

Chronicle

June 2007

An article in the *Dominion Post* seemed to set the tone for June by predicting that parents, pupils and patients faced widespread disruption. The article noted that doctors and teachers were negotiating their collective agreements and the wage increases sought could be costing over \$1 billion. This put the Government in a tricky situation as, on one hand, it was under pressure to prevent industrial action but, on the other hand, the Government had to head Reserve Bank warnings against “extravagant” wage rises which would fuel inflation.

The *Press* reported that primary school principals had started a series of meetings to vote on their pay claim, estimated to be worth \$35 million. The President of the New Zealand Educational Institute (NZEI) Irene Cooper said the claim reflected the “complex and demanding role of principals” and that it would help with recruitment and retention. The principals were seeking pay increases between 5% and 18% in the first year and with 4% increases in the second and third year.

The simmering dispute between hospital orderlies, cleaners and kitchen staff and their employers continued to receive extensive media coverage with a series of articles in the *Manawatu Times*, the *Southland Times*, *NZ Herald*, and the *Timaru Herald*. The main theme was that employers had been given a reprieve from threatened strike action. The Service and Food Workers’ Union (SFWU) said that the workers had cut their claim from \$16.54 to \$15.20 an hour in an attempt to reach a compromise. The union had issued rolling strike notices (see May 2007 Chronicle) and the main employer (Spotless Services), responded with lockout notices. A *Southland Times* article on 5 June suggested that a compromise was possible with SFWU spokesman Alastair Duncan saying that last-minute talks had opened sufficient space for a return to mediation. He was quoted as saying that “the latest offer is an increase of 50c on the previous rate lifting the entry level rates to \$13.60 with a top rate of \$15.60”. Furthermore, the opportunity to audit the District Health Board figures was another important development.

Industrial action at Southland hospital continued with the *Southland Times* reporting that cancer patients waiting for bone scans and patients needing heart scans were amongst some of the affected patients. About 20 medical radiation technologists had taken industrial action and this had affected after-hours radiology services. However, a later article suggested that “a highly productive meeting with district health board representatives” resulted in the union radiographers deciding not to issue further strike notices.

Meanwhile, senior doctors were considering their first ever national strike with the Association of Salaried Medical Specialists (ASMS), representing about 90 per cent of senior hospital doctors issuing its first ever countrywide stop work notice. According to media reports, staffing issues had been behind several recent high-profile medical errors and doctors had raised, therefore, concerns about staffing levels and patient safety at provincial hospitals. The ASMS was quoted in the *Press* as saying that the district health boards’ offer of a 3.8% pay increase over four years would not ease mounting recruitment problems.

The *Nelson Mail* reported extensively on the dispute between Air Nelson and employees represented by the Engineering, Printing and Manufacturing Union (EPMU). In early June, the paper reported that workers had gone on a four-day strike as part of the second phase of industrial action after negotiations had stalled again. Subsequently, the *Press* reported that the Employment Relations Authority (ERA) rejected an EPMU claim that Air Nelson used strikebreaking labour to load aircraft (see May 2007 Chronicle). EPMU organiser Strachan Crang said the union was disappointed with the outcome of the ERA hearing and planned to appeal the decision to the Employment Court. Air Nelson then announced that it planned to use volunteer labour to load aircraft. Predictably, there was a strong reaction from the EPMU with spokesperson Strachan Crang saying “this is Air New Zealand showing its true colours. In terms of employment it has no regard for the law and will do what it likes”. However, some compromise was reached by the end of the month with the *Nelson Mail* reporting that Air Nelson workers were considering the airline’s latest agreement proposal after the two parties had met.

In another dispute involving the EPMU, the *Press* reported that tension had escalated at two West Coast mines as workers voted to strike after being refused transport to the mine entrance. The 139 miners at the Spring Creek Mine, near Greymouth, and Terrace Mine, near Reefton, were due to meet to decide any further action. The union imposed a national overtime ban and rolling stoppages at Solid Energy mines after a breakdown in collective negotiations. The union was seeking a pay rise of between 5% and 5.5% while Solid Energy had offered 4%.

