INTRODUCTION IN NEW ZEALAND:

New Vista for Collective Bargaining:
Extension or Restriction?

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Introduction:
The seemingly unimportant change of term from "industrial agreement" as it appeared in the now repealed Industrial Conciliation and Arbitration Act 19541 to "collective agreement" in the Industrial Relations Act 19732 replacing the former statute has signified an immense sociological restructuring which affects the whole field of industrial relations, particularly the potentiality for genuine collective bargaining.

A proliferation of in-plant and work-site3 collective agreements regulating issues specifically applicable to the particular circumstances of the workplace, and elaborating on rights disputes and grievance procedures with extension to problems of promotion, seniority, transfer and related matters, could, and should, have followed the coming into operation of the new statute. Nothing prevents the parties from going further than the bare requirements, but still remaining within the permissible limits, of the Act. Has any such proliferation occurred? Have either the unions or the employers taken advantage of the possibilities opened up?

Regrettably, the answer is "no." One of the leading industrial relations scholars in New Zealand, Professor F. J. L. Young, pointed out in a most perceptive statement that this new opportunity has not been used. After emphasising that a significant shift has occurred in the underlying philosophy of industrial relations, he observed:

The full ramifications of this change have yet to develop. They have certainly not yet been grasped by the wider community and even by some within the ranks of the social partners.4

The present paper intends to examine and carry this proposition in another direction by analysing a number of actual, voluntary and compulsory collective agreements with a view whether or not any important differences can be found in content. To what extent, if at all, have the parties agreed to establish their specific labour code within the framework of an in-plant agreement?

In order that the analysis can be carried out and some conclusions be drawn, first it is necessary briefly to describe the statutory dispute settlement procedures.

DISPUTES AND PROCEDURES FOR SETTLEMENT

The factually already existing and impliedly acknowledged distinction between "dispute of interest" and "dispute of rights" has been given express statutory recognition by the I.R. Act.

It is a logical corollary of the distinction between the two types of dispute that the jurisdiction of the former Arbitration Court has been divided between the Industrial Commission5, vested with the arbitral functions and the Industrial Court6, exercising a judicial power in relation to disputes of rights. Attention will be focused mainly on disputes of interest, the procedures for settling them and the resulting collective instruments.

The I.R. Act has in effect retained the three-tier settlement procedure as existed under the former statute:

(a) Voluntary settlement;
(b) Conciliation;
(c) Arbitration.

The parties to the dispute, or using an expression with a broader connotation, the social partners, are registered industrial unions of workers on one side, and registered industrial unions of employers or individual employers on the other side. Some of them, usually but not necessarily the workers' union, creates a dispute by claiming an action in the existing collective instrument. The other party answers with a rejection-counterproposal, and this will be followed by negotiations. If and when agreement is reached, the terms must be recorded in writing, and registered with the Industrial Commission as a voluntary collective agreement.

If the parties fail to agree, the dispute will normally be taken to a conciliation council consisting of an equal number of assessors nominated by the two sides under the chairmanship of a conciliator. Where the application for conciliation is filed by an industrial union of workers, any union or association of employers in existence in the industrial district in any industry to which the dispute relates must be named as respondent; where such union or association does not exist, it will be sufficient if a number of employers are named. In both cases, nevertheless, all employers engaged in the relevant industry or industries in the district "shall also be deemed to be respondents." This blanket citation of the respondents as all such employers, regardless of whether or not they have actually taken part in the conciliation proceedings, will be original parties to, and bound by, the subsequent settlement embodied in a collective agreement registered with the Commission. It logically follows that they are also deemed to be parties to the arbitration that will take place if conciliation fails.

The Industrial Commission, after hearing submissions, makes its decision in the form of an award. Although the procedure is quasi-judicial, the award in contradistinction to judicial decisions does not adjudicate past controversial issues between the parties, but it has a regulatory and normative effect for all future employment contracts coming within its purview, and by virtue of the blanket clause its binding force extends to contingent parties who at any time during its continuance will be connected with or engaged in the industry. In view of its character an award has been described by the Chief Judge as "in form a judicial decree, but in substance an act of legislative authority," and in effect the Industrial Commission constitutes a "delegated and subordinate legislative authority."7

THE CONTENT OF COLLECTIVE AGREEMENTS

For the purposes of analysing the content it seemed the best method to take a number of the most recent collective agreements. Altogether 112 voluntary and 79 conciliated collective agreements were perused.

