

A Chronological Analysis of the Evolution of Industrial Relations in New Zealand

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Abstract

This article covers the evolution of industrial relations in New Zealand from 1840 to the present and illustrates the unique way industrial relations developed in New Zealand. A good number of developments were influenced by law, practices and events in the United Kingdom and Australia while others were a response to local needs. In colonial New Zealand, British law became the first foundation of its legal system. However, events in Australia also influenced New Zealand's industrial relations scene in its formative years.

The State plays a central role in New Zealand's industrial relations. There is a similarity to Australia in this respect. However, in Australia, each state and territorial government has the power to legislate for matters concerning industrial relations. In addition, the federal government has its own legislation covering certain classes of employees including those not covered by state government legislation. This is contrastingly different from many other countries such as the UK and USA, where the characteristic shape of industrial relations is set at industry or workplace level, largely through the interaction of employers and unions (Mylett et al., 2000:5-6).

Although there may be similarities between the UK and Australia, New Zealand's industrial relations evolved from its own unique historical developments and national needs. This article looks at the events that brought about government response in the form of different pieces of industrial legislation and practices over time. From a 'cause and effect' viewpoint it could be said that the different major events (the 'cause') brought about various pieces industrial relations legislation ('the effect') over the period of time in question.

Introduction

Industrial relations began in New Zealand as soon as employer-employee relationships began with European settlement (Geare, 1988:27). British customs and attitudes were transplanted into New Zealand in the nineteenth century through the almost verbatim transfer of British law. By the English Laws Act 1858, an Act of the New Zealand Parliament, the statutes and common law of England as at 14 January 1840 became the laws of the young colony (Gerbic & Lawrence, 1996:43). This resulted in the English law of contract, with its use of the class conscious terms 'master' and 'servant' being reinforced (Deeks et al., 1994:35).

Despite New Zealand's predominantly agricultural economy, a good proportion of the population from the earliest days of European settlement were wage earners.

Colonial New Zealand was predominantly a society of small enterprises, small towns and rural communities with 60 percent of the population living in places with fewer than 5,000 residents (Deeks et al., 1994:39).

The Beginning - 1840 to 1860

The first significant industrial relations event is popularly considered to be the action of one Samuel Parnell in 1840, a Wellington carpenter, in refusing to work for more than eight hours (Deeks et al., 1994:35). Parnell was asked by a local merchant, George Hunter, to build a store for him at a time when there was a local labour shortage. Parnell used the labour shortage as leverage for his bargaining power, rejecting the twelve or more hours a day that was the norm at the time.

- During this time harsh legal punishment was meted out by the judicial system. For example, in 1846 a man was sentenced in the Auckland Magistrate's Court to seven days hard labour because he had cut only two tons of firewood in a day when his employer held that he should have cut four (Roth, 1978:21).

The Gold Rush Years - 1861 to 1880

The gold rushes of the 1860s and the railway construction camps of the 1870s created large aggregations of non-urban people (many of whom came from Australia) who were generally not craftsmen, were not in close relationship with employers, lacked security of urban workers and generally had a "rough" existence (Victoria University, 1989:1).

As the gold diminished and the construction works reduced, these people moved into such industries as shipping, waterfront and other transport, coal mining and other areas of unskilled and semi-skilled manual work. Industrial relations during this period continued to be regulated by common law which was not conducive to union activity. It held strike action to be a criminal conspiracy. Trade unionism itself was considered a conspiracy at common law until it was permitted by the Trade Union Act of 1878 (Brosnan et al., 1990:27). However, there is evidence that Parliament was concerned about the possibility of labour exploitation when it passed a piece of legislation titled Employment of Females Act in 1873 which applied to women and girls working in factories. This Act (including amendments) limited working hours to eight per day, allowed for a half day holiday on Saturdays, allowed four holidays a year, and made it illegal to employ children under the age of ten years (Brosnan et al. 1994:39-40).

However, it lacked enforcement procedures and, with the gradual onset of difficult economic conditions, an increasing number of employers ignored labour laws.

