CHRONICLE

February 2008

The crisis in the health sector continued with the *Press* reporting in early February that '11th hour' talks between the Association of Salaried Medical Specialists (the Association) and district health boards (DHBs) aimed at averting strike action by senior doctors were continuing (see November 2007 Chronicle). The Association Executive Director, Ian Powell, was quoted as saying that a new proposal by the DHBs was welcome, but a strike would proceed, unless there was "a turn-around for the better".

A week later things were no better with the *Southland Times* reporting that hospital management were preparing for possible senior doctor strikes. The Association claimed that 88% of specialists who had answered a postal ballot indicated that they supported industrial action. However, there were some dissenting voices amongst senior doctors. The *Southland Times* reported that the former President of the New Zealand Orthopaedic Association, Murray Fosbender, was appalled at the lack of progress and urged that an independent person, such as a judge or arbitrator, should be brought in to evaluate the various claims of senior doctors and the boards and make a decision.

Finally, in an unusual step, the Minister of Health David Cunliffe stepped in to intervene in the dispute by offering to facilitate a meeting between the Association and the DHBs. Association President Jeff Brown was quoted in the *Dominion Post* as saying that: "…[i]t's fantastic that the Minister is taking some responsibility…We don't see it as interference, we don't see it as meddling. We believe that he's genuinely wanting to sort it out and that's why we're prepared to give it a chance". Although the Association's Executive Director Ian Powell praised the Minister of Health in the *Press* by saying that his move was "unprecedented", the doctors' union still gave the Minister a month to sort out the dispute before they would initiate strike action.

A long running dispute between the former chief executive and the board of the Hamilton-based Parentline child advocacy organisation reached a conclusion when the Employment Relations Authority rejected the CEO's claim of constructive dismissal (see August 2007 Chronicle). The dispute received extensive coverage by the *Waikato Times* with sensationalist headlines such as 'Barnyard antics at hearing'. A number of letters to the editor were published reflecting the divisions in the local community over the dispute. While adjudicator Janet Scott found that CEO Maxine Hodgson was unjustifiably dismissed she also ruled in her 148-page decision that the "core issue" was Mrs Hodgson's determination to "run Parentline as she saw fit and the manipulative, misleading and deceptive conduct this engendered". As a result she considered that Hodgson's contribution towards the dismissal was "total" and she was not entitled to any compensation.

A follow up article in the *Waikato Times* claimed that Hodgson had played a high-risk game by taking the Parentline board to the ERA. The article went on to say that the Authority's criticisms of Hodgson's conduct, as 'manipulative, misleading and deceptive' were stunning and revealing and had tainted her reputation.

The *Herald on Sunday* featured an article on an employee who had won a $7500 payout after resigning from her job because she had too little to do. The employee took TelstraClear to the Employment Relations Authority after returning from parental leave in July 2006 to find her former employer had restructured her job and had left her little to do in her new part-time job. She was quoted as saying that: "I went from being quite a senior person working on reasonably significant projects to feeling like a spare piece of furniture. It was demoralising."

The *Press* highlighted how a man had been fighting for more than a year to get his former employer to pay his wages. The man had worked as a cleaner for a company for five years, but the new owners, who purchased the company in December 2006, had not paid him for three months. The Employment Relations Authority found that he owed nearly $5000 of outstanding wages but told the employee that it was up to him to enforce the ruling. He was quoted as saying "[t]hey (the Authority) are the authority … [t]hey should enforce it. People like us, it keeps costing us money to do something about it." When asked if it was fair to expect the employee to enforce a ruling, a spokeswoman for the Department of Labour said that under the Employment Relations Act, there was little they could do for the employee.

The saga of the highly public dismissal of University of Auckland lecturer Paul Buchanan had a sequel in the Employment Relations Authority (see August 2007 Chronicle). The *NZ Herald* reported that Mr Buchanan claimed that an offensive email he wrote to an Arab student was a one-off mistake, and that it was his poor state of health that contributed to the 'brain explosion' on the day he sent the email. Explicit details of his medical condition were revealed at the hearing, including a quote that "[e]erything I put into my mouth came out almost immediately at the other end." Buchanan also claimed that after the email was leaked to the media Middle Eastern press reports had labelled him a racist and that he had also received death threats.

A Christchurch double heart bypass patient claimed that he was visited in hospital by his boss and sacked at his bedside. The *Press* reported that the man was admitted to Christchurch Hospital's emergency department after suffering chest pain for a week. His boss subsequently visited him and, after 11 years of employment, his job was terminated. An employment lawyer was quoted as saying that the dismissal was "unlawful", "callous" and "grossly insensitive".

