

## Chronicle June 2006 to September 2006

### June 2006

The debate around the Employment Relations (Probationary Employment) Amendment Bill continued (see May Chronicle). In the *Dominion Post*, one of the Council of Trade Union leaders, Carol Beaumont, wrote that the Bill attacked the rights of every employee in New Zealand. Ms Beaumont slated the Bill as unnecessary, unfair and unproductive. As every New Zealander changed jobs, on average, about six times in their lifetime, it was estimated that, at any one time, around 300,000 workers would be with be covered by the probationary provisions. However, the Bill's promoter Dr Wayne Mapp responded by stating that the "union movement is still living in the world of class struggle" and that "the reaction from union quarters has actually been quite hysterical and over the top". He concluded that the Bill would help new workers and assist those on the margins of the labour force "to get a foot in the door".

The future of the Bill started to look uncertain when United Future said it would oppose that people, who changed jobs, would be subject to its provisions. While agreeing with the probationary provision applying to new employees, the leader of United Future, Peter Dunne, stated that it would be problematic if the Bill meant that every time a worker changed jobs then they would have to endure another probationary period. In response, Dr Mapp acknowledged that he may need to soften the Bill if it was to pass. He also suggested further changes such as the inclusion of an employers' code of conduct and limiting the Bill to smaller workplaces. The National Secretary of the engineering union (EPMU), Andrew Little, rejected the proposed code as being toothless and unenforceable.

Besides the Employment Relations Amendment Bill, industrial unrest in the health sector featured prominently in the media. The strike by junior doctors became a reality and it received extensive, often negative, coverage in the media. The *Press* reported that the dispute was over working hours, with the Resident Doctors' Association (NZRDA) saying that a 72-hour maximum working week was too long. The Association also rejected a proposal of a joint committee to negotiate changes to hours and rosters. Several newspapers highlighted that contingency planning saw consultant doctors, not normally rostered to work at hospitals overnight or weekends, being offered about \$200 an hour as an inducement to cover the shifts usually staffed by junior doctors.

The strike action by junior doctors prompted a string of critical media comments. The *Press* stated that the junior doctors' case seemed weak and while the employer, the District Health Boards, appeared "calm and reasonable, the rhetoric emerging from the doctors' union has been characterised by the kind of stridency that would do credit to the cloth capped secretary of a miners' union". The *NZ Herald* joined in the rhetoric when it suggested that the delays caused to patients were "calculated and cruel" and accused the NZRDA of "needless industrial theatre". The article also recalled similar claims of punishing rosters by the Association in 2004, 2003, 2001 and 2000. The *Sunday Star Times* reported that union leader Deborah Powell's job could be on the line in the wake of the industrial action as many regarded it as a costly failure. The article claimed that a rift between junior doctors and hospital

management was widening, while fractures were also appearing between senior and junior doctors as well as within the ranks of junior doctors.

Further criticism of the junior doctors came in a *NZ Herald* editorial which commented somewhat ironically that it hoped that the doctors used their time profitably and eliminated the sleep deficits which they believed made them so potentially dangerous to patient welfare. The editorial claimed that the strike was not about specific changes to working hours, an increase in the rate of pay or allowances or conditions. Instead it was about the mechanics of how the two parties negotiated those issues.

The *Nelson Mail* also featured critical articles about the junior doctors' strike. Before the planned five-day strike by junior doctors went ahead, it reported that Nelson Hospital would be forced to postpone all but urgent surgery and concentrate on emergency services. In a later *Nelson Mail* article, an advocate for New Zealand's District Health Boards accused junior doctors of using "cynical" delaying tactics to frustrate the organisation of emergency cover for the planned strike and added that it had been difficult to get any cooperation from the union and junior doctors.

After the strike, the *NZ Herald* reported that signs were looking positive for a settlement. General Secretary of the Resident Doctors' Association, Deborah Powell, said the parties were "working on a new way forward".

Several newspapers reported that the 'Metals' multi-employer collective agreement. Both the Press and the Dominion Post reported that the "Metals" collective deal had been settled at 4.25%. The Metals agreement covered over 2000 workers at about 180 companies and has been regarded as a benchmark for agreements covering other manufacturing businesses. The Engineering, Printing and Manufacturing Union had initially claimed 7% which was labelled as 'crazy' by a Canterbury manufacturers group. While conceding that 4.25% was a more realistic figure some manufacturers warned that the increase could threaten jobs as it would make them less competitive against Chinese manufacturers.

