

with the trade unions on political issues. There are many precedents. In the United Kingdom, the Taff Vale case of 1901, which placed trade union funds in jeopardy and threatened trade union officers with contempt of court for the actions of their members, led to five years of intensive political activity culminating in the Trade Disputes Act of 1906. In the United States the Taft-Hartley Act of 1947, enacted to restrict and weaken the scope of union activity, actually advanced and intensified the political growth and development of the labour movement which led to the establishment in 1955 of the AFL-CIO's Committee on Political Education.¹⁵ One of the functions of the New Zealand Federation of Labour's series of stop-work meetings in 1976 was to edu-

cate rank-and-file union members on cost-of-living matters, on the government's policies on union membership and on the issue of nuclear ships in New Zealand waters. In general efforts to decrease political activity in industrial relations matters, particularly efforts that are geared to the use of the courts for enforcement, frequently have the opposite effect. Industrial relations cannot be taken out of the political arena by means of the law; any attempt to do so will simply put the law into the political arena too. "In the ultimate analysis, all aspects of labour relations . . . are part of politics. Trade unions are involved in politics, whether they want to be or not, whether they claim to be neutral in partisan politics or not."¹⁶ ©

15—See REHMUS and McLAUGHLIN, *op. cit.*

16—SPIRO, H. J., *The Politics of German Co-determination*, Cambridge, Mass: Harvard University Press, 1958, p. 5.

Reactions to Recent Changes in Industrial Relations Legislation in New Zealand

At the end of February the Industrial Relations Society held a panel discussion in Auckland on the changes made to industrial relations legislation through the Industrial Relations Amendment Act (No. 2) 1976 and the Commerce Amendment Act 1976. Edited extracts from some of the contributions by panel members are recorded below.

(1) MR D. BIRKHILL, President, Auckland Branch, N.Z. Insurance Guild

Prior to the government introducing its legislation into parliament it had backed down on a number of issues. In particular it had rejected completely severe provisions which would have removed union officials from office if they had incited 'non-industrial' strikes. Some sources say that it was pointed out to government that this might remove half the present union officials — including some of the moderates — and would open elected and appointed offices to the radicals. Another concession the government made was that it left the Supreme Court out of the industrial situation, making the Industrial Court the principal judicial body. The government also yielded

on the issue of calling ballots for voluntary membership of unions. Now, the ballots will only be called upon the decision of the Minister of Labour in consultation with the Federation of Labour.

Despite these concessions there were sweeping changes proposed in the Industrial Relations Amendment Bill (No. 3) 1976.* Some said the proposed legislation smacked of window-dressing so that the government could say it had carried out its election promise to straighten out the unions. Union leaders seemed to have acquiesced in it on the understanding that there would be industrial mayhem if it was ever invoked. Others said it was not good law. It was not fair law and it was ineffective law. The Bill was referred to the select

* The Industrial Relations Amendment Bill (No. 3) 1976 passed into legislation as the Industrial Relations Amendment Act (No. 2) 1976. (Ed.).

committee on Labour Bills for the hearing of submissions. The Labour opposition said it was the most restrictive, totalitarian industrial law in the western world.

When the Bill was reported back from the Labour Committee on 11 November 1976 the Minister of Labour stated that the government had moved to take some of the sting out of its legislation. Two of the most controversial provisions of the original Bill, relating to non-industrial strikes and failures to resume work where the public interest was affected, would be removed said the Minister. But they would not be gone for good since, according to the Chairman of the Committee, Mr J. F. Luxton (Government member for Piako), they would be incorporated into other legislation. Another controversial provision giving the Industrial Court the right to insert "uninterrupted work clauses" into awards or agreements, had been struck out by the Committee. The Committee also modified to some extent the provisions on voting for voluntary or compulsory unionism, to make it perfectly clear that only if less than 50 per cent of the valid votes cast (rather than of the workers in an industry) were in favour of an unqualified preference clause would such a clause be removed or not inserted in the Award.

