UNION MEMBERSHIP IN NEW ZEALAND:

An Assessment of Government Policy

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INTRODUCTION:

There are certain issues in the field of industrial relations in New Zealand that periodically rise to prominence. One such issue is the question of union membership, which has been once again thrust into the limelight by a statement the Minister of Labour made earlier this year. The Minister announced that during 1976 legislation would be introduced to provide for a ballot amongst workers to determine whether union membership in their particular trade, industry or occupation should be voluntary or compulsory. This announcement was in accordance with the National Party’s election policy statement on industrial relations, that stated:

“A National Government will change the law to give workers an effective means to decide whether their unions should be compulsory or voluntary.”

Not surprisingly, the Minister’s announcement has provoked much comment and vigorous debate amongst persons concerned with industrial relations in New Zealand. It is the purpose of this short article to analyse briefly the various statutory provisions that have related to union membership, then to examine the Government’s proposed scheme for amending the existing statutory union membership provisions, and finally to suggest some implications of voluntary unionism upon the present industrial relations system in New Zealand.

HISTORICAL ASPECTS

The statutory framework of industrial relations in New Zealand, as originally incorporated in the Industrial Conciliation and Arbitration Act 1894 (hereinafter referred to as the I.C. & A. Act), and presently incorporated in the Industrial Relations Act 1973, is founded upon the realistic premise that conflict at work is inherent in the relationship between workers and employers.

The purpose of industrial legislation has been to ensure that such conflict is constructively resolved through the procedures laid down by legislation. Woods succinctly described the role of legislation in industrial relations in New Zealand when he wrote:

“The main role of legislation is not to remove conflict, but to influence the way in which it is expressed.”

The effectiveness of the disputes procedures is dependent upon the willingness of the parties in dispute to abide by the procedures, and to accept whatever decision results. In order to ensure acceptability of the statutory procedural framework, it is essential to have a viable trade union movement. Unless employers can negotiate with an identifiable representative organisation of workers, the present system of dispute settlement would break down, and result in industrial chaos.

The importance of a viable trade union movement to the whole system of industrial relations in New Zealand was recognised in the first I.C. & A. Act of 1894. One of the primary purposes of this Act was to “encourage the Formation of Industrial Unions and Associations.” William Pember Reeves realised that the statutory system of peaceful dispute settlement could not succeed without the support and co-opera-

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(1) The Minister of Labour’s announcement was reported in the Auckland Star, 30 January, 1976.


(4) I.C. & A. Act 1894, Preamble.

(5) Minister of Labour 1892-1896.
the trade unions. In order therefore to make the system attractive to the trade unions, the statutory system included several obvious advantages to unions that decided to register under the I.C. & A. Act and accept the dispute procedure therein laid down. These advantages, which did in fact result in unions registering under the I.C. & A. Act, included the protection of all registered unions from rival organisations, in so far as employers were not under obligation to negotiate with an unregistered union; the extension of the award negotiated by the incumbent parties to all employees connected with or engaged in the industry within the locality to which the award related; and finally the advantage of being able to negotiate a favourable union membership clause, which was incorporated into the current award.

The importance of the unions to the question of union membership became apparent very soon after the first I.C. & A. Act came into force. The coal miners in the Denniston mines (7) and the Canterbury bootmakers (8) were amongst the first unions to negotiate a union preference clause in their awards. The legality of the action on the part of the Arbitration Court in permitting the inclusion of preference clauses in awards was first tested in 1900(9), when the Court of Appeal upheld a decision of the Supreme Court which decided the inclusion of preference clauses was within its jurisdiction of the Arbitration Court. This question was put beyond doubt when in 1900 an amendment to the I.C. & A. Act was passed, which amended the definition of "industrial disputes" to include "the claim of members of industrial unions of workers to be employed in preference to non-members." (10)