The Great Depression Years - 1881 to 1889

Severe trade depression during most of the 1880s led many employers to trim their labour costs (Victoria University, 1989:1). As a result, working conditions, which were largely uncontrolled, deteriorated and instances of 'sweated' labour (a euphemism for gross

exploitation) began to spur trade unions and sections of the public to seek remedial action both by encouraging trade union organisation and by advocating legislation to establish and enforce minimum wages and conditions (Woods, 1963:30).

The Rev. Dr. Rutherford Waddell of St. Andrew's Presbyterian Church, Dunedin, had observed numerous instances of sweated labour in the course of his pastoral work and vehemently denounced it at a packed public meeting in Dunedin on 7 June 1889 (Geare, 1988:29; Deeks et al., 1994:40-41). He attacked the system that gave rise to such labour conditions, in particular for women and girls (Paul, 1939:17 as cited by Roth, 1973:12).

In July 1889, the Dunedin Tailoresses' Union was formed and the Rev. Waddell was elected its first President (Deeks, 1994:41). Unionism began to develop and expand rapidly among non-craft workers in 1889 with many of these unions forming the Maritime Council which became involved in a variety of strikes (Brosnan et al., 1990:27).

The First Major Strikes - 1890 to 1893

By 1890, due to publicity in the daily newspapers and the weight of concerned public opinion, the Government appointed a Royal Commission of nine persons to inquire into industrial conditions (Woods, 1963:24-25):

“The Commission found that a sweating system as it existed in London did not exist in New Zealand, although three members dissented from this finding in a minority report. The majority of the Commission regarded the term ‘sweating’ as applicable only to an established industry and not to individual instances, but the Commission nevertheless recorded a considerable number of such instances.”

The findings of the Commission led directly to protective legislation in the form of the Factories Act 1891 (Fryer & Oldham, 1994:10). A more comprehensive Factories Act was passed in 1894. These Acts included various measures relating to sanitation, overcrowding, toilets, dining rooms, hours of work, holidays, measures against accidents, prohibition of employing under 14 years of age and a maximum of 48 hours per week was set for both males and females under 16 years. Also, for the first time, inspectors who had unrestricted rights of entry were appointed in 1892 and within 3 months they had called for improvements in 913 factories (Deeks et al., 1994:41-42). Clearly, there was a problem with factory conditions.

In 1890 the Maritime Council (supra), which had linked itself to a similar body in Australia, became involved in the first major strike (in New Zealand in a show of unity for their Australian counterparts (Roth, 1973:13). This maritime strike lasted 56 days and ended with workers having suffered a heavy defeat and by 1891, the union movement was crushed in New Zealand (Geare, 1988:30). There were instances where preference of employment was given to strike breakers and former unionists were forced to sign so called “Yellow Dog Contracts” - promising never to join a union.(Roth, 1973:21). From the heyday of 1890 when there were reportedly 200 unions and a membership of 63,000, support had fallen by 1894 to a mere 70 unions and an estimated membership of 8,000 (Roth, 1978:25).

In 1891, a liberal Labour government took office for the first time in New Zealand and proceeded to formulate legislation in response to community and trade union pressure to empower courts to rule over industry by prescribing minimum terms and conditions of employment and enforcing industrial peace (Victoria University, 1989:2). After studying labour relations procedures world wide, William Pember Reeves, Minister for Labour in the new government concluded that New Zealand could only create a better system through state regulation (Deeks et al., 1994:45).

The First Industrial Relations Legislation - 1894 to 1889

By the end 1894, as a result of Reeve's efforts, Parliament passed the Industrial Conciliation and Arbitration Act 1894 (ICA 1894). Reeves introduced 'what was then the most progressive labour code in the world and the most comprehensive' (Sinclair, 1969:183).The Act's preamble was: "An Act to encourage the formation of industrial unions and to facilitate the settlement of industrial disputes by conciliation and arbitration" (Brosnan et al., 1990:27). It established a system which recognised registered unions of workers as well as employers. Both (employers & unions) in turn received recognition and protection as bargaining agents with obligations to follow procedures of the Act and with liability to penalty for strike or lockout action while engaged in conciliation or arbitration procedures (Victoria University, 1989:2-3). Any group of seven workers in a given occupation could file for registration, thereby creating a new body with statutory recognition under the Act (Williams, 1984:29).