Under the Bill as originally presented in Parliament, union officials, if they were not to be liable for penalties for failure to observe dispute procedures, had to prove that they had taken all possible steps to prevent strikes or lockouts. This provision and other similar provisions in the Bill have now been turned round so that it is no longer the responsibility of the union officers to establish their innocence, but of the employer to establish their guilt, by proving that the officers:

- (a) Advocated or suggested or connived at at non-compliance with the disputes procedure or decision; or
- (b) Wilfully failed to inform any person bound by the Award . . . that the strike or lockout would be a breach of the Award; or
- (c) Incited, instigated, aided or abetted the strike or lockout.

Although the Select Committee stripped from the Bill sanctions proposed against political strikes and some allied clauses, these clauses were subsequently incorporated into Part 4 (a) of the Commerce Amendment Act, under clause 119 (b) of which

it is an offence for any person to become a party to or incite, instigate and/or abet a strike or lockout which:

- (1) Is not an industrial matter; or
- (2) Is beyond the power of employers and workers involved in the strike or lockout to settle by agreement between them, or
- (3) Is intended to coerce the government, directly or indirectly, by inflicting inconvenience on the community.

Another new clause specifically defines the area within which private interests must necessarily yield to the public interest — namely where the economy is seriously affected, or the life, safety or health of members of the community are endangered by industrial action. Where the public interest is threatened in this way, a Minister, or any person directly affected by the strike or lockout, may apply to the Industrial Court for an order for a resumption of work.

There are a number of people in New Zealand at the moment who say that unions should not get involved in "political" issues but should confine their activities to "industrial" matters. In putting this view these people define away the problem of whether such a natural division in union activity does exist. The argument — unions should restrict their attention to industrial matters — presupposes the existence of a clear and unambiguous division between industrial matters and political matters. Perhaps one could have supported such a glib view of unions when governments were committed to minimal intervention in the commercial and industrial life of a nation. But now governments have decided to conscientiously and actively involve themselves in attempts to modify the economic activity in the society. Thus, it is now more common for unions to approach governments on questions like tariffs, unemployment, social welfare, health care, minimum wages, taxation, because the solution to such matters can only result from political action by governments.

The political life of a nation is not merely the sound and fury of elections, the tri-annual cavalcade of candidates. It is a continual process of inter-action between various pressure groups who are continually seeking to get acceptance of their views and attitudes amongst legislators, bureaucrats, newspaper editors and the community at large. The union movement too, is

heavily involved in trying to gain public acceptance of its priorities. The alternative would be to allow decisions to be made on vital issues which directly affect unionists without their point of view being considered. While my own union, for example, the New Zealand Insurance Guild Industrial Union of Workers, is not politically affiliated, it is not, and cannot afford, to be, non-political.

There is a real question of principle at stake with regard to these non-industrial matters. Is it equality before the law to make it an offence for unionists to withdraw their labour on a non-industrial matter where any other group can take precisely the same step and be within the law? A union might, for example, declare a green ban on an area to preserve trees and open space in the heart of a city. It could now be fined up to \$1500 and, if a developer suffered any loss, it could be sued for damages. Members of the Forest and Bird Protection Society might withdraw their labour from their various occupations in order to picket the area, and be liable to no penalty. That can only be regarded as discriminatory legislation. It will be surprising if unions do not seek to justify more stoppages in future for reasons of health and safety. Would the waterfront closure during the visit of the 'Longbeach' be punishable as a strike of a non-industrial kind, or a legitimate stoppage on the grounds of health and safety? The courts may have interpretation problems.

The Minister of Labour said the government is relying on the public to act responsibly and avoid abusing their new powers under the Commerce Amendment Act to take criminal action against striking unionists. He agreed that the new provisions aimed at curbing "non-industrial" strikes would give the public widespread powers. In spite of his assurances, it is clear from a close examination of the "non-industrial" provision that unions could face a barrage of prosecutions from private citizens for taking action they had previously been regarded as "industrial." If the letter of the new Act is applied, unions could find themselves in a virtual straight-jacket in contemplating strike action outside their Awards. There is no doubt that there are going to be some very interesting cases. The widespread union action a few months ago over the wage freeze is now deemed unlawful as the freeze was imposed under the Wage Adjustment Regulations which were

made under the Economic Stabilisation Regulations. As another example — if the government decided to halve the unemployment benefit, this would be done under the Social Security Act. If unions took strike action in protest at the halving of the benefit this would be deemed as illegal as it was non-industrial. Many problems could arise where there is "overlapping." It is quite foreseeable that a union could be taking action under something to do with their award, but it is covered by another Act — how are they going to decide whether it is legal or not.

