from diminishing in incidence there is a marked increase in size. It is hard to resist the conclusion that the new Federal Government and the organised labour movement are on a collision course.

Thus far attention has concentrated upon the “headlines” of industrial relations in Australia. There are in addition many other features worth remarking. One such feature is the careful attention presently being given worker-participation. With but one exception, the attention has not yet become a matter of public debate but it is fair to say that various schemes are being canvassed by different bodies. The Federal Government sponsored a broad inquiry, the results of which have not been published, the Victorian Government in South Australia has published extensive proposals and is now enacting legislation and the ACTU at its 1975 Congress initiated a working committee to report upon “worker-participation in the area of decision-making at all levels.” There can be no doubt that the momentum behind this trend will accelerate. Likewise the initiatives in trade-union education will continue and expand. There have been enacted under the Trade Unions Education Act 1975, the foundation stone of the central training college has been laid, trade union training centres in the various States are well established, superbly equipped and housed and staffed by qualiﬁed and committed people. This is a trend to which New Zealand could well pay very careful attention.

A third Australian initiative from which New Zealand could benefit lies in the broad area of manpower planning. Under the Labour Government, and speciﬁcally under the Department of Labour, schemes were introduced to deal with long-term manpower problems. Hence, the National Employment and Training Scheme (NET) which aimed to alleviate unemployment and shortage of skills, to remove imbalances in opportunities for employment and to assist in the long-term restructuring of the work force. A parallel scheme to deal with short-term problems was the Regional Development Scheme (REDS). Clearly, both schemes owe much to the Swedish model and to a considerable degree the approach which they illustrate embodies much of what Professor J. F. L. Young has long advocated in New Zealand. The new Federal Government has already dismantled much of the initiative while at the same time expressing public and constant concern with manpower policies. Accordingly, it is not an easy matter to forecast what may happen. Possibly Australia will see a return to a familiar line of allocation of resources. If this is to occur then Australia will have much relevance to attempts to lower unemployment.

Given the present trend to reinforce and, indeed, extend the reach of the traditional industrial tribunals one ﬁnal development warrants mention and it is this: the legal deﬁnition of an “industrial matter” will be subject to strain. At the time of writing the NSW Labour Council is taking a test case on the provision of redundancy payments in awards. As the law stands claims for redundancy do not lie within the jurisdiction of industrial tribunals as entitlement to such payments arises after the employment relationship has terminated. The same is true of claims for pension schemes, relocation allowances, retraining and many other matters which are contemporary industrial relations problems. What this demonstrates is that the concept of “management prerogatives” is once again under challenge. In short, a question which will increasingly exercise the industrial tribunals and the courts is: how wide is the power of management to unilaterally alter the conditions of employment? In turn this is linked with exploration of worker-participation in decision-making and is a small but signiﬁcant part of the broader problems of manpower policies, training and retraining and the allocation of resources. Underlying all this is the chronic problem of an industrial society: what is to be the relationship between the major groups of employers and employees to each other, to the various tribunals and to society at large?

INDUSTRIAL LAW CASES

TRANSPARENT DEVICE


The Industrial Court has often said that the contract of service-who are in the case

The Court found that the three women were, in fact, employees and covered by the collective agreement. Defendant employer was fined $100 for breaching the agreement, under the Industrial Relations Act ss 147-148.

This case demonstrates that employers may be increasingly interested in creating independent contracts, instead of employer-employee relationships, and thus evade awards and collective agreements, PAYE obligations, Equal Pay Act requirements, accident compensation levies, superannuation payments, and possible redundancy compensation. However, the Court, however, has given notice that it is alert to such evasions and is prepared to order not only arrears of wages, but also penalties. One can only ask whether $100 was an inappropriate penalty in this case.

CONTRACT OF EMPLOYMENT CONTINUES DURING ILLEGAL STRIKE


Although the statutory scheme of conciliation and arbitration with terms of employment, has been avoided, has been a great disadvantage in New Zealand since 1894, the common law contract of service between employer and worker remains important. Because of a dispute relating to a police search of certain private homes during which search management allegedly aided the police, members of the Auckland Freezing Workers Union employed at Hellaby’s Southdown freezing works stopped work from 3 April 1973 until 30 April 1973, although an ancillary dispute was responsible for the stoppage after 17 April. Four statutory holidays happened to fall during the period of stoppages: Good Friday, Easter Monday, Easter Tuesday and Anzac Day, being April 20, 23, 24 and 25 respectively, (Easter Tuesday being the day selected by the union in place of the 2nd day of January).

Plaintiff Weir argued, on behalf of himself and 1,200 others, that he was not correct to cease or to allow a worker to engage in actual work. Mahon J. found that the words “employed in any factory” in s 28 (1) of the Factories
Act 1945 meant the contractual relationship, or the statute, and not physical activity on the chain. The Court also found that the employees were not dismissed on April 9, and then re-engaged on April 30 under new contracts of service. Rather, the contract of service remained in effect. Although it was certainly open to the employer to give notice of dismissal, especially since the stoppage was in violation of an agreement of 29 February 1973, the employer must explicitly give such notice.

