers doing once-a-day

milking had less staff turnover, sick leave and absenteeism. The researchers had also interviewed employees who said the shorter working hours enhanced their family life. Project leader Dr Rupert Tipples said in the *Dominion Post* that if once-a-day milking became more widely accepted it was possible that New Zealand may become a world leader and this might help sustain the industry's advantage.

The alleged eavesdropping by newspaper executives into private staff conversations prompted the President of the International Federation of Journalists to voice his concern. Chris Warren voiced his "deep concern" at reports that management at APN newspaper *Hawke's Bay Today* had listened in on conference calls between the Engineering, Printing and Manufacturing Union (EPMU) and staff delegates during collective agreement negotiations. The EPMU laid a complaint with Hastings police claiming that "the caller or callers intentionally and unlawfully intercepted private communications" after they discovered evidence of this kind of behaviour from phone records.

April 2006

The debate over the National Party probationary employment Bill continued during April (see March Chronicle). One commentator writing in the *Dominion Post* called it disingenuous, claiming that the Bill was a complete removal of any employment rights for the first 90 days and that employers would be able to dismiss an employee for any reason they chose no matter how well an employee was performing. It was claimed that if the Bill became law it would be 'the thin end of the wedge'. However, supporters of the Bill pointed out in the *Press* that, amongst developed nations, New Zealand was in a small minority that did not have a probation period of the type proposed by the Bill. The *Press* also reported on the polarisation of opinion amongst business groups and unions. Business groups claimed that the existing employment relation's provisions for probation periods were ineffective and urged the National Party to proceed with the Bill. The country's largest trade union the Engineering, Printing and Manufacturing Union (EPMU) threatened mass industrial action if the Bill was not withdrawn.

The *Dominion Post* reported on employer warnings to health sector workers to be realistic with their pay expectations, as health boards were struggling to balance budgets without cutting services (see March Chronicle). The warning came ahead of the renegotiation of collective employment agreements for two major groups: the 2,500 junior doctors and the 2,600 senior doctors. Other workers, including 250 radiation therapists, about 1,600 public and private lab workers, and medical radiation technologists, were also pushing for pay rises. It was reported that the largely Government-funded nurses' pay settlement had raised pay expectations throughout the health sector.

Further action in the health sector included a 14-hour nationwide strike by radiation therapists which disrupted treatment for nearly 500 cancer patients. The union's main demands concerned cost-of-living pay rises, contribution to superannuation and long wait lists (up to 20 months) while the employers had offered no across-the-board pay rises as they preferred to rely on individual merit pay rises.

During the month, concerns of a national strike by junior doctors mounted as talks with their district health board employers broke down. The Resident Doctors Association claimed a substantial pay increase and the health boards responded with an offer of 2.92%. The employers proposed a “memorandum of understanding” as part of their claim, which suggested a committee made up of health board and union staff should make joint decisions on employment conditions. One source claimed that this was a “red rag to a bull” and was almost guaranteed to provoke a hostile union response.

Patients could be charged more to see their family doctor unless the Government helped meet a \$22 million pay claim from nurses in the primary health care sector. Nurses Organisation’ representatives told Parliament’s health select committee yesterday that registered nurses working in GP clinics would earn \$195 a week less than their hospital counterparts from July 2006. The pay gap was driving nurses out of the community sector, and could threaten the success of the Government’s primary health strategy.

Air New Zealand’s Chief Executive Rob Fyfe was quoted in the *Press* as saying that engineers will have to make further work practice and productivity improvements to hold onto key aircraft contracts (see February Chronicle). He also claimed that there would need to be continual improvements in productivity, processes, and turnaround time to meet the company’s budget targets.

The *Dominion Post* reported on the Airline pilots’ union efforts in the Court of Appeal over its interpretation of public holiday entitlements recognised. The Holidays Act 2003 has spawned a number of cases over how seven-day-a-week industries treat public holiday entitlements. The airline claimed that pilots were given 11 extra days’ leave in lieu of designated public holidays, and that even though they would be unlikely to be rostered to work all 11 public holidays, the airline was content to give them more days off than necessary in return for not having to pay half as much again to have them work public holidays.

A security guard was awarded \$4,000 by the Employment Relations Authority after it determined that the company he worked for had an “unsafe work system”. The guard had been kidnapped and robbed at gunpoint and was so traumatised by the robbery that he could not return to work. He suffered post-traumatic stress disorder after the robbery and told his employer through a lawyer that he could not keep working for the firm. The Authority found that his employer had not given him training on how to cope with the after-effects of an armed robbery, or proper support and counselling.