In an article on staff turnover, the *Dominion Post* claimed that staff turnover had become a huge cost to organisations and would continue to sap companies if employers failed to develop and retain employees. Consultancy and IT firm Unisys estimated that the cost of replacing a worker was 1.5 times that person's annual salary. Data from Statistics New Zealand showed that more than 300,000 people, or 17% of the workforce, changed jobs in the year to June 2006. Unisys said recruitment cost more in a tight labour market and each new employee drove up wage levels for the same job, without a matching increase in productivity. It also said that to counteract turnover employers should develop tailored, progressive career paths within their companies, groom their best performers and support work-life balance.

The *Daily Post* reported that some local Rotorua employers were hiring private investigators to catch out 'cyberslackers' who spend up to three hours a day shopping

online, visiting auction sites and sending joke emails to their friends. One employer said that with the growing popularity of social networking sites such as Bebo and Facebook, they expected the problem to get worse.

March 2008

There were many media reports on the proposed amendment to the Employment Relations Act. The amendment would require all employers, where reasonable and practicable, to provide facilities and breaks for employees who wished to breastfeed. Announcing the changes, Cabinet Minister Maryan Street said there was currently no explicit legal protection of women's right to breastfeed at work. The Council of Trade Unions (CTU) welcomed the proposal. CTU Secretary Carol Beaumont was quoted in the *Press* as saying that "[t]ime and access to facilities will be a welcome move for breastfeeding mums at work, and brings New Zealand into line with the 92 other countries who have signed up to this international obligation."

The proposed amendment also includes minimum meal and rest breaks for all employees with those who worked at least eight hours a day entitled to two unpaid 10-minute rest breaks and one paid 30-minute meal break. Predictably, employer groups were unhappy with the proposal. The Hospitality Association's Chief Executive Bruce Robertson stated that the proposed change was another piece of legislation in an already over-regulated industry. He further criticised the amendment by stating that the Government was building a nanny state and that employers were already counting the cost of increased wages from the Holidays Act. Further, in an opinion piece in the *Press*, it was argued that rather than reaching for "the blunt vehicle of the Employment Relations Act", the number of "rogue employers" who were denying employees reasonable breaks and the facilities to breastfeed should be identified. The article further argued that with predictions of a looming economic slowdown, the focus should be on greater flexibility in the workforce, rather than adding to the rigidities. Minister of Labour Trevor Mallard countered these arguments by saying that the proposed changes were needed and that "[w]e wouldn't be doing it if there wasn't an issue".

A note of caution was voiced by Business New Zealand who broadly welcomed the proposed amendments. Business New Zealand's Chief Executive Phil O'Reilly argued that the changes could, in fact, "make matters worse if they produced prescriptive rules or inflexibility". Although, around 93% of collective agreements provided for breaks and therefore the law change would be "academic" for most workers, he argued that these changes were needed in some non-unionised workplaces, which employed a limited number of staff or where heavy individual workloads made it important for employees to be at their desks or benches as much as possible.

The spectre of a strike by senior doctors loomed yet again when the *Press* reported in late March that the senior doctors' union would meet to "discuss a last-ditch offer from the Health Minister to avoid strike action". The Association of Salaried Medical Specialists' Executive Director Ian Powell was quoted as saying that the negotiations were at a "very delicate stage", and would not discuss the Minister's offer. However, the intervention of the Minister did prevent strike action and may have offered a solution with the *Dominion Post* reporting that Association's national executive had

voted to carry out a postal ballot over the following four weeks. Ian Powell said that although the agreement met some but not all of the Association's requests, the national executive had recommended its 2800 members to accept the settlement.

Yet another group of workers in the health sector announced an intention to strike. According to the *NZ Herald*, around 500 Spotless Services staff, including cleaners, kitchen workers and orderlies, were to strike at 6am on April 2nd. The strike was in protest over what staff saw as the employer's failure to implement a $3-an-hour pay rise agreed in mid-2007. One hospital manager only became aware of the threat when he was informed by the media and stated that he was disappointed not to have been told the news earlier. Minster of Health David Cunliffe was challenged to sort out the hospital cleaners' problems since he had averted the "senior doctors' strike with a big bag of cash".