Defendant employer was ordered to pay out the amount due for such holiday pay, approximately $48,000.

The decision demonstrates the continuing fundamental importance of the common law agreement: a strike, albeit illegal, does not automatically destroy the contract of service. Management must expressly announce that the breach is fundamental, thus terminating the underlying contract.

ASPECTS OF THE NEW INDUSTRIAL COURT


The new Industrial Court, as defined in ss 32-62 of Industrial Relations Act 1973, is declared "to be the same Court as that established by the Industrial Conciliation and Arbitration Act 1954 and heretofore called the Court of Arbitration," s 32 (2). The new identity, however, is belied not only by the new name, but also by the new function, and the new approach of the Industrial Court as contrasted with the old Court of Arbitration. This note will attempt to reconcile the two courts as a legal institution, is so markedly different from its predecessor that significant adjustments must be made in the practice of industrial relations in New Zealand.

Pickford v Canadian Construction Co. Ltd is a seemingly inconsequential case involving only the interpretation of a "mental contract" clause in a collective agreement for the few workers concerned. The dispute related to Clause 6 (a) of the Northern Industrial District Labourers Award, 72 B.A. 3674, which required that meal money be paid to workers "required to work after 6 p.m. and provided that work continues after the meal break."

The Inspector of Awards asked that the meal money be paid to shift workers on ordinary time, working the 4 p.m. to midnight shift. The Company contended that Clause 6 (a) was only intended to apply to overtime work, and not ordinary time, albeit shift work. There was evidence that such was the known intent of the parties. Had the case arisen in the Court of Arbitration, that court could have filled in any omissions or made new provisions to overcome deficiencies in the drafting of the clause in question. In other words, the law-interpreter, the Court of Arbitration, always understood the intent of the law-giver, the Court of Arbitration.

Now that judicial and arbitral functions have been split asunder, however, the new court can only interpret awards made by the Industrial Commission, and cannot re-phrase poorly drafted clauses and, in fact, has the same position in respect of awards and collective agreements as the Supreme Court. Anderson v Couchman, 40 B. 114, 157.

The result in this case was, as the court applied strict rules of statutory interpretation, that meal money must be paid to shift workers, although that was probably not the intent of the parties. The court quoted a length from N. H. careful on the interpretation of statutes, even though the document in question was the fruit of lay conciliation, and not the product of a skilled Parliamentary draftsman.

In a dissenting remark, one of the nominated members of the Court commented that the known intent of the parties to an agreement would now be ignored by the Court.

The impact of this legalistic decision is that parties in conciliation should have legal assistance in drafting their agreements. The Industrial Relations Act 1973, however, excludes barristers and solicitors from conciliation councils by s 78 (3), and legal advisers must either stay in the background, or give up their practising certificates.

BILLY HODGSON, Senior Lecturer in Law, Faculty of Law, University of Auckland.

BOOKS


This slim volume of 120 pages brings together ten public addresses by N. S. Woods, retired Secretary of the Department of Labour and now Visiting Fellow in Industrial Relations at Victoria University of Wellington. Most were delivered to different audiences during 1972 and 1973, and some have been revised and up-dated to take account of changes in the law.

While the dominant theme is industrial relations, some of the lectures are wider in scope, discussing the human condition in general (a talk to army personnel on "What is Man?") and the place of the individual in the modern world. This broad range is fully in line with the author's view that industrial relations lies at the heart of human relationships in industrial society." He believes that conflicts which arise in industry are not basically different from conflicts between individuals and that differences can be resolved by goodwill and mutual understanding.

Woods accepts trade unions not just as a necessary evil but as a positive force whose inescapable clashes with management provide a vital stimulus to social progress. The worker, he writes, turns to his union because he has learnt by long experience that he doesn't get his share of the increments by just waiting." Management, he seems, would like to do its best by its workforce but is hampered by conflicting loyalties, for it has to consider shareholders, clients and customers as well as its employees.

Nevertheless, Woods sees large areas where the traditional relationship between employer and trade union is in need of radical change.

Of course, it is fairly widely known that the worker's legal position is governed largely by the ordinary common law rules of contract and that there is an ever-increasing number of legislative enactments (for example, Accident Compensation Act 1972; Annual Holidays Act 1944) which further proscribes his legal rights and duties. It is surprising however that the laws relating to the individual worker and those governing the collective relations of trade unions and employers were generally regarded as being independent and separate. The most that would be acknowledged is that rights and duties determined collectively become "incorporated" into the worker's contract of employment. It is as if, on one hand, the "public" common law of contract must remain conceptually intact and sacrosanct, and, on the other hand, the legal procedures and agencies of the industrial system must remain the sole prerogative and domain of unions and employers.