The *Dominion Post* reported that Wellington bus drivers employed by NZ Bus were told they could be “fired” if they talked to passengers about inappropriate topics, including their thoughts on the company or a person’s appearance. In a memo to its drivers, NZ Bus said that it wanted drivers to hold general conversations on topics such as the weather, sport, hobbies and local events such as concerts. But subjects including sexual references, comments on physical appearance, talking about the bus company, or using abusive language were inappropriate. It is understood the instruction was issued after NZ Bus heard about a driver complaining about the company in front of passengers.

In an employment issue involving the police, the *Dominion Post* reported that the Police Commissioner was appealing to the Court of Appeal a former policeman’s right to bring a personal grievance claim years after he resigned with a \$190,000 payout from the Police Employment Rehabilitation Fund before he could be dismissed. In 2001, a disciplinary tribunal found the former policeman guilty of 31 out of 39 charges. They included sexual harassment, throwing a file at a colleague and pepper-spraying another. He lodged a personal grievance claim in January 2003, well outside the 90-day period for filing such claims. The Employment Court found that through a misunderstanding with his lawyer, the former policeman thought his ability to claim for personal grievance was preserved when instead the time to make the claim had run out. On that background, the Employment Court allowed him to make a personal grievance claim.

Both the *Press* and the *Dominion Post* reported that the unemployment in Australia had reached a 32 year low of 4.4% and that the average weekly income for an adult in

full time work, not including overtime, was \$A1,070. But the articles went on to say that it was “not all rosy on the work front” with Australian working conditions recently coming under scrutiny by the International Labour Organisation (ILO) for ignoring international requirements to promote collective bargaining. Australia's Workplace Relations Minister, Joe Hockey, dismissed Australia's inclusion on the list as an election year stunt by the Australian Council of Trade Unions' leader, Sharon Burrow, who had lobbied the ILO to look at Australia.

An article in the *Dominion Post* claimed that, while awareness and legislation had reduced the incidence of sexual harassment, bullying had replaced it as the workplace hazard of the new millennium. The article claimed that many managers did not realise how widespread the problem was and how much human and financial costs were associated with workplace bullying. Australian psychologist Evelyn Field, who is an authority on bullying, feared that bullying was on the increase due to longer working hours, individual employment agreements and more stressful working conditions. The latest statistics from the Department of Labour showed that, in the past year, 128 cases of bullying went to mediation, which was almost three times the number of sexual harassment cases. Interesting, it was found that half of workplace bullies were women, and that 70% of their victims were female.

July 2007

The *Press* and the *Dominion Post* reported that Employment Relations (Flexible Working Hours) Amendment Bill had won the support of a parliamentary select committee strengthening the likelihood that it would be passed when it came to the final vote. The Bill had already won favour from several unions, including nurses and bank workers. However, it had alarmed Business New Zealand with Chief Executive Phil O'Reilly saying that it would cause “ludicrous outcomes”. The legislation was partly drafted in response to what was seen as a culture of long working hours, with New Zealanders working an average of 1809 hours a year, compared with the average Briton who worked 1672 hours and the average German, who worked 1435 hours.

The *Nelson Mail* and the *Press* reported that union members at Air Nelson voted to accept a revised offer from their employer ending a six-week pay dispute (see May and June 2007 Chronicle). Under the settlement, union members would get a 9.5% pay rise over 30 months. An EPMU spokesman said that members had “mixed feelings” about accepting the offer as a number of new issues had come to light during the industrial action including rosters, workforce casualisation and the future use of contractors which would require future discussion with management.

The bitter dispute between service and food workers at Southland Hospital and Spotless Services appeared to be resolved with the employer “sweetening its offer” according to an article in the *Southland Times*. Spotless had agreed to meet the union's demands to pay existing and new staff \$14.25 plus penal rates.

An article in the *Press* quoted an independent health economist as saying that the quality of New Zealand's healthcare was under threat unless the Government boosted salaries. He told the *Press* the Government must intervene in long-running health sector pay disputes because employers could not afford to settle claims and the sector

was suffering. The economist also claimed that staff working in the public health system were underpaid by international standards and that New Zealand was “bleeding” well-trained medical staff overseas. A spokeswoman for Health Minister Pete Hodgson said he could not comment on the issue of health sector pay because there were ongoing negotiations.

