THE HISTORY AND DEVELOPMENT OF WAGE FIXING
LEGISLATION IN THE PRIVATE SECTOR

by

* GORDON WILLIAMS

In New Zealand wage fixing was institutionalised at a very early stage in the economic development of the country. New Zealand wanted its workers and employers to be nurtured and controlled by legislation, and wages and conditions of employment and disputes concerning these matters determined within a compulsory system of industrial conciliation and arbitration. Under these procedures, the Court of Arbitration in the early period of industrial relations in New Zealand played a very positive part in the determination of the level of wages in the contract of employment.

From its inception the Court followed a fair wage policy. Under this policy it determined the wage by hearing what rates of wages were being paid by good employers, still taking into account the extent to which these rates should be generally applied. By 1908 it had generally accepted that a rate of 8/- per day was a basic rate for an unskilled worker.

By 1912 the Court was placing some reliance upon basic retail price indices. The basis of these indices were the results of investigations carried out by the Labour Department on the family budgets of a number of families over a period of four years. As these indices the Court moved up its basic wage for unskilled labour accordingly, thereby retaining a constant purchasing power for the worker. The effect of the wage policy was that the bargains process was minimised and a wage fixing rather than a wage bargaining policy became firmly established. The elements of negotiation and compromise between the sides was reduced. The rates of wages clauses came to be regarded not as matters for negotiation but rather matters fixed by the Court in terms of a general policy.

This formative pattern, once set, was difficult to break and with the exception of the years 1932-1936, this remained the basic pattern until 1942 and the passing of the Economic Stabilisation Emergency Regulations.

During the first World War rising prices became more prevalent and the Court began to move away from a fair wage policy to a living wage criterion in the determination of a minimum wage for unskilled labour. Rising prices coupled with the fact that wage rates could only be renewed every three years made it inevitable that certain parts of the work force fell behind others in terms of real income. To counter this the government gave the Court of Arbitration power to amend awards during their currency in respect of hours of work and rates of pay. Prior to this legislation, the Court did not possess the power to amend either awards or agreements during their currency. The only amendment which could be made was at the end of each three year period. The Court was also given the power to review the mechanics for carrying out this new adjustment was a Standard Wage Pronouncement (S.W.P.).

The first of these was made in March 1919 causing so much confusion among both employers and employees that it was necessary to clarify the purpose of such pronouncements in a second pronouncement. The Court made it clear that the purpose of a S.W.P. was to preserve uniformity and relativity of wage rates. The pronouncements would set standard minimum rates of pay on three levels, skilled, semi skilled, unskilled, and these rates were to apply as awards and agreements came before the Court for renewal. In addition to these basic wages the Court could grant a bonus by way of compensation for the increase in the cost of living. However, employers still remained unhappy with the application of this bonus and the section was amended in 1920 to restrict amendments to cases where it was just and equitable to both workers and employers, and did not seriously imperil the cost of production. This bonus system was implemented on several occasions by the Court, but the rate paid on each occasion was a general adjustment of all wage rates. As a result the War Legislation and Statute Law Amendment Act was replaced by S9 of the Industrial Conciliation and Arbitration Act 1921-1922. This section gave the Court the authority to make general orders which simultaneously amended all awards and industrial agreements. This was the fore-runner of the General Determination which were to become an integral part of the wage system in the 1950s and 1960s. The enactment of such legislation also exemplified the unsuitability of the three-year award system to conditions of price-wage spirals.

Throughout this period the freedom to negotiate a wage had been greatly curtailed by the Court. Instead of being a mediator and a medium for negotiation between employers and employees, the Court decided what the rates should be and the parties reacted accordingly.

During the late 1920s there was growing dissatisfaction on both sides of the industrial era and the Court's wage fixing policy. There was a move amongst trade unions for an increase in the basic wage, and dissatisfaction with the three-year delay in the process of adjustment of wage rates. The Court tried to meet this growing dissatisfaction by making another S.W.P. in 1925 raising all three levels by 1d per hour. The frustration of the employers, especially the farming sector can be gauged by the hostile reaction to the Court's decision in the Freezing Workers Award of 1927. In issuing this award the Court indicated that one of the factors influencing it was the desire to maintain the standard of living of the workers.