The ICA Act 1894, being the first indigenous industrial relations legislation, introduced:

1. The Conciliation Boards

The country was divided into seven industrial districts, each with a board of conciliation. Each board consisted of equal numbers (4 or 6) representing employers and trade unions. These members then elected an impartial chairperson. Besides matters referred to it, a board could conduct its own investigation into disputes it became aware of (Deeks et al., 1994:45 ; Victoria University, 1989:3-4).

2. The Arbitration Court

Where a conciliation board failed to reach a decision, or where either party was dissatisfied with the decision, the board or the unhappy party could refer the matter to the Arbitration Court. It could refer a matter back to conciliation, make directions, or make a compulsory award - a final legally binding document specifying wage rates and employment conditions (Deeks, et al., 1994:45; Victoria University, 1989:5).

The ICA Act 1894 did four significant things(Williams, 1984, p29-30):

1. it strengthened the the role of trade unions by forcing employers to deal with them;
2. it provided procedures for settling the natural conflict between capital and labour founded on the backstop of compulsory arbitration because arbitration could always be called on to resolve conflict;
3. it provided a legal procedure for enforcing industrial agreements on the negotiating parties and on all others in an industry; and

4. it placed strict controls on direct action as the price for providing statutory methods for dispute resolution.

Thus the industrial ICA Act 1894 moved New Zealand from a largely informal industrial relations environment to one in which the state offered trade unions powerful statutory means for securing wage settlements with employers at the price of restrictions on direct action. The sanctions against direct action were tightened by an amending statute in 1905 so that any strike or lockout was illegal where an award was in force (Deeks et al., 1994:46).

The Rise of the Union Movement - 1900 to 1919

By 1900 there were 175 unions registered under the Act representing 17,000 workers. By 1910 the number of registered unions had increased to 308 representing 57,000 workers. Employers too found it necessary to organise themselves in order to be represented in conciliation proceedings and before Arbitration Court. The number of employer unions increased from 68 in 1901, representing 1,824 employers, to 118 in 1911, representing 4,251 employers (Deeks et al., 1994:47). Ironically, a major impetus to the formation of employer unions was a piece of legislation (ICA Act 1894) primarily designed to protect and develop unions of workers (Williams, 1984:86; Deeks et al., 1994:245).

Between 1894 and 1906 there were no significant strikes in New Zealand. There was considerable overseas interest in the New Zealand industrial relations model. A famous American writer, Henry Demarest Lloyd, titled one of his books on New Zealand, "A Country Without Strikes" (Deeks, 1994, et al.:47). In 1901 an amendment to the ICA Act allowed either party to go directly to the Arbitration Court for a resolution of a dispute thereby bypassing the Conciliation Board. This had two negative effects (Williams, 1984:30):

- Conciliation Boards acted like courts of the first instance instead of being genuine negotiating bodies; and
- the system that had been set up for dispute resolution became a wage fixing system instead.

Pember Reeves had predicted that the industrial disputes would be largely settled voluntarily at Conciliation Board level when he first introduced this legislation. But this never happened as a result of the 1901 amendment. This resulted in a significant amendment to the ICA Act in 1908 when emphasis was placed on obtaining a genuine negotiated settlement at conciliation stage (Deeks et al., 1994:47-48). This basic system continued, albeit with significant modifications, up to the passage of the Employment Contracts Act 1991 (ECA).

There were three major strikes during this period (Roth & Hammond, 1981: 72, 83, 88) namely, the the Blackball Miners' Strike of 1908, the Waihi Miners' Strike of 1912, and the General Strike of 1913. These strikes posed a new challenge for the arbitration system because militant unions deregistered themselves from the ICA Act and began conducting direct bargaining with the employers (Deeks et al., 1994:49).

As with the 1890 maritime strike, these strikes marked a significant set back for the trade union movement. In a change of tactic, the labour organisations (including socialists) formed the New Zealand Labour party to champion their cause through the ballot box. The First World War (1914 to 1918) caused a dramatic rise in the cost of living by some 34 per cent (Holt, 1986:120). The system was unable to keep up with the rapidly rising inflation because awards were adjusted every three years at that stage. The Government in 1918, amended the system to enable the Courts to adjust the awards during their currency to take into account cost of living movements.