The *Waikato Times* reported on a dispute involving local community group Parentline and its former Chief Executive Officer (see April Chronicle). The paper stated that the “bitterly fought and crippling expensive Employment Relations Authority hearing” had resumed after a three-month adjournment. The article reported that Parentline had budgeted almost a third of its total expenses for the period April to June on legal fees and there was a suggestion that it might mortgage its building to help pay the legal fees. The paper reported on the daily turn of events throughout July with accusations from both sides and a comment that the ERA adjudicator Janet Scott had “often been the real star of this soap opera”.

In a rare judicial step the *Sunday Star Times* reported that Employment Court chief judge Graeme Colgan had essentially accused government of allowing the Employment Court’s powers to be diminished with the introduction of the Employment Relations Act and its focus on mediation through the Employment Relations Authority. While the issue was technical and based around what types of cases could be heard by the Employment Relations Authority and the Employment Court, the article said that the Judge’s fear appeared to be that legally complicated cases went to a non-judicial body, which may not be qualified to hear them. In a judgement Judge Colgan said “the Employment Relations Authority is a lay authority that is not presided over by judicial officers. Its members are not required to be, and many are not, qualified and trained in law”. He went on further to say that the Employment Court’s authority had been undermined, and said “it is ultimately for Parliament to determine where cases are to be heard as questions of access to justice. When Parliament does so again, I respectfully urge it to reconsider these issues.” Auckland University associate professor of law Bill Hodge said the judge's comments were born of frustration at long-standing tensions between the Employment Court, the High Court, and the Employment Relations Authority.

The *Waikato Times* reported on a number of approaches that the Waikato District Health Board had taken to reduce a national \$60 million-a-year problem of sick leave amongst staff. It started by taking the view that it was a symptom of staff being tired. The board established that its sick rate was heavily influenced by the fact that many of its nurses, women working shifts, were running a household too. They were taking sick days because they were busy and tired, rather than skipping work for the sake of it. Innovations included offering roster changes, child care, budget advice, tai chi sessions, gym memberships were introduced. The board also made targeted approaches to staff taking excessive sick leave. After five years sick leave had been reduced by almost 50%.

The *Sunday Star Times* noted that Combined Trade Unions (CTU) president Ross Wilson was retiring after seven years as head of the union movement. When questioned about why more people don’t join unions, Wilson claimed that there was still a very hostile employer community in the private sector and that the country was paying the price of the anti-union strategies of the 1990’s. Despite the lowest

unemployment in the developed world and labour shortages in many areas, wages had failed to go up much. He claimed that it was broadly correct that unionised labour got higher wage increases than others, though this was obscured by the fact that often the wage increases were passed on to non-union people in the same area. While on opposite sides of the fence, Wilson received praise from Business New Zealand's Phil O'Reilly and Auckland Chamber of Commerce's Michael Barnett who stated that "I respect him hugely and I certainly don't see him as the enemy." On some questions he agreed with the union leader such as New Zealand shouldn't try to make low wages the basis of its ability to compete internationally. If it does, it will simply join "the race to the bottom", swapping first-world for third-world wage levels. Wilson was due to start a new role as chairman of the Accident Compensation Corporation.

August 2007

An *NBR* article reported that the Minimum Wage (Abolition of Age Discrimination) Amendment Bill returned to Parliament after a select committee hearing. Green MP Keith Locke said during the second reading of the Bill in Parliament that the Green Party stood alongside the country's young workers in their quest for 16 and 17-year-olds to be paid the adult minimum wage of \$11.25 per hour. He said that 16 and 17-year olds were often chosen by employers in the fast food and supermarket industries because they were in fact better at their jobs than older workers. Labour Minister Ruth Dyson said the government had raised the minimum youth rate to 80% of the minimum wage.

The Employment Relations (Flexible Working Hours) Amendment Bill continued its passage through the legislative chamber. The *Dominion Post* reported that while employers were embracing the "family friendly workplace", staff without children were worried they were being left to take up the slack without any benefits. One employee was quoted as saying that she had to work overtime to cover her colleagues' workload and while she accepted that it must be really difficult for mothers to juggle work and family "...my own work gets neglected during these times and I also have to work harder". The article quoted overseas examples where there was a growing backlash from childless employees who were concerned they were being polarised in the workplace saying that while this was not the case in NZ there was "simmering disquiet".