Wage bargaining during this period (1923-1930) conformed much to a set pattern. The freedom to arrive at a rate outside the general rate set by the Court did not result. The parties in conciliation knew in advance that if agreement could not be reached and if the matter went to Court, the Court would set a rate which conformed with their ruling rates. The likelihood of both parties reaching an agreement at a rate either far above or below the rates set by the Court was minimal. Falling prices made it impossible for the employer to agree to a higher rate, and the maintenance of purchasing power of the wage packet prevented any reduction of the status quo by the employee. Consequently, agreement in conciliation as to wage rates was almost a foregone conclusion.

This position was not to remain for long. Between 1928-1932 export prices fell by approximately 47 per cent, average money income per capita fell by some 27 per cent and the same percentage of this recession hit initially and hardest at the farming sector and they reacted by cutting farm wages drastically. In 1931 the Government took similar action and cut Public Service wages another 10 per cent and then by cuts ranging from 5½ per cent to 12 per cent. Under such economic conditions wages in the private sector controlled by the three-year adjustment could not remain unaffected. Consequently, through S16 of the Finance Act 1931 the Court was again empowered to make general orders amending all awards and industrial agreements. By virtue of S20 this power was to last from 1 April 1931 to 31 December 1932. On 29 May 1931 a general order was issued reducing all rates by 10 per cent. However, the worst was still to come as far as the unions were concerned. There was a general movement amongst employers to remove the compulsory reliance on disputes to the Court. Against strong trade union opposition the employers finally got their way. Section 7 of the Industrial Conciliation and Arbitration Amendment Act 1931.
Act 1932 stated that if a dispute was not settled it could only be referred to the Court if a majority of representatives on both sides of the bar agreed that it could not have come at a more opportune time for the employers. It was the peak of the 1930s depression, unemployment was currently around 60,000. The practical result of this was that the employers who were for the first time in 40 years able to dictate the wage payable without interference from the Court. The unions were in no position to disagree, if they did the probable result would be that the employers would not agree to go to Court, leaving the award to expire which pleased the unions in a more precarious position.

This period 1932-1936 was a time when wage bargaining procedures were relatively free from government or institutional influences. Of the 73 awards filed during 1935, in only four cases were wages amongst the matters referred to the Court for settlement. The contract of employment negotiated during this period was a rather one-sided affair, in favour of the companies.

In 1935 the Labour Party was elected as the government, as a consequence industrial legislation repressive to the trade union movement was amended. Firstly, companies engaged in all industries in which trade unions were registered under the Act were reinstated. This reversed the 1932 amendment and replaced the status quo with regard to wage bargaining. Secondly, Section 20 of the Act was amended to allow Court power to make an order fixing a basic rate for adult male workers employed in an industry to which an award related, and by the same order fix a rate for adult female workers. The section was a protective measure and was only effective if the award was to fix a lower wage or if the Court abandoned the policy of setting a minimum standard rate. The power remained until 1954, but really became superfluous in 1945 with the passing of the Minimum Wage Act.

Another S.W.P. was issued in 1937, and from then to 1939 wage bargaining settled down to the rhythm and pace established by the Court in the mid 1920s. The Court was predominant and its guidelines inevitably followed.

With the outbreak of war in 1939 wage bargaining procedures entered into a new epoch. For the first time wage bargaining procedures came under strict regulation, this control was firstly imposed by the Rates of Wages Emergency Regulations and later by the Economic Stabilisation Act. Such strict control of wages payable and wage bargaining procedures was not seen again until the early 1970s. However the wartime regulations differed from their contemporary counterpart, they were enacted for the purpose of securing public safety, the defence of New Zealand and the efficient prosecution of any war. Although having definite economic consequences they were not seen as an instrument of economic and fiscal policy, but more as a part of a parcel of wartime emergency measures. Whereas the current regulations are made pursuant to the Economic Stabilisation Act 1948, the purpose of which is to promote the economic stability of New Zealand, and are purely economic in genesis. As will be seen later, this emphasis on economic stability in the 1940s and 1950s expanded and encouraged the Governments in the 1970s to effect a policy of shifting wage bargaining out of the sphere of industrial law and into the sphere of economic and monetary policy. A move which was to be another precedent to the current wartime legislation.

