## INDUSTRIAL RELATIONS IN NEW ZEALAND

## New Vista for Collective Bargaining: Extension or Restriction?

by

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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The seemingly unimportant change of term from "industrial agreement" as it appeared in the now repealed Industrial Conciliation and Arbitration Act $19544^{1}$ to "collective agreement" in the Industrial Relations Act $1973^{2}$ replacing the former statute has signified an immense sociologcal restructuring which affects the whole field of industrial relations, particularly the potentiality for genuine collective bargaining.
A proliferation of in-plant and work-site ${ }^{3}$ 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 the coming into operation of the new
statute. Nothing prevents the parties from statute. Nothing prevents the parties from
going further than the bare requirements, going further than the bare requirements,
but still remaining within the permissible 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 cer-
tainly 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 conciliated, collective agree ments with a view whether or not any important differences can be found in any tent. To what extent, if at all, have the parties attempted 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 IR. 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 Commission 5 , 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

[^0]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 expression with a bartners ${ }^{7}$, are registered industrial social partners ${ }^{7}$, are registered industrial
unions of workers on one side, and registunions of workers on one side, and regist ered industrial unions of employers or individual employers on the other side ${ }^{8}$. One of them, usually but not necessarily the workers' union, creates a dispute by claiming specified changes in the existing 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 collec tive agreement?.
If the parties fail to agree, the dispute normally will be taken to a conciliation council consisting of an equal number of asessors 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 representative 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" 10 . This blanket deemed to be respondents". This blanket citation has great significance as all such employers, regardless of whether or not
they have actually taken part in the concilithey have actually taken part in the concili-
ation proceedings, will be original parties ation 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
$\square$
parties to the arbitration that will take place f conciliation fails.
The Industrial Commission, after hearing submissions, makes its decision in the form of an award11. 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 ${ }^{12}$ 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 Supreme Court 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" 13.

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 voluntary agreements 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: 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 sequence of the clauses, and by the fact that most of them lack specific indication as to the type of

7-This term is applied by Young, note 4 above, and is being used increasingly in Western Europe to des-
cribe organised management and organised labour in their various relationships. Cribe organised management and organised
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-bid, s. 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 -lbid, ss. $84-90$.
12 ibid, ss. 83 (1) and 89 (2).
former Arbitration Court (per
the agreement.
Typical clauses in collective agreements can be set out as follows:
Industry to which agreement applies; Definitions; Hours of work; Shiftwork; Overtime; Wages; Allowances; Payment of wages; Holidays; Meals and smoko; 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 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 he nature of the industry, more emphasis s 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 leave. Sick eave is usually dealt with in the sick pay clause. Again, safety accidents first aid health and welfare may be in separate clauses, or included under the heading of "General Conditions", The the heading of tive clothing and equipment, where applicable, most frequently is placed in a separate clause, but may be bracketed with safety or working conditions. Terms of employmen sometimes extend to termination, but some Schedules place it under a separate head ing.
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
(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

[^1]matters that refer to the employeremployee relationship. Contrarywise, the second group relates merely to unionemployer issues: definition of the industry 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 secretary or other union official 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 employee, 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 clause ${ }^{14}$, disputes ${ }^{15}$ and grievances ${ }^{16}$. 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 as the worker must be dismissed if he refuses to join, it is of vital importance for the individual ${ }^{17}$.
A subspecies of voluntary agreements, the composite agreements 10 deserve some special mention. A composite agreement settles disputes of several 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 plant only. The Port Chalmers Marine Repair Works Employees' Composite Agreement ${ }^{19}$ has been concluded between five unions, the Shipwrights', Engineers', Boilermakers', Electricians' and Storemen's on one side and the Union Steamship Company on the other side. The clauses do not contain anything specially related to the particular work-place. They mainly regulate the usual contentious issues of wages, allowances, overtime, holidays and redundancy, but do not deal with rights disputes or personal grievances. In this respect, unless the Commission makes an order declaring that the composite agree-
ment shall supersede all existing award and collective agreements that would other wise apply, the industry-wide agreements retain their coverage ${ }^{20}$. Another composite agreement relating to the Kawerau Tasman Pulp and Paper Mill construction works, besides giving special attention to the wages and allowances of the many classes of workers, contains in addition to the standard rights dispute and grievance procedure, a provision for establishing a Joint Consultation Committee ${ }^{21}$. One of the Huntly Coal Project composite agreements similarly has a joint consultation and also a job delegate clause ${ }^{22}$, but the other agreement only has the bare minimum of terms ${ }^{23}$ The Maui Offshore Construction composite agreement concerning the installation of the offshore platform and the laying of the associated submarine pipelines, despite expectations to the contrary, lacks any speific provisions ${ }^{24}$.
In-plant agreements, apart from a very ew, 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, settling the conditions of 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, day roster, shift-work and related matters. Overtime is dealt with in similar length and minutiae. The redundancy provisions are also divided into sub-clauses entitled, "Definition and Application," Alternative Employment with the Company," "Rights of Redundant Workers," Grievance Procedures," "Re-location," "Redundancy Compensation Payment Sche dule" and "Re-employment." Grievance matters arising from redundancy disputes will be settled in accordance with the standard grievance procedure as provided by the I.R. Act and incorporated in the agreement25.
Another agreement affecting the Wellington Container Terminal clerks, apart from the inclusion of an incentive bonus scheme,
follows the ordinary pattern ${ }^{26}$. The same observation applies to a great number o 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 grades in the ladder of positions and increments by regular steps through the grades with the necessary evaluation processes ${ }^{27}$. Factory workers, in general, still seem to be regarded as being paid on a certain rate with very little potential for advancement except by general increase of wages.
It would be perhaps unrealistic to expect collective agreements to contain such minute details as some American agreements. Thus, to mention only one, the Agreement between the American Can Company and the United Steelworkers of America28 in Article 7 concerning wages, sets out regular annual increments both for hourly rate and 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 in general all problems of job security 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 extentensively regulated. Safety and health, vacation plans, training programme under the supervision of a Joint Training Committee, group medical insurance and a nonmittee, group medical insurance and a noncontributory pension plan similarly
mportant part of the agreement.
In New Zealand, it can be argued, legislation takes care of most of these problems. This is true to certain extent. The I.R. Act sets out the clauses for disputes of rights and for the settlement of personal griev-