The *NBR* quoted lessons from the UK experience on flexible hours saying that the key for most employers would be getting the balance right between giving employees the flexibility and control that they want over the hours they work, while meeting the needs of the business. In the UK, most employers who had fallen foul of the legislation did not have a process to deal with requests. When challenged, they were unable to show they had fairly considered an employee's request or that their refusal of a request was reasonable.

Employment relations became an election campaign issue in the forthcoming Australian Federal election with Labor leader Kevin Rudd reiterating that if Labor was elected then it would phase out Australian Workplace Agreements, as well as committing to a balanced system of flexibility and fairness. Opposition Leader Kevin Rudd challenged Prime Minister John Howard to a public debate on employment

relations, just a day after Labor released its controversial policy on the issue. Mr Howard claimed the “policy is just as destructive of jobs in the small business sector as the earlier policy.”

The secondary teachers’ union pulled out of pay talks with the Ministry of Education, prompting fears of widespread disruption. The Post Primary Teachers’ Association (PPTA) said that the offer by the Ministry of Education represented a shortfall of \$100 million over a three period, money that was needed to retain talented teachers and attract new people to a beleaguered profession. The ministry offered 3% per year for three years while the PPTA was seeking 4% and a lower level of improvements. In late August, matters got more serious with the *Press* reporting that secondary teachers were set to walk off the job in September after the membership had voted overwhelmingly (99%) in favour of strike action. The Ministry of Education sought mediation in a bid to avert a national teachers’ strike.

The dispute between senior doctors and their employers simmered with reports by the *Nelson Mail* and the *Press* claiming that senior doctors appeared more likely to take national strike action after becoming angry at the release by a district health board negotiator of an ‘exaggerated’ statement about their pay rates (see June Chronicle). The *Press* article quoted psychiatrist Joanna Prendergast who said “there was quite a lot of heated debate about whether industrial action was the way to go ... but the overall feeling was that if we had to, we had to, for the future benefit of the medical workforce and quality of care for patients”.

In the *Press*, the Association of University Staff hailed “an unprecedented increase in staff salaries over the past three years”. Ratification of the latest collective pay agreement negotiated by the union meant that academics had gained an overall salary increase of up to 20% over a three-year period.

The *Dominion Post* reported that Kapiti Coast bus users faced a day of uncertainty after 40 drivers employed by Mana Coach Service who were members of the Tramways Union walked off the job for 24 hours. The remaining 100 drivers had agreed to a contract that provided for a pay increase in return for surrendering an extra week’s annual leave that was available after five years’ service. Tramways Union secretary Phil Griffiths said his members believed the drivers who accepted the deal had “sold them out”.

A Maori Health Trust was ordered to pay a sacked doctor more than \$10,000 compensation. The *NZ Herald* reported that Dr Tane Taylor was dismissed by Raukura Hauora o Tainui in June 2006, after almost 10 years as the “face” of the trust’s Health Clinic. Dr Taylor was dismissed for “actively undermining” the trust, and for being “antagonistic” and “hostile”. The doctor won his claims of unjustified suspension and dismissal and was awarded lost wages, as well as \$15,000 compensation for hurt and humiliation. However, the award was reduced by a third to take into account some failures on Dr Taylor’s part.

The *Southland Times* reported that Yunca Heating and Gas was unsuccessful in its challenge to a Employment Relations Authority ruling which allowed union officials to speak to union members collectively during work hours. Yunca took the Engineering Printing and Manufacturing Union (EPMU) to the Employment Court,

following a dispute between it and the EPMU (see February Chronicle). Employment Court Chief Judge Colgan who described the appeal as a test case dismissed the challenge saying that one of the principal thrusts of the Employment Relations Act was for collectivism.

The dismissal of prominent University of Auckland political scientist Paul Buchanan featured prominently. Dr Buchanan was dismissed following an email to Arab student seeking an extension to an assignment because of her father's death. The email said she was "preying on some sort of Western liberal guilt" because her father had died. Buchanan said he was unjustifiably dismissed and that he needed to be reinstated to mend damages to his reputation.