The *Dominion Post* reported that the Employment Court had ordered Farmers Holdings to pay a former executive, Gijs Faber, a bonus of \$120,000 for staying with the company through its sale negotiations. Mr Faber resigned without being informed of the company's pending sale and he was never paid the bonus. The Court ruled that withholding the sale information was a breach of the employer's good faith obligations under the Employment Relations Act.

Two decisions of the Employment Court regarding wrongful dismissal of employees featured prominently in the media. In one of the first cases to come before the Employment Court since amendments to the Employment Relations Act in December 2004, the Court found that Air New Zealand had acted wrongly in dismissing an employee. Air New Zealand dismissed the employee after investigating complaints laid against her for poor service and an admission that she pushed a co-worker during a dispute. The Court said that the amendment to the Act changed how employers dealt with employees, shifting the focus from what the individual employer thinks is the best way to handle the situation, to what a "fair and reasonable" employer would do. The Court found that a fair process might have resulted in a justified dismissal

but Air New Zealand failed to talk to all the relevant parties involved, thereby failing “properly to weigh all the circumstances under which the alleged misconduct occurred”.

In a second case, the *NZ Herald* reported that the Employment Relations Authority ordered an employer to pay \$2,400 to a plasterer who wrote graffiti on a client’s house. The Authority ruled that the employee did not get an unequivocal warning that his job was at risk. The employer labelled the decision “ridiculous” and was seeking legal advice about whether to appeal the decision.

The CEO of the Employers and Manufacturers Association, Phil O’Reilly, argued that the two cases highlighted real problems with dismissal law in New Zealand. He claimed that in each case the dismissal was warranted but the employer had to pay because the employer did not go through all the proper procedural steps to dismiss the employees. He supported his stance further by pointing to an Employers and Manufacturers Association (Northern) report which had identified a 28% rise in grievances in the past year, with awards for hurt and humiliation averaging about \$5000. Mr O’Reilly called for the Employment Relations Act to be simplified and clarified, including the introduction a probationary period for new employees.

The *Dominion Post* reported a dramatic increase in personal grievance claims lodged by staff against Child, Youth and Family Services. Answers to parliamentary questions showed that 24 personal grievance claims had been lodged against Child, Youth and Family Services in the year to August 2002 while in the period between January 2005 and March 2006, there were 45 claims.

Tens of thousands of people congregated in Australian cities to protest against new employment relations laws (the so-called “Work Choices” legislation). The *NZ Herald* wrote that the laws, which removed many rights and conditions that had protected workers for decades, were a defining battleground for the next federal election (expected to be held in the second half of 2007).

The *NBR* took issue with a report released by Standards New Zealand. The report intended to set out best practice for evaluating job positions within an organisation and in the market. The report was intended to eliminate any gender biases that might privilege male or female dominated occupations or positions. The *NBR* claimed somewhat ironically that the report would allow New Zealand to “stake a claim for being the most politically correct country on the planet” and that there are fears the government’s internal review of gender pay equity would encroach on the private sector after the Department of Labour had commissioned Standards New Zealand to develop the national standard.

## **July 2006**

The debate over the Employment Relations (Probationary Employment) Amendment Bill continued (see June Chronicle) as the union movement held a number of protests to voice their opposition to the Bill. The *Taranaki Daily News* reported that 100 Fonterra cheese workers marched through Eltham while the *Dominion Post* reported

that a contingent of 600 protested on Parliament's lawn. The promoter of the Bill, Dr Wayne Mapp, was loudly booed when he tried to address the crowd.