While the courts were prepared to accept the inclusion of preference clauses, they were not prepared to accept a clause which made union membership a prerequisite to employment. The position of the court on this question was made very clear in Magner v. Goths, (11) and the courts continued to refuse to accept the concept of compulsory union membership until the Labour Government intervened in 1933 and through the I.C. & A. Act introduced compulsory union membership. (12) Although it is not intended in this article to analyse the reasons that prompted the introduction of compulsory union membership in 1933, it is important to remember that the legislation was in part the result of a severe deterioration in trade union organisation and strength that had been caused by the effects of the economic depression of the 1930's, and the suspension of compulsory arbitration that resulted from an amendment to the I.C. & A. Act in 1932. Since the effectiveness of the system of conciliation and arbitration depends upon the maintenance of an equality of bargaining strength between unions and employers, it was essential to the continuation of the statutory system of industrial relations that the balance be restored, and compulsory union membership was seen at this time as one method to restore the equality of bargaining power.

It is very questionable whether statutory provision for compulsory union membership should have been in force for a period of 25 years. It is interesting however to note that when in 1960 the National Party made an election issue out of the question of union membership, mankind turned against an award of equality of bargaining power, this attitude towards amending the legislation was probably occasioned by the fact that the only alternative to compulsory union membership was previously seen as voluntary union membership. Thus while compulsory union membership was not considered a desirable concept, voluntary union membership was seen as an even greater threat to the continued existence of industrial relations systems. The legislation eventually passed by the National Government in 1961, (13) which repealed the law relating to compulsory union membership and replaced it with the present qualified and unqualified preference clauses, was a masterly compromise between two opposing positions.

QUALIFIED AND UNQUALIFIED PREFERENCE CLAUSES

Under the present provisions in the 1973 Industrial Relations Act relating to union membership, the Industrial Commission may make an award or agreement which includes a qualified or an unqualified preference clause if such a clause is agreed to by all the assessor's in conciliation, or if not less than 50% of the workers bound by the award desire to become or remain members of the union. Since almost invariably there is agreement in conciliation to include an unqualified preference clause, the matter is settled in conciliation. If however there was no such agreement in conciliation, and no award is made, or more than 50% of these ballot did not want to be union members, then the Industrial Commission shall insert in the award or agreement a qualified preference clause, in addition to provisions in the Industrial Relations Act for a worker who is covered by an award or agreement containing such a clause must become a member of the union within 14 days after his or her engagement. (14) If there is a qualified preference clause in the award or agreement then the adult worker must become a member of the union within 14 days after his or her engagement, if requested by an officer of the union. If a worker does not wish to join the union, he must notify the union in writing, and if the union is unable to prove that the worker has had adequate opportunities to join, he must be allowed to continue with his work. The legal effect of the qualified and unqualified preference clauses is that statutory compulsory union membership is no longer required, but that the parties themselves decide to include provision for compulsory union membership in their award or agreement.

Since in practice qualified preference clauses are rare, New Zealand now has a state negotiated compulsory union membership. Although it may be labouring the obvious, there does seem to be some public misunderstanding as to the legality of union membership. There is nothing in law to prevent the parties agreeing to a qualified preference clause as opposed to an unqualified preference clause.

It is the statutory provisions relating to qualified and unqualified preference clauses that the Government has pledged itself to repeal, and to replace them with what could result in widespread voluntary unionism. In order to understand the Government's proposals for abolishing compulsory union membership, it is necessary to examine its election policy statement on industrial relations, and in particular the section entitled 'Industrial Harmony,' which outlines the proposals for giving workers the opportunity to vote upon whether they desire voluntary or compulsory union membership. It is always dangerous to take any political party's election policy statements too literally, but since the Government has made a frequent reference to the fact that they were elected to implement its industrial relations policy contained in their manifesto, and intend to ensure that policy is implemented, (20) it would be unwise to totally ignore the proposals in the election manifesto.