The *Nelson Mail* announced that Air Nelson pilots were planning more industrial action in a bid for an increase in pay and better conditions (see November 2007 Chronicle). The pilots were seeking a wage rise of up to 4.5% over three years, and a 4.30pm finish before their weekend off. The airline claimed that meeting the pilots' demands would set industry precedents and cost more than $4 million a year. In response to a lack of progress, New Zealand Air Line Pilots' Association members at Air Nelson went on strike for 12 hours, forcing the cancellation of 34 of the 164 flights run by the company.

The *Manawatu Standard* reported that the Engineering, Printing, and Manufacturing Union (EPMU) was "racing against the clock to secure redundancy packages" for Palmerston North call centre workers. The communication firm Sitel had announced that it had lost the Yellow Pages contract, leaving 110 workers out of a job. Union representatives began trying to negotiate a redundancy package for its members, but attempts to enter the Telecom New Zealand building turned nasty and lead EPMU organiser Wayne Ruscoe was subsequently trespassed from the building and was later charged with assault. But an interim injunction from the Employment Relations Authority ordered that EPMU representatives should be allowed into the building to meet with their members.

The *Waikato Times* reported on the local employment dispute between Parentline and its former CEO claiming that the "employment stoush [was] set to go another round" (see February Chronicle). The article reported that Maxine Hodgson was planning to challenge the Employment Relations Authority's February rejection of her claim of constructive dismissal. Parentline's Chairwoman Margaret Evans said the challenge would chew up more time and costs and said that "[w]e are saddened and disappointed, because we had hoped everyone was moving on".

There were several media reports on the findings of the Employment Relations Authority in the case about dismissed University of Auckland academic Paul Buchanan (see February Chronicle). The Authority found that Paul Buchanan had been unjustifiably dismissed and awarded him $66,000 in damages but it refused to order his reinstatement. The Authority determined that it was "simply not practicable" for the university to employ him in his previous role when he had failed to demonstrate an understanding of how his actions and conduct affected those he worked with and taught. Buchanan's union, the Association of University Staff, said

that there was a strong case for reinstatement claiming, the dismissal effectively ended his academic career in New Zealand. Authority member Vicki Campbell reasoned that the outspoken security and intelligence expert had contributed 25% to his own dismissal by sending the e-mail then "half-heartedly" apologising.

The *Press* reported on the case of "a brave teenager" who took his employer to the Employment Relations Authority for illegal deducting money from his wages and awarded him a payout of more than $14,000. The windscreen fitter was angry about a weekly deduction from his wages for repairs to a work vehicle. A fortnight later the company started deducting $100 from his wages to cover the cost of repairs. The teenager challenged his employer about the deductions but was told to find another job or put up with them. A few days later, he resigned in a letter almost written entirely in text language, then went to the Authority seeking compensation and lost wages. He was awarded $6,069 for reimbursement of lost wages and $8,000 compensation for humiliation, loss of dignity and injury to feelings.

April 2008

Member of Parliament MP Sue Moroney's "battle to have meal breaks made compulsory" appeared likely to succeed, according to the *Waikato Times*. During its first reading in Parliament, the Employment Relations (breaks and infant feeding) Amendment Bill was supported by all parties, except Act. While it started as a private member's Bill, (which normally would have been drawn from a ballot), the Government had announced that it would support it. The Bill had advanced to the select committee phase and public submissions had been called for.

The *Press* highlighted that the Small Business Advisory Group (SBAG) had "thrown in the towel" on a key employment relations issue. The group had lobbied hard for a so-called 12 months personal grievance free period, allowing employers to dismiss employees when they wanted. The SBAG was now asking the Government to place greater emphasis on the substance of an employment dispute rather than the process, which it claimed was getting too much emphasis. The SBAG wanted the Government to be more lenient on disputes involving small businesses and place more emphasis on the contributing behaviour of the employee.

While the Minister of Health David Cunliffe had intervened in the senior doctors' dispute (see March Chronicle) he seemed very reluctant to get involved with the long running junior doctors' dispute. The *Press* reported that Mr Cunliffe had sent the Resident Doctors' union a letter where he explicitly stated that he would not become involved in its pay negotiations. Later in the month, the *Southland Times* noted that yet more talks between the junior doctors and their employer (the District Health Boards) had failed to reach a resolution. Thus, another round of strike action starting on the 7th of May looked inevitable.

Meanwhile it was rumoured that senior doctors wanted to be paid up to $500 an hour (on top of their normal pay) for working during the junior doctors' national strike. DHB chief executives were understood to have 'baulked' at the high rates for senior doctors.