The Second Great Depression - 1920 to 1935

The 1920s produced a totally different scenario from that of the First World War years. Prices of primary products like wool, meat, and butter were falling rapidly because of world recession. This time the system under the ICA Act was condemned by employers for its inability to adjust wages to depressed economic conditions (Deeks et al.:51). The Great Depression of the late 1920s and early 1930s had caused export prices to fall by 47 per cent. By October 1933, 17.8 per cent of the adult male labour force (statistics on female workers were not collected at that time) were unemployed. There were labour camps, street marches, riots as well as queues for handouts from Government and charities. Compulsory arbitration was repealed from 1932 to 1936, allowing employers to adopt a "take it or leave it" approach at conciliation (Deeks, et al., 1994:52).

The Welfare State - 1936 to 1950

In 1935, the first Labour Government led by Michael Savage was elected with a very large majority. Savage introduced some radical social reforms including the introduction of the "Welfare State" and amending the ICA Act in 1936 to make union membership compulsory. Sinclair (1969:270) gives a good view of the changes under Labour:

"In a tremendous burst of legislative activity in 1936-8, and another in 1945-6, the Labour government transformed the State into the Welfare State. Part of the task was to recapture territory lost during the slump. The cuts in salaries were restored, the compulsory arbitration system was re-erected, and the Court was directed to fix a minimum wage for all workers. A large public works programme was commenced to provide employment on full wages instead of 'relief'...."

Compulsory unionism resulted in the total membership of unions rising from 16 per cent to 46 per cent of the workforce (Roth, 1978:28). Unionism also diversified into the white-collar as well as female sectors of the economy. Conditions in New Zealand gradually improved and with the advent of Second World War in 1939, the economy for the next six years was in high productive mode supporting the war effort (Deeks et al.:52).

The Events Leading to the Second Industrial Relations Legislation -1951 to 1973

1951 saw one of New Zealand's biggest labour disputes - the 1951 Waterfront Dispute. In the post war inflationary economic climate, the Arbitration Court was again proving to be hostile to the unions. This was not the case during times of recession. The Waterside Workers Union's (WWU) discontent with the arbitration system was aggravated by the foul and fatally dangerous working conditions on the wharves. (Deeks et al., 1994:54). In February 1951, employers refused to pass on the full 15 per cent wage increase granted by

the Arbitration Court to the watersiders. The unions refused to work overtime which resulted in dismissals and soon the waterfront came to a standstill. According to the union its members were locked out, but according to the employer and the Government (National Party in power) the men were on strike (Roth & Hammond, 1981:149).

The Government intervened with the powerful Waterfront Strike Emergency Regulations and used the armed forces to load and unload ships at the wharves. Other workers including miners, seamen, freezing workers, harbour board employees, drivers and labourers went on strike in protest against the use of troops in an industrial dispute. Some 22,000 workers were involved at the height of the dispute. The Government responded by bringing in the police in to violently break up demonstrations (Deeks et al., 1994:54).

The Government then proceeded to de-register the WWU and seized its assets. This strike, lasting 151 days at a cost of £42 million and more than a million working days, proved a victory for the Government (Roth & Hammond, 1981:149-152 & 154). Following the 1951 defeat of the unions, the increasingly affluent 1950s brought a spirit of peaceful co-existence between employers and unions (Roth, 1978:44).

The growing prosperity and full employment of the 1950s continued into the 1960s with unions burgeoning (Roth & Hammond, 1981:156). However, in 1967 and 1968, the economy was in recession. In response, a 'nil wage order' was handed down (with the union representatives vehemently dissenting) by the Arbitration Court on the 17th of June 1968. On the 5th of August 1968, the unions did manage to obtain a 5 per cent general wage increase with the support of the Employers Federation. The Arbitration Court's credibility was shattered. Unions took more direct actions resulting in increasing numbers of strikes. Working days lost through strikes rose from 99,095 in 1966 to 162,563 in 1971 and 488,441 in 1976 (Deek et al., 1994:56; Roth & Hammond, 1981:166).