The Transport and Industrial Relations Select Committee hearing on the Bill started near the end of July. The *Nelson Mail* reported that the CTU president Ross Wilson told the committee that the Bill was an attack on the fundamental human rights of the most vulnerable employees. The Bill's promoter, Dr Wayne Mapp, said that the Bill would allow employers to give a chance of work to young people and others types of employees without fear of personal grievance cases if they were not up to the job. Dr Mapp told the Select Committee that his main purpose was to help groups, such as Maori, immigrants and women returning to the workforce, who found it difficult to break into employment. Dr Mapp conceded that the Bill might need to be amended to shorten the 13-week benefit stand-down for employees who did not get a job after 90 days, and include voluntary employer codes of conduct as well as shorter probation periods for casual workers. The *Dominion Post* reported on clothing manufacturer Douglas Voon who had a clear impression of the Bill. Mr Voon said the Bill would stop new employees from taking personal grievances in their first 90 days on the job and would allow small businesses to test staff.

Another contentious piece of legislation was before the Transport and Industrial Relations Select Committee. The *Dominion Post* reported on the select committee hearings into Green MP Sue Bradford's Bill to remove the distinction between youth and adult minimum wages. Fifteen-year-old schoolgirl Ashleigh Saunders, who works at a supermarket, was part of a National Distribution Union delegation submitting on the Bill. National MP Wayne Mapp said that paying all workers the adult rate would increase prices, especially as there were moves to introduce an adult rate of \$12 an hour.

The *Dominion Post* reported that the New Zealand Fire Service Commission was given leave to appeal against the decision of the Employment Court to grant a day off to firefighters for each public holiday worked. The Fire Service estimated the decision could cost millions as it meant that firefighters would also be entitled to back pay to 2004, when the Holidays Act 2003 took effect.

The *Timaru Herald* reported that a collective agreement was reached with boning room workers at the Smithfield freezing works. The settlement of the agreement would mean that a planned \$11m upgrade could proceed. Following a two-year impasse between workers and management, there had been fears that the freezing works would close with the loss of 500 jobs.

Numerous strikes occurred throughout New Zealand during July. Industrial action struck Wellington rail commuters as rail track workers from the Rail and Maritime Union sought a \$1.38 increase in their hourly rate of \$14.84. The *Dominion Post* highlighted the owner's – Ontrack - claim that wage demands would cost \$4.2m. However, the company offered to meet the union through a mediator.

Air commuters were also affected by industrial action. The *Press* reported that some flights in and out of Christchurch were cancelled because of continuing industrial action by Mt Cook Airline pilots. Flights were disrupted because some pilots had

been sick and other pilots would not cover shifts beyond those that they had already been rostered on.

The fallout from the junior doctors' strike continued during July. The *Sunday Star Times* and the *Dominion Post* reported that hospitals were refusing to hand over pay records to the doctor's union amid fears strike-breaking doctors might become the target of a union witch-hunt. The Resident Doctors' Association was demanding to know what its 2000 doctors were paid during the period of the strike, igniting a fresh dispute with health boards. While the RDA said it simply wanted to ensure its doctors were paid correctly during the strike, sources from several hospitals believed it was an attempt to discover which doctors broke the strike.

The *Southland Times* reported that sixty of its staff took industrial action over contract negotiations. The National Secretary of the Engineering, Printing and Manufacturing Union (EPMU) Andrew Little said the union members were frustrated that, despite long negotiations and mediation, the company was refusing to provide the same conditions as staff at other Fairfax-owned papers in New Zealand.

The *Press* reported that Canterbury meat processors who supply Progressive Enterprises supermarkets began a five-day strike. NZ Meat Union Canterbury spokesperson claimed that the processors were earning 30% to 50% less than industry standards. The union was seeking a 16-month collective agreement with a 12% pay rise, which would take workers up to \$15.50 an hour in a first step towards pay parity with others in the industry.

The *Press* reported that Child, Youth and Family (CYF) denied poor management was behind an exceptionally high number of personal grievance cases taken by its staff (see June Chronicle). The union claimed that the complaints were indicative of poor management culture and low staff morale. In a reply to an Official Information Act request, CYF's Chief Executive Peter Hughes stated that the 43 personal grievances lodged in 2005 represented only 1% of all staff.

Both the *Dominion Post* and the *Press* reported that the dismissal of four Christchurch based Air New Zealand engineers for accessing inappropriate internet sites was found to be unjustified. The Employment Relations Authority ordered the airline to reinstate the workers and pay them \$76,695 in lost wages and compensation. The airline announced it was likely to appeal the finding.