Other groups in the health sector took industrial action. Nationwide, around 800 hospital cleaners, orderlies and kitchen staff went on strike for 24 hours over failed pay talks. They were caught up in a national pay dispute with their employer Spotless Services Ltd, which had yet to pay workers a wage increase, promised in May 2007 (see March Chronicle). Spotless Services said it could not pay the increase because it had not received the full funding allocation from the country's District Health Boards.

However, the *Independent* had looked into the reasons behind the dispute and it disputed the claims made by Spotless Services. It found that whereas the government had provided additional funding for the wage increase, Spotless Services had realised that it had miscalculated and that the pay increase would result in a $1.4m loss for the company. Spotless Services had approached the District Health Boards in November to argue its case but was rebuffed.

Service and Food Workers Union's Industrial adviser Shane Vugler suggested that health sector industrial disputes could be dealt with better if a compulsory final offer arbitration model was adopted. Striking was not the best option for the members of his union and the union would support a shift in the public health sector to final offer arbitration. He added that although strikes created headlines, the lack of pay while picketing meant that families suffered. Unions also lacked in bargaining power as not enough employees belonged to a union. All these reasons supported the use of an independent arbitrator.

The unusual case of an employee who had worked for no pay for nearly two years was widely reported. James Tahere had worked as a manager at the Tokoroa cinema for 21 months without wages or holiday pay, despite having a written employment agreement for fulltime work at an hourly rate of $20. Mr Tahere told the Employment Relations Authority that he continued working because he enjoyed the job and that he had received assurances from the cinema owner that he would be paid. The Authority awarded Mr Tahere $51,145 after the cinema owner failed to make a statement or attend mediation.

The S*outhland Times* reported that two former employees were ordered by the Employment Relations Authority to pay $232,500 to their employer for secretly running a business that was in direct competition. Both men had unrestricted access to their employer's client details, pricing and future tender details and had decided to become directors of another company, which was in direct competition. They deliberately promoted their own company at the expense of their employer. These (and other) actions were described as "outrageous" and "completely unacceptable" by the Authority.

The widely publicised saga of University of Auckland's political science lecturer Paul Buchanan continued (see March Chronicle). According to the *Dominion Post*, he intended to appeal against an Employment Relations Authority decision which had not reinstated him.

In a *Waikato Times* article on workplace drug testing, the National Secretary of the Engineering, Printing and Manufacturing Union (EPMU) Andrew Little voiced his disapproval of the practice. He said that while most employers were fairly sensible about random testing it only dealing with part of the problem; the employment

relations issue for an employer was concerning the fitness of a person to work. Mr Little claimed that the problem with testing for cannabis, for example, was that it could remain evident in the body for 10 days and that in most cases this wouldn't impair the ability to work. He said that the EPMU will continue to monitor random drug testing to ensure employers apply their policies fairly.

The *Press* reported that more than 52% of all British employees were now subject to computer surveillance while at work. This had led to a sharp increase in strain among those being monitored and the biggest impact was on white-collar administrative staff. According to a study by the London School of Economics, British employers were devising new ways of keeping their employees in light of a tight labour market, but employers were also seeking to increase employee efficiency. Many of the techniques used by British employers, such as teamwork, performance management and pay, individual development, had negative stress implications.

May 2008

With the Employment Relations (Flexible Working Arrangements) Amendment Act becoming law on 1 July 2008, the *Dominion Post* published a feature article on the changes. The article opened with the statement that "finding a work-life balance is a little like the pursuit of enlightenment. The harder you look, the more it eludes you." One of the key objectives of the Act was to help offset skill shortages by making it easier for care givers to balance work and home responsibilities and thus allow them to be part of the workforce. Various employer organisations had already voiced their strong opposition to the changes. The main argument was that employers were already implementing many of the changes now being enshrined in law. Additionally, it was an often repeated complaint that it placed too many demands on small- and medium-sized enterprises. Spokesperson for the Canterbury Employers' Chamber of Commerce Peter Townsend was quoted as saying that "[I]t's just another layer of compliance and imposition on business that makes it that much more complicated to employ people." However, Angela McLeod of the Federation of Business and Professional Women claimed that business and employers had nothing to fear and that it was not "a law for flexibility, it [was] a law for the right to request it, which [was] quite different."

A gaffe by National industrial relations spokeswoman Kate Wilkinson was highlighted in numerous media reports. Ms Wilkinson was forced to retract comments suggesting that National would revoke the compulsory employer contribution to the Kiwi saver scheme. She said that her earlier suggestion was based on her misinterpreting a question. Since its start, more than 600,000 New Zealanders had joined the scheme. A further article in the *Dominion Post* reported that the Department of Labour was investigating three companies who allegedly offered lower pay rises to workers belonging to KiwiSaver and then retained the employer tax credit of up to $20-a-week.