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\0-IR. Act, s. 66 (3); Woods, op. cit., 20.
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-(Ag75) 75 BK. Aw. 2689, 6033, 6043, 6735, 7479 and 3757 ( (:076) 76 BK. AW. 1277.
with appendices.
ances to be included in every award and collective agreement but both may varied with the consent of the Commis ion29. The parties apparently found easier to copy the provisions simply from easier to copy the provisions simply from the statute. Safety and health are again statutory matters 30 , and the Accident Compensation Commission 31 pays during periods of injury originated incapacity to work. Likewise, during illness workers receive free hospital 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 32
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 quently needed to supplement the state measures. As far as vacation schemes are 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 33 are virtually unknown concepts. At times of "overfull" employment and At times of overfull 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 depression with increasing unemployment darkly underlines the importance of the right to security in the job.

Lastly, hàs any serious endeavour been made in New Zealand to introduce any form of workers' participation in management? Apart from a few attempts ${ }^{34}$, the answer in general must be in the negative. Even such modest achievements as a works committee do not feature in the agreecommittee 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

## 29-I.R. Act, ss. 115 (3) and 117 (3).

29-1.R. Act, SS. 115 (3) and 117 (3).
31-Accident Compensation Act 1972.
32-Social Security Act 1964.
33 -See F. Meyers, Ownership of Jobs (1964), esp. 112; also Howard-Clayton, "A Proprietary Right Employment', (1967) Journal of Business Law, 139.
An Introduction to Workers Participation, publications by the New Zealand Department of Labour, 1972,1 An introduction to Workers Participation, publications by the New Zealand Department of Labour, 1972 ,
1973, see also Seminar with the Theme Worker Participation-Examples from New Zealand Practice, N.Z. 1973; see also Seminar win the Theme worker
Institute of Economic Research, Wellington, 1975.

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 precedents of former industrial agreements. Paraphrasing Maitland's famous remark relating to the forms of action, it can be said that though we have buried the I.C. \& A. Act, it still rules us from its grave. The ghosts of the past stand in the path of innovating spirit 36 . Expressed in less exalted words, it simply comes down to the fact that the argument over wage o the factinues to be the most important rates continues to be the most important frequently the sole, issue in the bargaining process, and all other matters are releg
to a place of secondary importance.
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 ostensibly offered potentia 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 all practical purposes closed the window facing the wider horizon
The Wage Adjustment Regulations ${ }^{37}$, fol owing 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 "ex ceptional circumstances" are proved to its satisfaction. The events and troubles con-
sequent 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 wageprice spiral must certainly be recognised as desirable, but the method of cutting through, in many respects absolutely negativing, industrial relations legislation invites strong criticism. An objective wise by= stander, 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 anaemic. 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 ${ }^{38}$
(b) Proposed amendments to the I.R. Act limiting the unions' freedom by -
(i) The intended ballot on voluntary unionism, and
(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 "tempor ary" anti-inflationary measures effectively counteracts the evolution of truly voluntary and free collective bargaining.

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    -Originally enacted in 1894, and after numerous amendments re-enacted in 1954; hereinafter quoted as -Her. \& A. Act."
    3-For the purposes of this paper," or simply "the Act."
    -F. J. L. Young, "New Zealand Industrial Relations will be used as synonyms
    the ILO/NORAD, Industrial Relations Symposium for Asian Countries held at Manila Aaper delivered to ember 6, 1975 , also to be published in the New Zealand Journal of industrial Relations; Professor Young
    is the Director of the Industrial Relations Centre, Victoria 5-1bid, ss. $17-31$.
    6-lbid, ss. $32-62$.

[^1]:    14-I.R. Act, ss. 98-104
    16-Ibid, s. 117.
    17-See Szakats
    18-See Szakats, "Compulsory Unionism: a Strength or Weakness?", (1972) X Alberta L.R. 313 19-(1975) Act, s. 75 Bk. Aw. 8419.

[^2]:    36-Sir Frederick Maitland, Forms of Action, 296; United Australia v. Barclays Bank (19A1) A.C. 29. Where 37-Wage Adjustment Regulations.1974, S.R. 1974/143, and amendments issued under the Economic Stabili-37-Wage Adjustment Regulations.1974, S.R. 1974/143,
    sation Act 1948 replacing former similar regulations. 38 -lbid. Regs. 45A-E.