The *NZ Herald* reported that finance company Hanover Group was ordered by the Employment Relations Authority to pay a former CEO \$750,000, plus interest of more than \$50,000. The CEO was originally made redundant but Hanover then alleged he breached a restraint of business deed when he accepted a CEO position at a rival company, one month before his effective resignation date. The payout was believed to be the biggest the Authority had awarded since it was established in 1999 and possibly the biggest in New Zealand employment law history.

A number of articles appeared in the media relating to the Employment Court decision in *Air New Zealand v Hudson* (see June Chronicle). An article in the *Dominion Post* claimed that the new test introduced under the Employment Relations Amendment to the Act was helpful to employees because it created a harsher test for

an employer to justify any decision to dismiss. The article went on to say that before the amendment the test depended on whether there was a fair investigation into the allegations of misconduct and if this requirement was met, then the test was whether the employer had an honest belief, based on reasonable grounds, that serious misconduct had occurred. Generally, if there was a fair and thorough investigation there would be grounds upon which an employer could form that view. The new test allowed the Employment Court to substitute the objective test of the “reasonable employer”. The *NBR* stated that the new test highlighted the need for complete objectivity by the employer.

## **August 2006**

The Employment Relations (Probationary Employment) Amendment Bill continued to receive widespread media coverage (see July Chronicle). In an article reporting on the select committee hearings, the *Press* commented that, judging by the diverse views expressed on the Bill, it was sometimes difficult to work out if supporters and opponents were talking about the same piece of legislation. By late August, however, the *Dominion Post* predicted that the Bill was doomed after the Maori Party indicated it would withdraw its parliamentary support.

An article in the *NZ Herald* suggested that, according to the Human Rights Commission, New Zealand employers could potentially advertise for non-smokers only, without violating the Human Rights Act. A spokesperson from the Department of Labour appeared to support this interpretation when the spokesperson agreed that smoking fell outside the Employment Relations Act. Anti-smoking lobby group Ash stated that while it could understand employers wanting non-smoking employees, it opposed employers deliberately hiring non-smokers.

The transport and industrial relations select committee presented its report on the Employment Relations Amendment Bill. The Bill was the second attempt by the government at extending job security to employees in the catering and cleaning industries. In 2005, the Employment Court found the right to transfer employment only applied where an organisation was contracting out a part of its work that was currently done in-house, not to so-called “second generation” contracting.

The *Press* reported that Mount Cook Airline and its pilots had agreed to renew talks in order to break the deadlock in a year-long dispute which had caused hundreds of flight cancellations and disrupted the travel of thousands of passengers (see July Chronicle). Mt Cook Airlines was successful in its application to the Employment Relations Authority for facilitated bargaining. The dispute related to twice yearly courses in Bangkok that pilots were required to complete to maintain their flying licence. The pilots association had insisted that the pilots flew business class to Thailand, while Mount Cook wanted them to fly economy.

Meanwhile, the troubled health sector again featured prevalently in the media. The *Dominion Post* reported that senior doctors would return to the negotiating table after the Association had claimed that an 8% pay rise was needed to ensure that their salaries remained competitive. The Executive Director of the Association of Salaried Medical Specialists Ian Powell pointed to that, in response to workforce shortages,

salaries offered to Australian senior doctors in New South Wales and Queensland had increased significantly this year.

The *Dominion Post* also reported that junior doctors were considering more strike action as their union accused District Health Boards of deliberately stalling negotiations. The General Secretary of the Resident Doctors Association Deborah Powell said the boards had begun delaying talks in order to force doctors out of existing employment conditions. Dr Powell said that information about the boards' "tactics" had been sent to members and they were deciding what action to take (including strike action). DHB Spokesperson Nigel Murray said that Dr Powell's comments were irresponsible and designed to drum up support for another strike.

The spectre of strike action from yet another group of health sector employees was reported in the *Southland Times* as radiographers, working in hospitals in six District Health Boards confirmed dates for a three-day strike. The National Secretary of the Association of Professional and Executive Employees Deborah Powell said the radiographers wanted parity in wages and conditions with colleagues who settled their collective agreement last year. A DHB Spokesperson said that employers would like to have a nationally consistent set of terms and conditions for radiographers but this was not achievable in the short term.