The government of the 1970s responded by passing the Industrial Relations Act 1973 which:

1. retained the basic structure of the conciliation and arbitration system;
2. introduced a new section on voluntary settlements (in addition to the Award) which could be registered without government involvement and made enforceable;
3. allowed registered unions to elect to bargain directly with employers and if agreements were reached they were enforceable by the Court; and
4. drew a useful distinction between disputes of rights (personal grievances when a worker is dismissed for example and interpreting what a clause in an award actually means in law) and disputes of interest (the bargaining and setting of wages and conditions) as well as providing procedures for settling them (Victoria University, 1989:5-6; Deek et al., 1994:56; Fryer & Oldfield, 1994:4-5).

Amendments to the Second Industrial Relations Act - 1974 to 1986

The Industrial Relations Act underwent three significant amendments between 1983 and 1985 (Brosnan et al., 1990:36 & 71; Fryer & Oldham, 1994:5):

- voluntary unionism which was introduced in 1983 by the National government was in 1985 made compulsory again by a Labour government. This is an obvious reflection of the differences in political philosophies towards unions by the two parties;

- compulsory arbitration was abolished in 1984 by the Labour government. The union accepted this, partly as a trade off for the government changing voluntary unionism and partly because many unions wanted to be able to use their industrial strength in buoyant economic times; and
- the 1984 amendment required the Arbitration Court to take into account (when arbitrating an award) supply and demand for skills, fairness and equity, change in job content, skills, responsibilities, changes in productivity in new technology, and relativities within and between awards.

These changes were necessary to account for the changes in the nature of the modern workplace.

The Events Leading to the Third Industrial Relations Act - 1987 to 1990

Two years of public debate on the need for orderly bargaining to reduce strike action culminated in the Labour Relations Act 1987 (LRA) which replaced the Industrial Relations Act 1973. According to Fryer and Oldham (1994:5-6), the changes to the labour relations system that the LRA brought were designed to encourage orderly bargaining and encourage the state, unions and employers to cooperate for social and economic good of the country.

Brosnan et al. (1990:36-38) describes the specific changes the LRA brought to achieve those goals mentioned above:

- Institutions - the Arbitration Court was abolished and replaced by an Arbitration Commission and a Labour Court. The Commission's role was to provide arbitration for awards and agreements while the Labour Court dealt with legal matters such as interpretation of awards or agreements. Of significance was the transfer of powers to grant injunctions and damages from the High Court to the Labour Court;
- Union coverage - the Act broke the traditional monopoly which registered unions had over areas of membership by allowing members to move from one union to another. The minimum number of members for a registered union was increased from 10 to 1000 with the intention of decreasing the number of unions by forcing amalgamation and making plant unionism difficult;
- Personal grievances - the existing procedures were extended to cover sexual harassment;
- Enforcement - the system of enforcement of awards which had prevailed since 1894 was abolished; enforcement was left to unions which in the event of an award breach would have to prove it to a Labour Court and obtain a compliance order. The only state inspection (by labour inspectors) was of wage records to check on Minimum Wage compliance. Unions, therefore, became the only organisations monitoring employers' compliance with awards or agreements;
- Bargaining - the new act retained arbitration as voluntary and severely restricted the scope of bargaining. The previous system had been a mixture of awards and agreements. Most workers were covered by an award but some well organised groups had an award plus an agreement which improved upon some aspects(usually wages) of the award. Under the new arrangements, it was not possible to negotiate a legally binding agreement(s) while an award was in force. Under the same provisions if a union

attempted to open separate agreements with an employer covered by an award, the employer could apply to the Labour Court for exemption from the award; and

- Strikes - penalties for strikes were abolished but the Act distinguished between 'lawful' and 'unlawful' strikes. Only registered unions could strike lawfully and strikes were only to be lawful if they were over a new award or agreement when the old one expired or had less than sixty days to run. All other strikes were unlawful and could be subject to claims for damages.

From the very beginning the ICA Act and amendments only covered the private sector. The public sector operated under a different legislation with wage fixing being done on a system of relativities whereby occupations in the public sector were compared to identical or similar positions in the private sector and the salary fixed accordingly. The State Sector Act 1988 largely did away with this practice by bringing the public sector under the Labour Relations Act 1987, subject to minor exceptions (Geare, 1993:7).