Another strike by junior doctors received extensive media coverage. The doctors' dispute dragged on into yet another month with Resident Doctors Association refusing to rule out further industrial action after a 48 hours strike, which started on the 7th of June. This followed an employer offer of two increases of 4.25%, which

fell short of the 10% a year for the next three years demanded by the union. A *Dominion Post* article highlighted how both parties (the District Health Boards (DHBs) and the Resident Doctors Association) engaged in 'tit-for-tat' attacks after their talks ended in 'disarray'. A DHB spokesperson claimed that "[t]here [was] no real attempt by the union to get a settlement …". The Association's National Secretary Deborah Powell responded by saying that the employers should "stop posturing and start negotiating".

One of the big issue associated with the junior doctors' strike was the higher wages offered to Australian doctors. For example, The DHBs' lead negotiator David Meates claimed that junior doctors were basically apprentices, just learning their trade, yet they want to hold the system to ransom. He said that junior doctors had already won better conditions and shorter working hours than found overseas. The average first-year house surgeon was earning about $88,000 for a 60-hour week which - although less than the average Australian wage for junior doctors - was still a 'fair Kiwi wage'.

The *Dominion Post* highlighted the high costs associated with the strikes, estimated to be $20 to $30 million nationwide. The strike appeared to have prompted unhappiness on both sides. Chairman of the Hutt Valley District Board Peter Glensor asked: "Wouldn't it be cheaper just to settle?" He pointed out that even if the offer to the junior doctors was doubled, people would still say it would be more profitable to work in Australia. On the other hand, the *Press* argued that there was dissent in the ranks of junior doctors as a large number of junior doctors had defied their union and worked during the two day strike.

Finally, there was a stronger focus on personalities as the union's key negotiator Deborah Powell came under attack. In Parliament, Health Minister David Cunliffe blamed her for being responsible for the disruption. Mr Cunliffe claimed that Powell represented 7% of the health sector workforce, yet her members had been responsible for nearly 90% of all the strikes over the past few years. Even Council of Trade Unions' President Helen Kelly suggested that there were better approaches than the continuous strike actions used by the Resident Doctors Association.

The *Manawatu Standard* reported that the Meat Workers Union had 'picked up the cause' of a group of suspended workers at Levin Meats. The 27 workers had staged a sit-in protest in their tearoom over low wages and refused to work before police intervened. The workers, who were non-unionised, were suspended until further notice. A union organiser Eric Mischefski said that the acceptance of current work conditions and pay had become 'ingrained' in some people and he claimed that a number of the suspended staff earned less than the adult minimum wage.

A proposal plan to make 13 academic staff at the University of Canterbury's College of Arts redundant was placed on hold as the University and the Association of University Staff (AUS) agreed to attend mediation. A spokesperson for the AUS said that the union's collective agreement required the university to consult with staff and the union about planned redundancies and to try to reach an agreement. AUS spokesperson argued that the University had consulted but had not tried to reach an agreement.

The *NZ Herald* reported on a young Auckland couple who won 'a landmark victory' against the Department of Labour, setting a precedent for a redundant worker's entitlement to paid parental leave. The couple took the Department to the Employment Relations Authority after being told that the wife was ineligible for paid maternity leave because she had just been made redundant. The woman had successfully applied for paid parental leave but was made redundant due to the liquidation of the real estate firm she worked for. Just hours after losing her job she was told by a department information officer, that she was ineligible to receive paid parental leave because her employment had 'terminated' three weeks before her leave was scheduled to start. The decision was later confirmed in writing. Instead the Authority found that the woman's employment agreement clearly stated she should be given one month's notice of termination, and that term was 'not extinguished' by her employer's decision to put itself into liquidation. The notice took her beyond the start date of her paid parental leave, while she was still an eligible employee. The Authority suggested that it was up to the Department of Labour and ultimately Parliament to consider whether there was an 'apparent gap' in eligibility for Paid Parental Leave.

Microsoft New Zealand was reported to be reviewing its employees' remuneration schemes after a former senior account manager took a case to the Employment Relations Authority. The Authority determined that Microsoft had to pay the employee holiday pay accrued from bonuses dating back six years from his resignation. While this is believed to be an unprecedented case for the company, holiday pay associated with bonuses was a common matter of dispute in many multinational firms when generic employment agreements were written overseas and then applied in specific national employment law settings.

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