The early Wages Emergency Regulations reinvisted in the Court the power to make simultaneous amendments to wages during the period of the war and to the general order. However, the greatest change was accomplished by the Economic Stabilisation Regulations which tied wage-fixing procedures to a wartime price index. The new regulations took over the Court to make a general order to cover a 5 per cent movement in the index. The restraint of this index remained until June 1945. Subsequent amendments in 1947 and 1954 related to acute labour shortages. The indirect result of all this was to emphasise the importance of the Court's role in effecting government economic policy, a role which eventually led to its downfall.

The wartime Economic Stabilisation Emergency Regulations were revoked in 1950, but the stabilisation policy in respect of wage-fixing was not abandoned but maintained by the Economic Stabilisation Regulations 1950. These regulations were the first wage-fixing regulations to be made pursuant to the Economic Stabilisation Act 1948. Previous wage-fixing legislation had been under the Employment Conciliation and Arbitration Act or through independent legislation to be administered by the Court of Arbitration. In this legislation there was no direct reference to purpose equivalent to Section 5 of the Economic Stabilisation Act. As we have seen the Court had to some extent a discretion in this area and it developed its own criteria for fixing wages. These criteria in the 1950s were a combination of maintaining the standard of living of the worker and the continuance of harmonious industrial relations, while keeping an eye on the economy of the country.

Under the new Act priority was given to the economic stability of the country. This change of emphasis in the 1950s, given the existing state of the economy and the labour market, did not cause concern. The full free-enterprise system and the change of emphasis was yet to develop and yet to be felt in the wage-fixing area.

The regulations were altered again in 1952, the main area of change being that the Court was given the power on more than one occasion to make a S.W.P., taken away in 1950.

In 1953 the Economic Stabilisation Regulations 1952 were revoked by the Economic Stabilisation Regulations 1953, which were to come into effect on 1 February 1954. These regulations were entirely different from the old Acts. The new ones were completely different from the old Acts. The new ones were the result of the new policy of nationalisation, and were intended to preserve the Act and the Act. The result of this order was to make the trade union movement more in accord with the Court and to bargain individually with the employer, backed up by the occasional threat of direct action.

The mini-recession in 1958, followed by a recovery in 1959, set the ideal conditions from which the trade unions could make direct bargaining more eager to retain their power by and effectively competed on the market. Each new increase by its own initiative or by force, sometimes accompanied with the threat of
direct action. These actions gained for the unions what they could not receive through the medium of the Court, higher wage rates. As a result the Court became a superfluous institution, the real wage bargaining structure. This leap-frogging wage rate spiral brought to bear severe inflationary pressures on the economy. The government reacted by amending the Industrial Conciliation and Arbitration Act so as to make the Court unattractive to the parties in the hope of returning workers to the traditional form of wage negotiation channels. The amendment did not have its intended effect. Wages and costs still rose. In wage bargaining, traditional contracts which were once based were forgotten. The problem became predominantly an economic one, which required an economic solution. Wage-fixing legislation, it would seem, was for once and for all, bypassed from the realm of industrial relations and was becoming fairly and squarely placed in the sphere of economic and fiscal policy.

Therefore, from 1971 onwards legislation which affected wages became more fiscal in nature and was enacted as part of an economic package which was attempting to stem the tide of inflation.