GOVERNMENT PROPOSALS

Under the Government's scheme to change the statutory basis of union membership, it is intended to be introduced to voluntary unionism, in order to provide that within three years of the enactment of the legislation, a compulsory secret ballot is to be conducted amongst all workers of each trade, industry or occupation, in a geographical area to be determined, to determine whether they want their union membership to be voluntary or compulsory. The decision resulting from this ballot is to remain in force for three years, when a further ballot will be held on the same question by the employer and the union, and in the third year, another ballot may be held if not (14) Industrial Relations Act 1973, s. 96.
(15) Ibid., s. 100.
(16) Ibid., s. 102.
(17) Ibid., s. 105.
(18) Ibid., s. 95.
(19) Ibid., s. 96.
(20) The Prime Minister was reported in New Zealand Herald, 22 March 1976, as saying, "the position is we have a certain policy and we will carry it out."
less than 10% of those covered by the award or agreement, or of all persons employed in that industry, petition the Department of Labour. It is perhaps ironic that in order to obtain voluntary unionism, the workers must be forced to participate in the initial ballot and presumably all subsequent ballots. More importantly the prospect of regular ballots, while satisfying the desire that an individual worker have an opportunity to change his or her mind, will do little to promote for that reason the idea of union organisation. It must be pointed out that under the present legislation, the individual workers through their assessors have the opportunity to change the form of union membership every time the award or agreement is re-negotiated, which may be every 12 months.

If the majority of the workers vote for compulsory union membership, then a clause to this effect is written into the award or agreement. Although the majority of workers may have voted for compulsory unionism, there will still be an opportunity for an individual to be exempt from union membership on what is presumed to be similar grounds to those already contained in the section relating to exemption from union membership in the 1973 Industrial Relations Act. The effect of compulsory union membership under the Government's scheme is that, whenever the union agreement is negotiated there is an opportunity to change the basis of union membership, in future compulsory union membership will remain in force for at least 10 years.

If the majority of the workers voted for voluntary unionism, then it is illegal to insert a clause in the award or agreement requiring union membership. It is however lawful for workers to form their own union or join an existing union or form a voluntary unregistered society that is concerned with only social, welfare and similar services. A voluntary union can register as an industrial union if it can show it has a membership of 25% of the potential workforce in the trade, industry or occupation. If there are two unions competing for registration, then the union with numerically the greatest number of members will be registered. This aspect of the Government's proposals appears to be likely to create a great deal of industrial trouble. It is almost an invitation to the rival unions to fight it out amongst themselves, with the victory of registration going to whichever union survives with the greatest number of members. It seems a retrograde step to introduce into the New Zealand industrial relations system at this stage a principle that has always been avoided, namely the problems associated with the concept of a 'closed shop'.

A particularly novel aspect of the Government's scheme is the idea that individual workers, when they become members of the Labour Department, would represent at negotiations for an award or agreement, all workers who are not members of a registered union. At conciliation, therefore, the parties present would include employer assessors representing whatever voluntary union is registered, and a representative from the industrial advocacy service. An interesting aspect of this service, which would be a part of the Government's proposals, is that it would be financed by the state, but so that the unions in negotiations would not be at a disadvantage, and in recognition of their contribution to the negotiations, the state would pay an equivalent amount on a per capita basis to all unions involved in negotiations. While it was probably not intended, this idea of paying those bodies representing the workers in agreement negotiations, raises the whole concept of state funded trade unions. The implications of such an idea are very interesting but unfortunately beyond the scope of this short article. Apart from the financial aspects of this part of the Government's proposals, difficulties can be foreseen for any scheme that necessitates a three-sided argument. While it could be imagined that employers may benefit from friction between the representative of the workers, the success of any settlement gained at negotiations depends upon its acceptability by all parties. It is to be hoped that before the Government embarks on this aspect of their scheme they would make some attempt to ensure it would not make an already long and complex award or agreement negotiation process even more lengthy and complicated for all concerned.