The first, and perhaps surprising, fact revealed is that more than half of the clauses fall in the category of in-plant settlements. The rest covers a whole industry in a district, or at least several employers. The second noteworthy observation relates to the actual terms: the principal clauses of the Schedule regardless whether they have resulted from free bargaining or conciliation regulate the same issues in a very similar manner. Indeed, without looking at the title or the introductory words of the Commission's Order the mere reading of the clauses would not be of any guidance in deciding whether the agreement is voluntary or conciliated. This difficulty is accentuated by the great variety in the composition of the clauses, and by the fact that most of them lack specific indication as to the type of

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1-"Originally enacted in 1894, and after numerous amendments re-enacted in 1954; hereinafter quoted as "I.G. & A. Act."
2-"Hereinafter quoted as "I.R. Act." or simply "the Act."
3-"For purposes of this paper, these expressions will be used as synonyms.
4-"F. J. L. Young, "New Zealand Industrial Relations - Retrospect and Prospects," a paper delivered to the ILO/IAEA Industrial Relations Symposium held at Auckland, August 26 to September 6, 1975, also published in the New Zealand Journal of Industrial Relations; Professor Young ibid, ss. 17-31.
5-ibid, ss. 82-62.
6-ibid, ss. 68-75.
7-This term is applied by Young, note 4 above, and is being used increasingly in Western Europe to describe the collective bargaining and organized labour in their various relationships.
8-As to registration, see I.R. Act, ss. 163-174.
9-ibid, ss. 82-62.
10-ibid, ss. 68, esp. (5); it should be noted that the dispute will not necessarily go to a conciliation council, but only if one of the parties makes an application, and the other agrees to nominate assessors.
11-ibid, ss. 83 (1) and 89 (2).
12-ibid, ss. 83-13 and 89 (2).
13-N.Z. Wages and Hours Federation I.A.W. v. Fraser (1924) N.Z.L.R. 688 (SC), at 709, relating to the former Arbitration Court (per Salmond J.).
the agreement.

Typical clauses in collective agreements can be set out as: 

Industry to which agreement applies; Definitions; Hours of work; Shiftwork; Overtime; Wages; Allowances; Payment of wages; Holidays; Meals and smoke; Sick pay; General conditions; Terms of employment; Safety, health, welfare; Temporary, casual and part-time workers; Junior workers; Redundancy; Disputes; Grievances; Preference; Exemptions; Right of entry; Union subscriptions; Union meetings; Application of Agreement; Scope of Agreement; Term of Agreement.

There are many variations to this basic pattern. In some agreements, depending on the nature of the industry, more emphasis is placed on special methods of payment, such as shift allowance, incentive bonus scheme and call money. Others subdivide the topic of holidays into statutory, annual, special and long service holidays, and regulate also for such contingencies as bereavement and jury service. Sick leave is usually dealt with in the sick pay clause. Again, safety, accidents, first aid, health and the wellbeing of the worker are to be found in separate clauses, or included under the heading of "General Conditions." The matter of protective clothing and equipment, where applicable, most frequently is placed in a separate clause, but may be bracketed with safety or working conditions. The effects of employment, sometimes extend to termination, but some Schedules place it under a separate heading.

Clauses both in conciliated and voluntary agreements can be divided into three distinct groups.

(a) Individual. Those which are to be incorporated in the individual contract of employment, and will normally settle disputes of workers' unions with one employer, or with one group of employers engaged in a common venture, and by its very essence it relates to a particular employee.

(b) Collective. Those which will not be so incorporated, as they affect only the union itself.

(c) Mixed. Those which affect the worker but also the union itself, and therefore are deemed to be incorporated in the individual service contracts.

The first group includes wages, allowances, sick pay, hours of work, overtime, holidays, safety, health, welfare and all matters that refer to the employer-employee relationship. Contrarywise, the second group relates merely to union-management issues for the composite agreement or industries to which the agreement applies; the territorial scope and the term in time; the employer's duty of deducting union subscriptions from the wages; the right of the union or other union officials of entering the workplace on union business; the union's right of demanding the names of all employees. These matters, obviously, do not directly concern the employer, but are important for the union's own status, and constitute the actual collective part of the agreement, as distinct from the code of rules to be individualised through the employment contracts.