The *Dominion Post* reported that former academic Michael James lost a battle over his dismissal by Unitec in 2003. Mr James, who was the former head of the design school, had been dismissed for waiving the course fee of a female student he was pursuing a relationship with. The Employment Relations Authority determined that the dismissal was justified.

The *Press* reported that the Christchurch City Council was ordered to pay \$32,500 to an employee for failing to prevent his stress and ill health. The employee, who worked for the council for over 10 years and was former team manager, took the council to court (seeking \$200,000 in compensation) after he suffered stress in his job. The Employment Relations Authority found that the council had caused harm by not recognising the employee's stress. His immediate manager knew that he was in difficulty but did not inform senior management or human resources staff.

The *Dominion Post* reported that the woman, who forced the Corrections Department to change its Maori cultural practices policy, was told she could not get legal assistance to pursue a Human Rights Commission complaint. This was despite that the Commission's legal office admitted: that her rights were likely to have been breached, that Corrections had discriminated against women in holding a Maori farewell ceremony and that resolution of her complaint would "affect a large number of people".

Both the *Waikato Times* and the *Independent* featured the findings of the Industrial Centre's 13<sup>th</sup> Annual Report on employment agreements, bargaining trends and employment law. When presenting the report findings in a seminar in Hamilton, Professor George Lafferty suggested that wages were only starting to catch up with recent favourable economic conditions after years in the doldrums. The report stated "there have been significant gains for many workers in low-paid industries where wages had fallen behind in the 1990s. So they appear to be eventually gaining some

benefits from an extended period of economic growth, increased profitability, skills shortages and low unemployment.” In the past couple of years, unions had “built up their confidence” and collective agreements for nurses and in the metal and manufacturing industries had helped to set the platform for better pay and conditions for workers. According to the report, which covered collective employment agreements for parts of 2005 and 2006, 82 per cent of workers surveyed had wage increases between 2% and 4.9% in 2006. Over the past 15 years, the average increase for collective agreements had been a “modest” 2.3% each year. The report advocated that more focus was needed on “vulnerable” workers, those on minimum or youth wages and on developing work-life balance.

The political row over Labour MP Taito Phillip Field had an employment twist when the *NZ Herald* reported a Labour Department finding that there was no basis for inquiring into allegations that he breached the Minimum Wage Act with payments made to Thai workers who painted his houses. The Department stressed that the painters were in a contracting relationship, not an employment one, and were, therefore, not covered by the Employment Relations Act. The Department’s comment came after National MP Wayne Mapp lodged an official complaint with the department about Mr Field in July, after the release of the report by Noel Ingram QC into the Mr Field’s relationship with a group of Thai people he had given immigration assistance to.

The *Dominion Post* reported that the former Managing Director of Air New Zealand Ralph Norris received a final payout of \$1.06 million from the airline after he left in 2005 to start a \$7.6 million-a-year job as head of the Commonwealth Bank of Australia. His payout consisted of an \$853,417 bonus for his final year at Air New Zealand and \$208,705 salary for the first two months of the 2006 financial year before he left.

## **September 2006**

Media reports on employment relations were dominated by two very high profile strikes. The health sector was again prominent but a long bitter dispute between Progressive Enterprises and its distribution workers also featured.

The month started with the news that striking distribution workers and their employer - supermarket chain Progressive Enterprises - were ordered back to mediation in a bid to end a week long strike. The striking workers were demanding wage increases and a national collective agreement for all three distribution centres owned and operated by Progressive Enterprises. The workers’ union - the National Distribution Union - had originally sought an interim injunction to stop the employer from using non union labour to break the strike. While both parties stated in the media that they looked forward to resolving the dispute the parties soon became deadlocked when 500 workers were locked out of Progressive Enterprises Auckland, Christchurch and Palmerston North distribution centres.

There were also media reports that violence had broken out on picket lines. In Christchurch, picketers harassed a worker trying to enter the distribution centre and shook his car. A Progressive spokeswoman described the Christchurch picket line as



“particularly militant”. But the National Distribution Union’s Spokesperson Laila Harre said it was inevitable “tensions will run high” as workers tried to keep strike breakers away from the distribution centres.