IMPLICATIONS OF CHANGES — THE BASIS OF UNION MEMBERSHIP

The above points are the essence of the Government's proposal on voluntary unionism. It is obvious that the Government has no intention simply to legislate for voluntary unionism in the same way as the Labour Government legislated for compulsory unionism in 1936. What the Government seems to be trying to do is to give individual workers the opportunity through a compulsory or voluntary union membership, the Government also recognises the right and freedom of unions to organise.(22) In trying to balance these two competing interests in the context of an industrial relations system, the Government is attempting to achieve what has been described by Grunfield as(23) "one of the most intractable problems posed for the law by modern industrial relations." It is too early to predict whether this Government scheme will be to this intractable problem. It does appear obvious at this stage, however, that the Government's scheme is doing little to further harmony. In 1974 Woods observed when commenting upon the concept of voluntary unionism, that(24)

"The advocates of voluntary unionism have yet to show that on balance it would be to the benefit of the community as a whole. There is certainly no reason to believe that it would bring greater industrial peace."

The accuracy of Woods' observation has been borne out by the Federation of Labour President, Sir Thomas Skinner, who is reported as stating that(25) "Unionists affiliated to the Federation of Labour will be urged to boycott any ballot on compulsory union membership by the Government." There has also been some indication of international trade union support for the stand taken by the Federation of Labour. If the Federation of Labour remains adamant in its rejection of the Government's ballot, and the Government goes ahead and introduces legislation based upon the outlines in its election policy statement, then the implications for New Zealand's industrial relations system are very serious.

It may be argued that it is worth running the risk of inter-union rivalry disrupting industry; of radically altering the nature of the award or agreement negotiation process; of drastically cutting back the membership of the white-collar unions, while allowing the already strong active unions to continue with compulsory union membership; or of altering the balance of power in the Federation of Labour because of the cutback in membership of the white-collar unions; the possibility of all or any of these consequences occurring is worth risking so that the rights of the individual are protected and in particular, the right to vote in a ballot not to join a union. It is true that the rights of the individual must always be protected, that is why there is provision in the 1973 Industrial Relations Act for a person to apply for exemption from union membership. It will also pay to remember that a ballot of a union must be submitted to the Registrar of Industrial Unions before being recorded, so that the Registrar can ensure no rule is unreasonable or oppressive.(26)

If the Government is concerned primarily with protecting the individual then it may be able to achieve this objective more effectively by extending existing provisions in the Industrial Relations Act, rather than by radically interfering with the foundations of the existing system of industrial relations. It is all too easy to upset the balance between protecting the rights of individuals, and maintaining the stability of society as a whole. In an effort to protect the rights of the individual, a state of chaos may be created in society. It is however for the Government to maintain the balance of interests in society. It is to be hoped that the Government will seriously consider the implications of its present proposals for voluntary union membership before implementing them.(27) Perhaps the best

(22) See in particular National Party Policy Statement, op.cit., 5.
(26) Industrial Relations Act 1973, ss. 175-181, which relate to the requirements for union rules.
(27) It has been reported in The New Zealand Herald, 24 March 1976, that the Minister of Labour may visit countries overseas to look at voluntary unionism in action.
advice that has been given to anyone who wishes to interfere with the existing system of industrial relations came from Woods, who wrote:[23]

"It is ... because the system is not something on its own, but part of a way of life as a whole ... that it should not be interfered with by amateur hands or turned into the cat's paw of political opportunists. It is capable of improvement, but improvement should come through the hands of those who appreciate the depth and the spread of its roots, both backward into history and tradition and forwards into the workplaces and the activities, feelings, and aspirations of men and women." [24]