The Fourth Industrial Relations Legislation – The Employment Contracts Act 1991

The LRA, however had two perceived major shortcomings (Harbridge, 1993:13-14):

- the first was the perceived lack of success of the LRA in promoting bargaining outcomes - the need (recognised by both unions and employers) to move away from occupationally based awards towards enterprise and industry agreements was not met;
- the second (driven by the National government which came into power in 1990) was the need to deregulate the labour market by dis-establishing mechanisms which regulated trade unions' representation and contract negotiation and thereby making the labour market more efficient.

With the aim of overcoming the above shortcomings the National government then proceeded with the enactment of the Employment Contracts Act (ECA) which took effect from the 15th of May 1991 (the ECA maintained the same approach as the LRA by capturing both the public and private sectors within its jurisdiction - section 3 of the ECA).

The Employment Contracts Act 1991(ECA) has undoubtedly been the most radical swing in industrial law philosophy since the first significant legislation - the Industrial Conciliation and Arbitration (ICA) Act 1894. There were two phases in the New Zealand's industrial relations history:

- 1894 to 1987 - when the principal Act was one of a number of ICA Acts (including amendments) or the Industrial Relations Act 1973 (IRA); and
- from 1987 onwards under the Labour Relations Act 1987 (LRA).

The ICA Act 1894 was supportive of unions, being partially entitled "an Act to encourage the formation of unions". Under the ICA Act, registered unions were given monopoly bargaining rights and were protected from take-over by other unions and from having their members poached (Geare, 1993, p6 & 8). Employers were obliged to negotiate with the unions thereby boosting collective bargaining. If the parties were unable to negotiate a settlement, then in theory the matter would go to arbitration for settlement. The position of unions was further strengthened in 1936 when the first Labour Government made unionism compulsory by way of legislation.

The ECA removed all legislative support for unions - and in fact made no reference to unions as "unions". Instead it referred to "employee organisations"- which included unions, social clubs, works councils, productivity groups, production units, or any group of workers (Geare, 1993, p9). ECA abolished monopoly bargaining rights of unions and made compulsory union membership unlawful. Membership of any employees organisation was entirely voluntary and discrimination in employment on grounds of membership or non membership of an employees organisation was prohibited (sec. 27 (1) (e) of the ECA). There was evidence of union membership erosion after the passing of the ECA (Harbridge, 1993:221).

The ECA created two types of employment contracts (Deeks et.al., 1994:92-93):

Collective Employment Contract

A Collective employment contract (sometimes referred to as CEC) was defined in the Act as being 'an employment contract that is binding on one or more employers and two or more employees' (section 19 of the ECA). Thus, a CEC might cover more than one employer (commonly known as a multi-employer contract) or any or all of the employees of one (or more) employer(s). Any CEC only applied to the parties that signed it.

Individual Employment Contract

An individual employment contract (sometimes referred to as IEC) was defined as 'an employment contract binding on one employer and one employee'(section 20 of the ECA). It covered three distinct situations:

- the first of these was when there was no collective contract to which the employee was a party (e.g. if the employer had not negotiated a collective contract, or if the worker had chosen not to be covered by it);
- the second was where a collective employment contract had expired (unless the employer and the employee agreed to a new contract); the employee was covered by an individual contract based on the terms and conditions of the expired collective contract; and
- the third situation was when the employer and the employee were covered by a collective employment contract but in addition agreed to negotiate an individual contract as long as the provisions of the individual contract and the collective contract were not inconsistent.

Further the ECA established two specialist institutions with exclusive jurisdiction to deal with all questions relating to all employment contracts (Harbridge, 1993:95-96; Deeks et. al., 1994:98-99):

Employment Tribunal

The Employment Tribunal was a lower level informal body designed to provide speedy, fair and just resolution of differences between the parties to the employment contract. It did this through mediation, but Tribunal members (people with considerable experience in labour relations) also had the power to adjudicate on disputes that had not been settled by agreement. In addition to its general function, the Act specified

a number of particular areas in which the Tribunal had jurisdiction, for example, in relation to personal grievances, disputes, recovery of wage arrears, penalties and compliance orders (section 73 of the ECA covers the jurisdiction of the Employment Tribunal).