The very unusual case of an employee of Sky TV with bad body odour culminated in a hearing before the Employment Relations Authority. It began with a petition passed between workmates, complaining about the “smorgasbord of female smells” that had been bothering staff for months. Sky TV had the air conditioning checked and the filters changed. A fragrance-emitting unit and a fresh-air vent were moved for optimum air circulation. With complaints continuing, a female employee was called in to speak to the woman about personal hygiene. The woman resigned and claimed that she was simply victimised and harassed. The Authority found in favour of Sky TV but the *NZ Herald* reported that employment experts who read the Authority

decision were critical of it, some saying that the odour allegations could have been a psychological bullying tactic.

The *NBR* commented on the Employment Court's decision in *Jesudhass v Just Hotel Ltd* that changed the law on confidentiality in employment mediation. The previous position was that any communication for the purposes of mediation was sacrosanct. This was overturned, resulting in what some commentators regarded as a new and more flexible interpretation of section 148 of the Employment Relations Act 2000. This section confirms that, without the consent of the parties, a person taking part in mediation through the Department of Labour must keep confidential any statement, admission, or document created or made for the purposes of mediation and any information, for the purposes of mediation, disclosed orally in the course of the mediation. The *Jesudhass* case involved an employee alleging in the course of mediation that his employer, through the mediator, had relayed to him that he would not be permitted to return to work and he would be dismissed immediately after mediation. The employer denied having done this, but the employee was subsequently dismissed after the mediation. In making the decision, the court recognised injustices may result. However, the court found section 148 did not give it any choice. The court held: "Parliament has rejected [a] balanced approach and has opted for an absolute maintenance of mediation integrity at the expense of achieving justice, albeit in rare and exceptional cases."

The *Southland Times* reported on the launch of a new resource kit to help dairy farmers improve employment relations in the workplace. Funded by Dairy InSight and developed in consultation with the dairy industry, the employment health assessment kit allowed farmers to measure and, if necessary, improve their performance as employers. Based around 15 key questions, the assessment was designed to get employers thinking about the 10 main factors that affected people on farms, including recruitment, communication, performance management, working environment, remuneration and retention. ATR Solutions managing director Shaun Wilson said the kit was a first for the industry and that "the challenge for the industry was to come to grips with its employment image".

The *NZ Herald* reported on the new face of unionism who will be appearing at the May Day celebrations. The article commented that along with the ageing rump of a movement that once held governments in its sway there would be strikingly young people: casual workers in fast-food outlets, school children, 'God-fearing' Pacific Islanders, militant students, and anarchists. Leader of the Unite union Matt McCarten said that "you'll have all the old codgers, the old warriors, and you'll have the new blood". The article reflected that the increase in union membership had risen since the Employment Relations Act restored union access to worksites in 1999, however had barely kept pace with the growth in the workforce. In the private sector, the unionised workforce had slipped to about 12% and in the large retail, wholesale, restaurant and hotels sector, which employs a quarter of the workforce, union membership was only 4% in 2004.

May 2006

The Bill proposing a probation period for all new workers continued to receive media publicity. A writer in the *Dominion Post* claimed that some employees were missing out on employment opportunities because employers were not prepared to take a chance on them. The writer claimed that a whole range of people needed employers to be able to take a chance on them, including people with overseas qualifications, new immigrants, those with no recent work experience, as well as those wanting to step up in their careers or change their career path. Yet another commentator in the *NZ Herald* claimed that the proposed Bill was a complete removal of any employment rights for the first 90 days, not a genuine, agreed probationary period between an employer and employee, which the Employment Relations Act already provided.

The *NZ Herald* highlighted a meat industry report that claimed that sick leave had risen by 39% in the year to March 2005. This amounted to an increase to 81,400 sick days from the 58,600 sick days reported in the previous 12 months. Business New Zealand's Chief Executive Phil O'Reilly claimed that similar trends were visible in other industries. Interestingly, Minister of Labour Ruth Dyson urged employers to use provisions in the Holidays Act to combat workers exploiting the Act's sick leave provisions.

A claim by The Engineering, Printing and Manufacturing Union (EPMU) for a 7% pay rise for workers covered by the metals collective employment agreement was dismissed as 'crazy' by the manufacturing sector. The EPMU, (that was behind the 'Five in '05 campaign' in 2005), began the lead up to this year's negotiations with a stop work meetings in Auckland, Christchurch and Wellington.