The third group consists of such important arrangements as the preference clause14, disputes15 and grievances16. Disputes mean disputes of rights that may arise between the employer and a group of workers, as distinct from a personal grievance which affects one worker only. In such matters the union is involved in the settlement procedures. Preference in employment for union members primarily serves the union's interest, but also the interests of employers. The employment of workers in the New Zealand Steel Limited works cafeteria, contains provisions itemised in 6 sub-clauses, and 33 subparagraphs on hours of work, day work, special men's shifts and annual leave matters. Overtime is dealt with in similar length and minuiae. The redundancy provisions are also divided into sub-clauses entitled, "Definition and Application," "Alternative employment," "Redundancy Compensation Payment Schedule," "Unemployment," "Grievance Procedures," "Re-location," "Redundancy Compensation Payment Schedule." Grievance matters arising from redundancy lay disputes will be settled in accordance with the standard grievance procedure as provided by the I.R. Act and incorporated in the agreement.

Another agreement affecting the Wellington Container Terminal clerks, apart from the inclusion of an incentive bonus scheme, follows the ordinary pattern26. The same observation applies to a great number of other in-plant agreements. Some of them contain detailed arrangements for specific work processes together with scale of wages, allowances and bonus payments, or well set out redundancy clauses but no great ingenuity is shown in respect to such individual matters as promotion, transfers and disciplinary action. Some local body officers, and skilled tradesmen's agreements, however, are more comprehensive, including as built-in conditions the achievement of higher wages for the ladder of positions and increments by regular steps through the grades with the necessary evaluation processes27. Factory workers, in general, still seem to be regarded as being capable of earning the minimum standards for the associated submarine pipelines, despite expectations to the contrary, lacks any specific provisions28.

In-plant agreements, apart from a very few, do not greatly deviate from the standard clauses, although by their very nature they provide ample scope for regulating matters particularly or exclusively relevant to the workplace. One of the most detailed agreements is that between the Australian Employers and the Blaw O'Reilly Union, the latter representing all salaried employees, and provides for a joint evaluation committee. Seniority, defined as "length of continuous service"; promotions, transfers, lay-offs, recalls from lay-offs and "unemployment" all pay a special dividend of employment, and all receive particular attention. Grievance adjustment from the filing of complaints through the stages of the process concluding in arbitration together with procedural requirements and decisions on suspension, discharge and reinstatement, are also extensively regulated. Safety and health, vacation plans, training programme under the supervision of a Joint Training Committee, group medical insurance and a non-contributory pension plan similarly form an important part of the agreement.

In New Zealand, it can be argued, legislation takes care of most of these problems. The I.R. Act is quite comprehensive, and sets out the clauses for disputes of rights and for the settlement of personal griev-
ances to be included in every award and collective agreement, but both may be varied with the consent of the Commission. The parties apparently found it easier to copy the provisions simply from the awards. Safety and health, again statutory matters, and the Accident Compensation Commission pays during periods of injury originated incapacity to work. Likewise, during illness, workers receive treatment and sickness benefit. Further, there is universal superannuation for those over the age of 65 years, and age benefit for persons over 60, if they need it.

Although all these public welfare payments represent an advance in social security, they provide only a minimum standard. Private arrangements are frequently needed to supplement the State measures. As far as vacation schemes are concerned, nothing similar exists in New Zealand.

Furthermore, it must be emphasised, that even with statutory protection against unjustified dismissal, and despite the inclusion of redundancy provisions in some agreements, in general, job security is sadly lacking. Right to promotion and what is known in America as the property rights in the job are little known concepts.

At times of "overflow" employment and shortage of labour the workers were not greatly disturbed by fear of losing their job. Those days, however, belong to the past, and the present economic recession with increasing unemployment darkly underlines the importance of the right to security in the job.

Lastly, has any serious endeavour been made in New Zealand to introduce a form of works' participation in management? Apart from a few attempts, the answer in general must be in the negative.