Employment Court

The Employment Court was a court within the wider legal system and it oversaw the role of the Employment Tribunal. The jurisdiction of the Court covered legal issues (e.g. questions of law) referred to it by the Employment Tribunal or appeals from Tribunal decisions.

Other changes of significance under the ECA were:

- employers and employees were free to choose who would represent them in bargaining (Harbridge, 1993:42-43);
- removal of union registration and recognition (Fryer & Oldham, 1994:6);
- establishment of a role for 'bargaining agent', which could include unions and those who were authorised to represent employees (Dannin, 1997:198);
- removal of blanket coverage, therefore, only the parties to the contract were covered by it; (Fryer & Oldham, 1994:6);
- no provision for a mechanism for employees to collectively choose bargaining agents (Harbridge, 1993:43); and
- the extension of the specialist labour jurisdiction of the Employment Tribunal and the Court to individual employment contracts as well as collective employment contracts (Deeks et al., 1994:100).

The Fifth Industrial Relations Act - Employment Relations Act 2000

Following the coming into power in 1999 of the Labour Party led coalition government, a new piece of labour legislation named the 'Employment Relations Act' (ERA) was introduced in 2000. The new Government perceived the 1991 Employment Contracts Act as being anti-union (Harre, Online, 2002) and tipping the power balance in favour of the employer. The Employment Relations Act 2000 is designed to recognise and address the perceived inherent imbalance of power in the employment relationship by promoting collective organisation of employees and collective bargaining, through unions (James, 2002:13). It revolves around the concept "Bargaining in good faith" which means that parties (unions, employers and employees) must be open and honest with each other and that nobody will be able to behave in ways that mislead or deceive the other party (Dept. of Labour NZ., Online, 2003).

The Employment Relations legislation is stated as (Archive of NZ Govt., Online, 2003):

- aiming to improve mutual trust and confidence between employers and employees;
- providing procedures for collective bargaining where employees choose to join a union;
- making provision for individuals to negotiate their wages and conditions of employment where they choose not to join a union.

A new independent Mediation Service was set up within the Department of Labour (Archive of NZ Govt., Online, 2003) and employed mediators throughout New Zealand. Mediation is to be the first process to occur for any employment dispute. The new institutions established by the legislation promote informal and low-level resolution of problems as soon as possible after the problem has arisen. Both employers and employees are able to contact these mediators for help. Under previous legislation (ECA), the parties were expected to go before the Employment Tribunal for a hearing. Under the present legislation (ERA), mediators are able to go out to visit employers and employees in their workplaces and provide a confidential mediation service between the parties.

The legislation also set up the Employment Relations Authority. This body investigates employment problems that have not been able to be resolved in mediation in a speedy, informal and non-adversarial way. The Employment Court continues to exist. It hears matters referred to it by the Authority or challenges to Authority decisions.

However, it is not the intention of this article to study the present but rather to give a brief account of historical industrial relations in New Zealand. No doubt history will judge ERA's contribution to the ongoing evolution of the industrial relations scene.

Conclusion

In New Zealand's industrial relations history there are five phases. The first phase stretched from 1894 to 1972. During this period the principal Act was the Industrial Conciliation and Arbitration Act (ICA) and amendments. This first phase shows events that led to government intervention in the industrial relations scene by way of the ICA Acts in New Zealand's formative years. The second phase (1973 to 1986) started with the introduction of the second major legislation, the Industrial Relations Act 1973 (IRA) which saw the modernisation of dispute and settlement processes using the IRA. The third phase (1987 to 1990) began with the Labour Relations Act 1987 (LRA) which encouraged orderly bargaining and brought state sector employees into its jurisdiction.

The fourth phase (1991 to 1999) commenced with the introduction of the third major legislation, the Employment Contracts Act 1991 (ECA). This phase was anti-union as the ECA abolished monopoly bargaining rights of unions and made union membership voluntary. The fifth phase was brought about in the year 2000 by the introduction of the Employment Relations Act 2000 (ERA) which continues to be in force at the time of writing. In this phase, ERA introduces a pro-union agenda thereby reversing most of the anti-union stance taken by its predecessor, the ECA. There is much speculation of a National coalition government coming to power in New Zealand soon with pending elections. If this comes true, it will be interesting to see if the pro-employer National government reverses gains made by unions under the ERA.