When carrying out such an economic package legislative restrictions on wages requires a study of the methods of wage settlement, and whether the policy will effect any change in formal wage-fixing structures. Therefore, any policy of this nature must be based on the support of the trade union and employer representative bodies. A trade union movement hostile to the basic features of an incomes policy can wreck it by industrial action. Industrial action not only provides a major instrument of pressure but it is a demonstration of the solidarity of a group. Therefore, any legislation which the major elements of the trade union movement are opposed to is bound to fail. It is only with the support of the trade union and employer bodies that the government has any chance of success.

In the case of the Industrial Conciliation and Arbitration Act 1971, the general purpose of this Act was to restore stability in levels of wages. Leap-frogging was to be overcome by providing that current agreements must run their full term, any future agreements to have a minimum period of one year. New agreements for a rate greater than 7 per cent of the current rate without the consent of the Remuneration Authority, the five-man body established to administer the Act. Provision was made for catching that worker who had not leap-frogged ahead. Those who had not received an average of 15 per cent increase in 1970 were entitled to do so, without the consent of the Authority. Once they caught up this new rate was subject to regulation by the Act. In approving increases the Authority was to have regard to the public interest, the removal of serious anomalies, genuine productivity agreements and established relationships between industries. Increases in excess of the 7 per cent were subject to a delay of 21 days. In this period, if the Authority thought the increase unjustified, it would notify the Minister of Labour, or would notify both the Federation of Labour and the Employers Association.

Unfortunately, the Act did not have the effect that was intended. The 7 per cent ceiling which was to be imposed on wages and employers alike as a minimum rather than a maximum. A greater number of catching up awards were brought before the Authority than was originally estimated would be. In many instances these claims resulted in increases in excess of 15 per cent being given, the major argument being based on fair relativity. The New Zealand Monetary and Economic Council considered that the 7 per cent guideline appeared to be an arbitrary figure and was unrelated to any increase in productivity. As the matching of real wages with real productivity is an essential element of an incomes policy, the lack in the legislation led the Council to the opinion that the guideline defeated its own purpose, and was inflationary instead of being deflationary. Consequently, the Act and on its expiration was replaced by the Stabilisation of Remuneration Regulations 1972.

These differed from the Act, in that they contained no guidelines under which the increase was to be given, and tightened the criteria under which the Authority was to function. The Authority was given power to make cost of living allowances. The regulations were cut short by a change of government in November 1973, and therefore their effectiveness is difficult to measure.

The incoming Labour Government was itself now confronted with an escalating wage freeze. It decided not to slow this down it implemented a temporary wage freeze, in the form of the Economic Stabilisation Regulations. By Section 11, every instrument (widely defined in Section 2) in force at the commencement of the regulations was to remain in force without amendment so long as the regulations continued in force. All wage rates or new instruments, except those which fell under the exception prescribed, were to be frozen for twelve months. The exceptions were set out in Section 13, A Wage Tribunal was set up to administer the regulations, this Tribunal consisted of three persons who were free of any sectional interest. The regulations made provision for a general wage adjustment at the commencement of the regulations, all rates to be increased by 8.5 per cent. All increases after February 1973 were subject to the 6 per cent ceiling. A further six-monthly wage adjustment was provided for if the Consumer Index increased more than 4 per cent, later amended to 2 per cent.

Under the regulations, the Wage Tribunal was given discretion to refuse any application, either in part or in whole, either unconditionally or conditionally. The exact criteria used, or the reasons for declining an application, were left to the discretion of the tribunal. There was no power to comment upon. This is because the decisions of the Tribunal were never published, apart from the award itself. It has been stated by one commentator that in discussing the proceedings, the Chairman thought his role was to get the parties to agree. As to what constituted an anomaly the Tribunal was often happy to accept the view of the parties. Therefore, it would seem that what amounted to an anomaly was a question of fact in the particular circumstances, and it was far better economically to have compromise than industrial unrest.

A temporary wage freeze was replaced in July 1974 by the Wage Adjustment Regulations. The primary object of these regulations was to control the amount of wages that could be paid. At the time of writing, the regulations had been amended ten times. The latest amendments, namely nine and ten, have provoked a bitter response from the unions, and their effect on harmonious industrial relations has been, to say the least, limited.