The *Waikato Times* reported the conclusion of the drawn-out Employment Relations Authority hearing between Parentline and its former CEO, 129 days after it opened (see July Chronicle). The article stated that although "the scrap has provided rich entertainment for the public, it is shameful it was allowed to get to this stage". It criticised the role of the Board saying that irrespective of the outcome the Board of Parentline should resign. The board's inability to quietly take care of business was the biggest failing and that well run organisations do not let their dirty laundry be aired in public.

In another high profile hearing, the *Dominion Post* reported that both Queen Margaret College and a terminally ill teacher who claimed his treatment at the school masked the symptoms of his cancer, claimed victory from an ERA ruling (see May Chronicle). The former teacher was awarded \$5000 compensation, but the ERA found in favour of the Wellington school on most of the alleged grievances. Authority member Rosemary Monaghan ruled that Dr Selwood had not been constructively dismissed, nor had the school acted unjustifiably.

A British survey had found that employees on high salaries were not necessarily happy with their lot. The survey by City & Guilds, one of Britain's authorities on vocational education and training, found that one-third (of a sample of 1000 people) said they were not particularly happy at work, giving a satisfaction rating of less than seven out of 10. Among those, human resources managers (2%), lawyers (4%) and secretaries (4%) scored lowest on the happiness ratings. The Happiness Index was constituted by factors that contribute to wellbeing and in the longer term could also improve productivity.

The *Dominion Post* reported that Helen Kelly had become the first woman President of the Council of Trade Unions (CTU). Other than three years teaching, Ms Kelly's entire working life had been in the union movement, across the gamut of education unions, from the Kindergarten Teachers Association and Early Childhood Workers Union to teachers' union NZEI and the Association of University Staff. She had been Vice-President of the CTU since 2003.

The *Sunday Star Times* reported on a group of labourers who were threatened with having their pay docked \$50 for spitting. Casual workers employed by NZ Labour Hire in Auckland were given notices saying that littering would cost them \$20, spitting \$50, and if they did not turn up for work for two days then they no longer had

a job. The company's operations manager Darryl Painter admitted the company did not know whether it could enforce the notices.

September 2007

A *Dominion Post* article featured the Employers and Manufacturers Association saying that an ACC "partnership" scheme should be treated with caution after meat company Affco was billed \$1 million for long-term care of a former employee. The employee was paralysed from the waist down after he was shot by mistake in a suspected gang attack in the car park of Affco's Wairoa meatworks in 2003. Under the partnership programme, Affco was responsible for work-related injury claims at its premises.

In a further development in the ongoing senior doctors' dispute with District Health Boards, the *Press* reported that senior doctors were going to ask the Government for help to resolve their bitter pay dispute (see July Chronicle). The Executive Director of the Association of Salaried Medical Specialists (ASMS) Ian Powell said that the union had resolved to go directly to the Government in an effort to avoid the otherwise inevitable escalation of the dispute, including possible industrial action. DHB lead negotiator Nigel Murray said health boards had offered a range of solutions but they had all been declined.

The secondary teachers were due to meet with the Ministry of Education in a last-ditch attempt to stave off a strike. The agreement to resume negotiations came after the teachers said that they would strike on September 12 if the government did not improve its pay offer. The ministry, which approached the Department of Labour to mediate in the pay dispute, said it was hopeful that industrial action could be averted.

Meanwhile an article in both the *Press* and the *Dominion Post* said that a \$120 million deal for 20,000 hospital nurses had been agreed, despite the nation's largest health board warning of "massive implications" for the sector. The deal gave nurses a pay rise close to 12% over three years. The New Zealand Nurses Organisation (NZNO), which had been in pay talks since March said a final response was expected any day. The Canterbury District Health Board voiced last-minute concerns over the cost of the deal and the impact on staffing requirements. A representative said the board faced a huge dilemma over how to retain nurses who were "some of the most important assets we have" while keeping within the budget.

Canterbury District Health Board maintenance workers called off a week-long strike to head back into negotiations. Around 55 technicians, electricians, fitters, carpenters, painters and gardeners were due to go on strike but voted to withdraw their strike notice after the health board signalled it was open to further negotiations. Their union, the Engineering, Printers and Manufacturing Union, said that the group was seeking a significant catch-up in pay rates of about 10% after lagging behind comparable trades for the past decade.