Even such modest achievements as a works committee do not feature in the agreements, notwithstanding that the I.R. Act permits regulations to be made for the purpose of establishing on a voluntary basis works committees for promoting, improving and maintaining harmonious industrial relations, and welfare, safety and health of the workers. Such regulations never have been made, and the Act may be interpreted as meaning that the Government Order the parties cannot voluntarily set up a works committee. Surely, the correct interpretation must be that the regulations merely intend to provide a model which may or may not be followed. The role of works committee in some matters could be combined with that of the dispute and grievance committees, and include within its functions all problems connected with job, job content, job valuation, classification, promotion, demotion, transfer, suspension, dismissal, redundancy and disciplinary matters. In order to properly appreciate and consider these issues the committee frequently should examine questions of operational requirements and production policy, The views expressed though they are not directly binding on the employer and would not impose on management prerogatives, may still considerably influence managerial decision-making.

WHAT HAPPENED TO FREE BARGAINING?

Why have the unions neglected to use the potentiality for genuine free bargaining given by the I.R. Act? Why did they fail to discover the significant shift in the philosophy underlying industrial relations? What explanation can be found for the indisputable fact that voluntary collective bargaining has not produced elaborately in-plants agreements? A work-site agreement may develop into a particular code of labour between the employer and the union, and by the incorporation of its relevant terms in the individual contracts between the employer and the singular worker it may regulate as far as possible all conceivable issues, both of substance and procedure, subject only to legislation and to the mandates of general law. Why do the parties strive to achieve this aim? In short, why have they not freed themselves from the straitjacket forced on them by the previous Act?

It would be presumptuous to give a definite answer stating the reasons with absolute certainty. Only informed guesses can be made.

The principal cause may be complacency, lack of alertness and the ingrained habit of following precedent of former industrial agreements. Perhaps, as A. J. Maitland's famous remark relating to the forms of action, it can be said that the parties have hitherto failed to recognize the grave, the ghosts of the past stand in the path of innovating spirit. Expressed in less exalted words, it simply comes down to the fact that the argument over wage rates continues to be the most important, and frequently the sole, issue in the bargaining process, and others are relegated to a place of secondary importance.

This criticism may be too harsh and not wholly justified. It is true, nevertheless, that interest disputes in the past have always centred around the wage claims, and the struggle for achieving the best rates has overshadowed other issues. Unions, however, may regard, not without justification, the apparent new vista for free collective bargaining, the opportunity offered by potential code-making as unreal, as a sheer delusion. One must admit, they cannot be blamed for their scepticism. While the I.R. Act has undoubtedly opened up new vistas, other legislative measures almost simultaneously introduced, have for practical purposes, closed the window facing the wider horizon.

The Wage Adjustment Regulations, following earlier limitations on the percentage increase of wage rates that could be freely negotiated by the parties without the Industrial Commission's approval, by amendment introduced a complete wage freeze. A further amendment has granted the Commission discretion of allowing agreed increases on the joint application of the parties, if the requirements of "exceptional circumstances" are proved to its satisfaction. The events and troubles consequent on the "exceptional circumstances" clause are too well known. In any case, even though a settlement would be approved, and the increase granted, the principle of free collective bargaining is lost.

The underlying intent of the Regulations in maintaining economic stability and arresting the upward movement of the wage-price spiral must certainly be recognised as desirable, but the method of cutting through, in many respects absolutely negative, industrial relations legislation invites strong criticism. An objective wise bystander, the mythical reasonable man, might point out that the restrictions on wage levels do not, and should not, necessarily affect other particular terms which could be freely negotiated. In principle this may be true. Nevertheless, in practice wages remain the centre of the dispute, the lifeblood of any settlement reached, and the restrictions not only deprive the bargaining of its freedom, but make the whole process anemic. It must be added that present developments point to further restrictions on free collective bargaining. These are:

(a) The limitation of redundancy payments to a maximum of 2 per cent of the total pay received during the preceding 12 months multiplied by the number of years of continuous employment, not exceeding 20 years

(b) Proposed amendments to the I.R. Act limiting the unions' freedom by —

(i) The intended ballot on voluntary participation

(ii) Penalty measures on industrial action.

The extent of the proposals is not yet known but they certainly will have a most restrictive effect.

The conclusion cannot be anything other than that the super-imposition of "temporary" anti-inflationary measures effectively counteracts the evolution of truly voluntary and free collective bargaining.