The regulations are best viewed in two separate parts. First, the principal regulation and the ensuing eight amendments, secondly amendments nine and ten.

The first wage adjustment increased all awards by 9 per cent of the lawfully payable rate as at 1 January 1974. It also established a bargaining range of 2.25 per cent above this amount. Apart from the exceptions provided for in the regulations, the right to negotiate was curtailed. This restriction was to remain in force until 20 January 1976 when it was revoked by amendment number seven. Although not entirely happy with the situation the trade unions were willing to accept it.

Once the rate was negotiated it had to remain in force for a 12 month period, a condition carried over from the old Economic Stabilisation of the regulations. An exception Sections 8 and 12 (3) (relating to the implementation of equal pay were similar to previous regulations. The major exception was enacted in Section 7 of the principle regulations. The Industrial Commission, which was the body which replaced the Wage Tribunal on the application of any party to any instrument or on the joint application of the parties, could grant an increase in income on the discretion to relieve a serious anomaly which existed as a consequence of invoking the regulations. In considering the application the Commission had to have regard to the criteria set in Section 7 (4) of the regulations. These criteria were similar to those which existed under the previous regulations, but were couched in a vaguer terminology. Apart from the ability to negotiate for a variation of 2.25 per cent, the Wage Adjustment Regulations 1974 made no dramatic changes to the wage-fixing legislation.

Power to make wage adjustments was also placed in the hands of the Industrial Commission, if an application was received from any central organisation. The order was supposedly to be based on the per-
percentage increase in the Consumer Index since the making of the last order. In fact the three orders made under the jurisdiction of the regulations are now no longer having regard to this criterion. Since little information was published on how the orders were calculated, it is difficult to comment on the workings of this part of the regulations. The interpretation of what is an anomaly under the regulations was open to question. The Industrial Commission in arriving at certain awards where this question was discussed did not publish the reasons for finding the situation anomalous. It is suspected that each situation was treated on its own facts.

Part 1 of the principal regulations and all amendments thereto, were revoked by amendment on 14 May 1973. This amendment was itself altered on 17 June 1973. What has emerged is a virtual wage freeze, subject to several exceptions.

Under Section 4 (1) of the reprinted regulations, no instrument shall fix a rate of remuneration that exceeds the rate payable under a superseded instrument. Where there is a new instrument the rate fixed must stay in force for a period of at least 12 months. One important aspect of this, the most important are set out in Sections 7 and 7A. Section 7 states that there are no exceptional circumstances, the effects of which have become apparent since 30 June 1972. As a result of these circumstances, problems have arisen in the making of an instrument, then on the joint application of the parties the Commission may approve an amendment to the instrument. Two structures are created by this section. First, what precisely is an exceptional circumstance?

No definition given in the regulations, and on a strict reading it appeared that there was the responsibility for defining the cases lies with the Commission. However, before this could happen both parties had to first agree as to which they thought were exceptional circumstances and this brought into play the second structure that is altogether impossible to obtain a joint agreement from the negotiating parties. Both problems were inter-related to such an extent that it appeared to be impossible to get any agreement unless the section was altered. The idea that the parties should first agree before approaching some institutional body is not new. It was first used in 1932, when a majority of employers and union representatives had to agree to enable a dispute to be taken to the Court of Arbitration. The effect of the present regulations, however, was that both original parties to the dispute were placed in positions which they could not manoeuvre out of, except by agreement. Employers argued that unless they could agree with the Commission for a ruling on what were exceptional circumstances, they could not be expected to make a joint application based on exceptional circumstances. The unions could not accept this, and were of the opinion that the circumstances they had stated, for example in the drivers' case, that the wages were out of relative with other wages, were exceptional in themselves. Therefore of the two parties, the unions were most likely to take direct action, which was what in fact happened. The end result of course, was that eventually both the major bargaining parties agreed to submit a case to the Commission, which to date appears to be granting increases in the order of about 3 per cent.