During the strike’s second week, the *Press* suggested that the dispute was as much about public relations as it was about pay rises and costs of the agreement. The *Press*’ Editorial claimed that the National Distribution Union was anxious to paint Progressive Enterprises as a foreign company indulging in aggressive industrial tactics imported from its Australian home. The *Press* also evaluated that the union appeared to be winning the publicity battle.

The *Sunday Star Times* featured the impact of the prolonged strike on two of the striking workers. The young married couple from Mangere said that two weeks with no pay was putting a strain on their finances and that they could no longer meet their loan and car repayments. The couple said that they never expected the initial two-day strike would end in a lockout. Still, they had no regrets as they thought they were fighting for a “good cause”.

According to the *Press*, the National Distribution Union and the Engineering, Printing and Manufacturing Union were shocked that Progressive Enterprises appeared to want union members to give up their right to bargain. Other unions had started to mobilise support of the striking workers. The article posed the question of whether unions were finding their “mojo” again after the Employment Contracts Act had emasculated them in the early 1990s.

Three weeks into the strike, the *Dominion Post* suggested that the dispute had united unions in New Zealand and around the world. Donations to the striking workers’ fund were coming from Australia and the United States. It was also reported that watersiders in both Australia and New Zealand were considering blocking the containers of Progressive Enterprises at the ports. However, Progressive Enterprises said it was willing to negotiate a reasonable deal with workers under the three existing collective agreements. As the strike entered its fourth week, the parties settled after two days of mediation.

Meanwhile, the health sector faced more industrial action when radiographers announced a three-day strike. Radiation technologists from seven District Health Boards (DHBs) were seeking a multi-employer collective agreement with the same pay and conditions as their counterparts in the North Island. As a result, hospitals had to postpone scheduled operations and could only treat severely ill patients. The *Press* highlighted that the radiographers had announced that they would follow the initial strike with a one-day strike and their union also warned of the possibility of a third strike. A spokesperson from the DHBs claimed the second notice was “deliberately and cynically timed” to have the maximum impact on patients.

The strike went ahead as planned leaving hospitals in "emergency mode" according to the *Press* as the care of thousands of patients was disrupted. The radiographers had agreed to work only on people who were in life-threatening situations but the Otago District Health Board was accused of breaking this understanding, according to reports in the *NZ Herald*.

The second strike by radiographers went ahead, although a Spokesperson from the DHBs argued that the strikes could have been prevented had the radiographers' union - Apex - been prepared to compromise. The DHBs had agreed to meet the union's pay demand but the pay rises would be paid over 2.5 years, instead of 2 years.

By the end of September, the radiographers returned to work with the promise of renewed negotiations. Neither side was prepared to discuss the strikes or the talks, with the union promising to "give the rhetoric a rest" as they sought an exit from what was claimed to be an expensive impasse.

However, the *Dominion Post* reported that yet another group in the health sector had announced intentions to take industrial action. Negotiations between the senior doctors and the District Health Boards appeared to have reached an impasse (see August Chronicle). The Executive Director of the Association of Salaried Medical Specialists Ian Powell argued that the union had made significant compromises but the boards had adopted a hard line. Although there was no plan to strike, this could not be ruled out. The DHBs had offered the senior doctors an increase of about 7% over three years, compared with the 29% over four years awarded to senior doctors in New South Wales.

The *Dominion Post* reported on a bizarre case at the Employment Relations Authority which involved a crane operator. The crane operator had confessed to his employer that he had an alcohol problem. Subsequently, he was dismissed for failing a breath test when he said he had not been drinking. The Authority determined that he had been unfairly dismissed. When the employee voluntarily admitted that he had an alcohol problem a rehabilitation agreement was drawn up which required the employee to complete a detoxication programme, attend a medical course and agree to random breath tests. The employee was told that, if a random breath test found traces of alcohol, he would be dismissed. These requirements were found to be "punitive and not rehabilitative" as they were in effect a "one strike and you're out" scenario.

The *Dominion Post* reported that according to a human resources specialist, workplace bullying was widespread in New Zealand. The specialist claimed that if she talked about the problem to a roomful of 100 people, "60 to 70 of them will be nodding their heads, knowing just what I am talking about". She also claimed that there was virtually no place for people to turn to for help. Employers were urged to get rid of bullies "as fast as possible" as the ongoing effects on individuals and companies could be devastating.

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