Yet again health workers were warned to be realistic with their pay expectations, as health boards struggled to balance budgets without cutting services. It was estimated that renegotiating collective employment agreements for 2,500 junior doctors and 2,600 senior doctors could cost millions of dollars. The *Dominion Post* reported that other workers, including 250 radiation therapists, about 1600 public and private lab workers, and medical radiation technologists were also pushing for pay rises. The radiation therapists' union threatened further industrial action if district health boards did not improve their zero pay offer. Members of the Apex union were seeking a 5 per cent pay rise and its National Secretary Deborah Powell stated that if employers did not budge, a strike notice would be issued.

The decision by junior doctors to strike received widespread media coverage. With their district health board employers, the doctors had been negotiating a new contract for about six months. Resident Doctors Association's General Secretary Deborah Powell said that an official notice of industrial action had not yet been issued to district health boards and she could not say whether a strike would go ahead or for how long. Dr Powell said junior doctors have not had a pay rise in four years and were leaving their \$21-an-hour jobs to work as locums for \$75 to \$100 an hour. Health boards had offered a 2.9 per cent pay increase, which had been rejected by the union.

The *Dominion Post* reported that the Meatworkers Union and AFFCO had reached an agreement on a collective employment agreement that covered 3,000 workers at

AFFCO's plants. National Secretary of the Meatworkers Union Dave Eastlake commented that the negotiations had been delayed by issues surrounding AFFCO's new Awarua plant. However, the union was happy with the revised deal put before them, but would not disclose what this included.

Around 200 caregivers at 11 former Salvation Army aged care homes around the country gave their union a near-unanimous mandate to call a strike in support of a pay rise. The Salvation Army had sold the homes to the Australian corporate Elder Care in 2005 and the current negotiations between the Service and Food Workers Union and Eldercare had stalled as staff had resisted cuts in their pay and conditions. At stake were: a \$100-a-year shoe allowance, cuts to 10-minute handover meetings between shifts, and a 50c-an-hour pay reduction for new caregivers.

Both the *Press* and the *Dominion Post* reported that a group of Ukrainian fishermen on the boat Malakhov Kurgan locked themselves in a cabin and went a hunger strike. Four of the eight crewmen remaining on the boat at Lyttelton Port were protesting about work conditions and they had not been paid wages owed to them.

A Barman was awarded more than \$45,000 after he was dismissed following three armed robberies at the pub where he worked. It was claimed that the barman went from a "happy-go-lucky" man to being "fearful in many aspects of his day-to-day life" after three robberies in three months at Richardson's Tavern, Auckland. In one robbery, a shotgun was thrust in his face. The ruling by the Employment Court criticised the Portage Licensing Trust for poor security measures against robberies at the tavern, and not doing enough to support the employee after the robberies. A stress disorder "was materially caused by the trust's breaches".

The *Independent* reported on a Waitoa tannery worker who absconded from his employer after being overpaid \$3,500 in his salary. The employee mistakenly recorded his hourly rate at \$201.08 instead of his usual \$13. The employee reached an agreement with his foreman that he would repay the money at \$75 a week and signed an authority permitting the deductions to be made. However, before the first payment could be made pursuant to the deduction authority, the employee abandoned his job. The Employment Relations Authority ordered the employee to repay \$3,542.79 to his employer to reimburse it for overpaid wages and also ordered him to pay his former bosses \$500 in costs. There was no appearance, nor any word from the employee.

The Waikato Students Union was ordered by the Employment Relations Authority to pay a former employee \$10,000 for "hurt and humiliation" inflicted by the student union President. According to *Waikato Times*, the compensation was one of the highest sums awarded by the Authority for a grievance relating to "failure to provide a safe workplace". The Authority said that the stress suffered by the employee was at a level more serious than seen before. The employee had her employment agreement revoked when she was elected to a position on the student union executive. She was dismissed by the President of the Students Union, only for the executive to reinstate her. In September 2003, the employee took stress leave; during this period she was advised that because of financial difficulties the union was reviewing all staffing requirements. The employee was duly made redundant which she claimed was a sham but she had since accepted it was necessary. In her application to the Authority in June 2004, her grievances included feeling "unsafe in the current working

environment of the WSU” and having suffered “prejudicial and discriminatory” treatment from the President of the student union, including “violence in his looks”.

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