Another exception provided for in the regulations is that the parties involved may make a joint application to the Commission with regard to a productivity agreement. This exception is still open to the deficiency that the application to the Commission must be a joint one. It could be that the employers may be more willing to agree if productivity is in fact increased. The agreement must undergo a probationary period of 6 months after initial approval by the Commission. After this period, evidence must be furnished to the Commission that the agreement has not resulted in increased prices of the commodities or services provided and if there is such increase the agreement can be cancelled.

The last exceptions which are worth noting are those found in Section 2 (3) of the regulations which deal with allowable increases for individual salary and wage earners, not covered by an award, or collective agreement. The exemptions set out in subsections 3 (a) and 3 (c) apply both to salaries and wages, while subsection 3 (b) would seem only to apply to "an existing salary scale or arrangement."

Under subsection 3 (a) a salary or wage earner is entitled to an increase if he gains promotion from one established position to another established position. This would seem to infer that a new position cannot be created solely for the purpose of promoting someone to it and thus circumventing this subsection. Subsection 3 (c) is based on the grounds that the duties or responsibilities have substantially increased. Again the criteria are stated in very general terms, whose interpretation will be no doubt decided on the facts of each particular application. Lastly, as regards subsection 3 (b) problems arise in interpreting what is exactly meant by the section. The unanswered questions revolve around whether an existing salary scale or arrangement falls within the definition of an instrument within the meaning of the regulations. Secondly whether service includes only length of service, or whether it also includes the quality of the service.

Apart from the strict control of wages under Part 1, the regulations provide under Part 2A for a Pay-Rising Tribunal. This Tribunal is now the overall pay-fixing body and is responsible for the decision of whether to make a wage order. The criteria for making such an order are set out in Section 16 (3), or relevant consideration is the promotion of the economic stability of New Zealand, a theme consistent with the approach of the empowering act and the policy of the government of the time.

Thus, in summary, it remains to be seen how the wage-fixing structures will develop. The present government has stressed that the present restrictions are only temporary and that a return to free bargaining is its ultimate aim. To this end the Industrial Relations Council have just recently met and set up a committee to look into the return to this position. But one must not forget that the government is engaged in a crucial struggle to defeat inflation. If this battle is lost, the question of industrial relations will become more crucial than ever.

CANTERBURY AND OTAGO:

Jack Cornhill*

* "There is an underlying attitude by the employers we are talking to that we should accept less because our members live in the South Island. The implication seems to be that it's cheaper to live down here."

Thus stated Gavin Cummins of the Cleaners, Caretakers and Watchmen's Union currently negotiating pay rises for his members. He could call it an employers' "exceptional circumstances", perhaps, though any evidence of cheaper living down South has to be viewed in the light of general economic conditions in the Island. With census figures showing a continuing drift of population over Cook Strait, the impact of increased sea freight charges to the North Island effective from June (which has led, among other things, to the demise of a Christchurch company making aluminium framing and the "death" of the Rangatira, industrial relations in the South have been overshadowed by a growing fear that the Island is doomed to become the Scotland of the Pacific, suffering accelerating de-population under economic downturn, patronised chiefly by tourists.

The sharper edge of Southern discontent was distinctly shown on 24 August when the C.S.S.O, staged a mass meeting in the Theatre Royal, Christchurch, to protest the effect of the present Wage Regulations on state servants. More than 3000 attended, spilling out on to the pavements. Subsequent similar meetings attracted significantly larger numbers. In New Zealand (600 Hutt Valley, 100 Auckland) while others in Dunedin, Invercargill and Gore were attended by more than 1200. Broad-casting staffs in Christchurch were more sensitive to the threat of re-structuring than their colleagues elsewhere and are on the edge of their seats for the emergence of the new Bill, reported at the time of writing to be at the point of draft number ten.

Canterbury Drivers were distinctly unhappy with the 3 per cent rise agreed to, if reluctantly, by the Drivers' Federation with the employers. They are currently