Bibliography

- Archive of NZ Govt., (Online) "Employment Relations Law: It's our business to keep you informed." Date of Article: n.d. Date retrieved: 6 October 2003. Available: http://www.executive.govt.nz/era/erl_over.htm
- Dept. of Labour NZ (Online) "Good faith in employment relationships: the big picture." Date of Article: 2003. Date retrieved: 6 October, 2003. Available: <http://www.ers.dol.govt.nz/act/faith.html>
- Brosnan, P., Smith, D., Walsh, P. (1990), *The Dynamics of New Zealand Industrial Relations*, Auckland:

- Jacaranda Press.
- Deeks, J., Parker, J. and Ryan, R. (1994), *Labour and Employment Relations in New Zealand*, Auckland: Longman Paul Ltd.
- Deeks, S. & Plowman, D. (1994), *Labour and Employment Relations in New Zealand*, Auckland: Longman Paul Ltd.
- Dunlop, J. (1958), *Industrial Relations Systems*, New York: Holt.
- Fryer, G., & Oldfield, Y. (1994), *New Zealand Employment Relations*, Auckland: Longman Paul Ltd.
- Geare, A.J. (1988), *The System of Industrial of Relations in New Zealand*, Wellington: Butterworths.
- Geare, A.J. (1993), *A Review of the New Zealand Employment Contracts Act 1991*, Dunedin: Firre (NZ).
- Gerbic, P. & Lawrence M. (1996), *Understanding Commercial Law*, Wellington: Butterworths.
- Harbridge, R. (1993). *Employment Contracts: New Zealand Experiences*, Wellington: Victoria University Press.
- Harbridge, R. & Hince, K. (1992), *Decollectivisation of Industrial Relations in New Zealand: Issues of Union Membership and Structure*, Working paper 1/42, Wellington: Industrial Relations Centre, Victoria University.
- Harre, L., (Online) "Workplace Relations: Strengthening the Employment Relations Act 2002." Date of Article: 18 July 2002. Date retrieved: 4 November 2003. Available: <http://www.alliance.org.nz/info.php3?Type=Policy&ID=1186>
- James, C. 2002, "Just Coincidence?" *New Zealand Management*, vol. 49, no.12, pp. 12-13.
- Holt, J. (1980), *The Historical Legacy - the 1894 Conciliation and Arbitration Act*, Paper presented as part of the winter lecture series on New Zealand's Industrial Relations, Auckland University, 17 June 1980.
- Mylett, T., Zanko, M., Boas, C., Gross, M. and Laneyrie, F. 2000, "Charting Employment Relations Perspectives", in *Employment Relations Perspectives: Globalisation and Regionalism*, eds Mylett, T., Zanko, M., Boas, M. and Laneyrie, F., University of Wollongong Press, Wollongong.
- Paul, J. (1939), *Our Majority: and the After Years- 1889 to 1939*, Dunedin: Otago Daily Times.
- Roth, H. (1973). *Trade Unions in New Zealand: Past and Present*, Wellington: Reed.
- Roth, H. (1978), *The Historical Framework in Industrial Relations in New Zealand*, Wellington: Methuen.
- Roth, B. & Hammond, J. (1981), *Toil and Trouble: The Struggle for a Better Life in New Zealand*, Auckland: Methuen Publications Ltd..
- Scates, B. (1991), *Gender, Household and Community Politics: the 1890 Maritime Strike in Australia and New Zealand*, Sydney: Australian Society for the Study of Labour History.
- Sinclair, K. (1969), *A History of New Zealand*, Middlesex: Penguin.
- Sutch, W. (1966). *The Quest for Security in New Zealand*, Wellington, Oxford University Press.
- Victoria University (1989), *The New Zealand System of Industrial Relations*(teaching resource material), Wellington: Industrial Relations Centre, Victoria University of Wellington.
- Williams, A. (1984), *Power Conflict Control:Recurring themes in Industrial Relations*, Palmerston North: Dunmore Press Ltd.
- Woods, N. (1963), *Industrial Conciliation and Arbitration in New Zealand*, Wellington: Government Printer.