**NEWS and VIEWS**

**WELLINGTON: B. H. Holt**

**JANUARY:**

A meeting of 1500 Wellington City Council employees discussed their combined trade unions to take "whatever action might be needed" to make up the shortfall in the Government's cost-saving adjustment. The Trades Council referred the matter to the F.O.L. and Sir Thomas Skinner stated that "key unions such as transport and building and large unions such as engineering and clerical" would be called together to agree on a procedure to have the wage bargaining regulations introduced in 1972 by the Labour Government reinstated. However, neither did they repeal them, despite strong opposition from the F.O.L. over their introduction without consultation. Their use by the present Government gave rise to "the charge of a March of Dan Long, General Secretary of the P.S.A. since 1960, will be felt in many areas but particularly perhaps in the area of relationships between the CSSO and the F.O.L. In February he was taken place about a joint approach to Government on the issue of wages. He said the State Services were not asking that the wage regulations be followed but that the alarm bells in July should make up the shortfall in the January order. In the September 1975 "N.Z. Journal of Public Administration" Long mentioned an idea Norman Kirk spoke about in August 1975 (recently expressed by Prime Minister Muldoon) of a single wage-fixing tribunal to deal with the claims of "the public service and the trade unions." Long expressed no dislike for this idea but said that the Labour Government was in danger of looking the separate issue of the principle of "fair relativity" for public servants with those in the private sector.

A recent Wellington dispute would suggest that the present Government is equally in danger of neglecting this principle. The First Maritime Composite Agreement replaces fifty awards and covers all maritime unions and New Zealand ship-owners except those in the Auckland Government. It took eighteen months to negotiate and originally employees of the Railways Department on ferries were included in the coverage. The present Government decided so as to take office to exclude them because leaving the ferries from the agreement were an effective wage increase which exceeded the guidelines laid down by Government. Unions staged a twenty-four hour protest stoppage on March 11 when the agreement went into the Industrial Commission. In the meantime, the spokesman for thirteen Hutt Valley and Porirua Basin Combined Motor Company unions, Pat Kelly, has said that their next claim are being based on the ability of their particular industry to pay. They hope to have their economic research completed in time for the June negotiations.

Finally, fears of unemployment have been evident in the region. The New Zealand Tramways Union has placed the issue of the Council's desire to employ part-time and contract labour in the hands of the F.O.L. The New Zealand Workers Union, whose membership is concerned about the possible sackings by Government of 100 permanent staff employed on roadworks around Wellington and others at stations, to be rehired as relief labour or on a four-day week basis. He was quoted as saying that workers have a right to a forty-hour week, a statement to which I cannot give my wholehearted support, having a yen for a thirty-hour week on my present salary. A more important issue is the alarm bells expressed by the journeymen butchers in the Wellington Shop Assistants Union at the fact that, when equal pay is achieved for women in April 1977, untrained women could enter the same pay as themselves. I will be interested to see whether the F.O.L. Women's Advisory Committee, which met for the first time in February, will offer its opinion on this issue.

AUCKLAND: Syd Jackson

The election of a National Government in November last year with its misguided out-date and dangerous views on labour and industrial relations ensured that 1976 would be a crucial year for Trade Unions. As we move into the second quarter of the year it is clear that the activities of Trade Unions are not so much on the actions, or non-actions, of employers, as on the actions of this Government. One of the major concerns will be to decide how to cope with the tragedy of a Government which is intent on deliberately creating unemployment as part of its so-called economic package.

This policy, which is based on the fallacious belief that a little unemployment would be a good thing since it would help increase the national growth rate, will have serious consequences for many people. The main fear is that if there is not a fundamental change in economic policies there is a real danger that unemployment will become a permanent part of our social structure with a great number of indirect social consequences.

The maintenance of full employment is vital because obviously unemployment does not fall evenly on the whole of the population.

Associated with the problem of unemployment is the all-important and contentious question of redundancy. If workers are opposed to the company's compensation for losing jobs through no fault of their own the Trade Union movement will need to devote much of their time and resources to fighting redundancies. People are concerned about the possibility that a company will force a better deal than they are getting.

The specific and spurious January cost of living order which, of course, did not cover the increased cost of living, and ways of resolving how this loss can be made up, are questions to be considered at nationwide stop work meetings called by the Federation of Labour. These meetings are also important showings of strength for Trade Unions. [25] Trade Unions will largely determine the policies Unions will follow in Award negotiations which begin in earnest in the middle of the year, because the cost of living order poses a direct threat to the negotiating power of Unions. A cost of living order should be seen for what it is. It is not a wage increase. It is

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