The *Press* reported that stationery giant OfficeMax was ordered to pay \$66,000 in compensation to eleven of its South Island sales staff for its failed bid to force through a commission scheme that would have left them out of pocket. The company was

'slated' by the Employment Relations Authority for a "fatally flawed" attempt to change the commission structure by using a consultation process the authority found to be a "sham" and done in bad faith. The dispute dated from December 2004 when OfficeMax sought to change the way sales staffs' pay was calculated which would have cut their income by between \$7,000 and \$25,000 a year. Authority member James Crighton ruled that although OfficeMax was under a duty to consider the views of staff about the plan and to operate in good faith, the staff had no reasonable opportunity to have an input.

In other industrial action, the *NZ Herald* reported that waterfront workers had given notice of a "potentially crippling" two-day strike at the Ports of Auckland after receiving a "goodwill" pay rise they said they didn't want. The port company's new Managing Director Jens Madsen said yesterday that the Maritime Union had notified it of a 48-hour strike by about 250 workers across its two container terminals and its general wharfs from October 2. Mr Madsen said staff had waited far too long for a pay rise since their collective agreement expired late last year, so the company had decided to start giving them the first instalment of a 3.25% increase it had offered them for each of the next three years. But union Branch President Denis Carlisle responded by saying that union members were incensed that the company paid the money into their bank accounts without their permission.

The fallout from the deal reached between the Engineering, Printing and Manufacturing Union (EPMU) and Air New Zealand continued (see January 2007 Chronicle). According to the *Dominion Post*, Air New Zealand planned to sue the EPMU for disclosing information about outsourcing of its ground handling staff that the airline claimed was confidential. EPMU's National Secretary Andrew Little said High Court proceedings were formally served against the union yesterday and he expected to be served with a personal summons today. The court documents called the union's actions in telling a parliamentary select committee about its employee contract renegotiation tactics "unconscionable and without justification". Court documents filed by the airline said it had suffered loss and damage to its relationship with its workers and to its public reputation as a result of what it called misuse of the information.

The *Dominion Post* reported that University of Otago was ordered to pay more than \$10,000 in compensation to an employee who found working with another staff member intolerable. The Employment Relations Authority found that, while Carol Fraser was not, as she claimed, unjustifiably constructively dismissed, there were actions by the university which disadvantaged her in carrying out her job. Between 1995 and 2006, Ms Fraser was employed as an administrative secretary/personal assistant in the university's physiology department. The departmental head, Dr Patricia Cragg, carried out a performance development review with Ms Fraser in August 2005 but would not address any issues related to the other employee. In her judgment, Authority member Helen Doyle said Dr Cragg's failure to follow up in terms of "obligations of trust, confidence and good" was unjustified because "it was not what a fair and reasonable employer would have done at the time". The university was required to pay \$9,000 for failing to provide a good and safe workplace and not taking reasonable steps to avoid further risk to Ms Fraser's physical or psychological health.

The *NZ Herald* and the *Dominion Post* reported that NZ Post was ordered to repay docked wages to a group of posties who staged a “secret strike” by putting mail back into post boxes. The ruling was labelled “farcical” by the National Party as it allowed workers to employ “guerrilla tactics”. The Auckland posties went on the “secret strike” in July 2006 in a dispute over a new employment agreement. They went to their delivery branches and helped sort the mail in the morning, took it out on their rounds and then reposted some letters, which went back to the sorting centres and the delivery branches. As soon as NZ Post found out what they had done, it suspended their pay from the day they began the action. But the Employment Relations Authority ruled that it was illegal to backdate a suspension notice. Postal Services Chief Executive Peter Fenton told the authority it was “unconscionable” to have to pay the posties for what he described as an act of sabotage.

The *Press* reported that Air New Zealand has been ordered to pay over \$13,000 to a Christchurch man it wrongfully dismissed over accusations of viewing internet pornography at work. Tony Wills was also reinstated in his old job after the Employment Relations Authority ruled there was insufficient evidence to link the objectionable websites to him. He was one of five staff dismissed from Air New Zealand’s warehouse operations in Christchurch in late 2004 and early 2005 for their internet usage. Mr Wills said he had not accessed any objectionable websites but was often logged on to several computers at once, meaning anyone could visit any site and it would be traced back to him.

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