The Minister has agreed that there are complexities in the new provisions but no more so than in the "exceptional circumstances" definition which has now proved to be workable — or has it?

(2) MR J. DYNES, Department of Labour, Auckland

The legislation as we have it, with the exception of the Commerce Amendment, is substantially as was agreed upon by the Employers' Association and the Federation of Labour. They presented their findings to government but they could not agree whether there should be penalties in the legislation or not. The employers wanted penalties in the legislation. The Federation of Labour wanted them completely cut out. When the first draft of the legislation went to the house there were some pretty severe penalties provided for. However, when the amendment came onto the statute book it was in a considerably modified form.

I have my doubts as to whether any legislation of a similar type can be effective without some provision being made for penalties. For any legislation which is an enforcing legislation there must be some provision for the enforcing authorities to say this is as far as we go and for penal action to be taken through the courts. The old Industrial Conciliation and Arbitration Act collapsed towards the end because the penal provisions in the Act were in such a form that they could not be administered. I do not think they were used to any extent in the last forty years.

By the end of May or the beginning of June we will all be in a better position to criticise or congratulate the government on its new industrial legislation. At present the legislation has had no real direct effects. We are getting much the same sort of reactions as before. The same sort of disputes are going on. The same proced-

ures are being followed, or not followed as the case may be. A ridiculous situation arises where, with a little bit of thought and a little bit of co-operation on the part of the parties and the use of the procedures that are laid down, there would be no need for stoppages and no heartbreaking within the organisations themselves. We have got to the situation in a lot of our industries where the workers and the employers are so far apart that it is almost impossible to bring them to the situation where you can get them to negotiate and talk reasonably. In some of the bigger organisations unfortunately we have a situation where both parties are looking for an opportunity to shoot the other party down. There is continual sniping going on from both sides of the table. Our industrial legislation is designed to correct this situation by providing machinery that can avoid such practices. The machinery is not always being used as it is designed to be and, unless there is some form of penal action that is available to the administrators of the legislation, it will be very difficult to get the parties to come together. We cannot make them make decisions but at least we can get them round the table to talk. Until you can get people round the table and get them talking you have no hope of conciliation or a settlement. We have had difficult problems in the heavy engineering industry — we now have a commission of enquiry on that industry. We have had an enquiry on the freezing works industry. We have had enquiries on the waterfront industry. We should not have to get to the stage where we have to set up commissions of enquiry to find out what is going wrong in industry. We only get to this situation when the legislation and the procedures laid down in the legislation are not being observed and administered as intended.

**(3) Ms M. WILSON, Lecturer in Law,
University of Auckland**

Why did the government introduce this legislation last year? We are in a position in which our industrial relations is hardly harmonious and yet into this climate the government has introduced legislation designed to provoke rather than to conciliate. We have to view both the amendment to the Industrial Relations Act and the Amendment to the Commerce Act in perspective. You can never forget that in New Zealand our whole industrial relations history has revolved around legislation. Our union

movement is a product of legislation. The way in which we conduct industrial relations is a product of the 1894 I.C. and A. Act. We made a decision then that we wanted to settle our disputes by conciliation and arbitration and we turned our back on collective bargaining at that stage. We must also remember that we decided in 1894 that the union movement would give up its rights to strike in return for the settlement of its disputes via these procedures. What was unusual was that, in 1973, the legislation removed many of the penalties relating to industrial action. It is not surprising to find these penalties reimposed in 1976. It is not surprising because it was in the government's policy and this government, as it constantly reminds us, does stick to its policy. It specifically stated that the National Party will reinstate those clauses from the 1972 Bill defining illegal strikes which were deleted by the Labour government. It has duly fulfilled that promise in the 1976 amendments.

We have a long historical tradition of imposing penalties for industrial action. The government's view of the trade unions' role in New Zealand society is confined by legislation. We have no acceptance of trade unions in New Zealand indulging in activities outside the settlement of wages and conditions of employment, no legal acceptance that is. The trade union movement, of course, views itself and its function in society slightly differently. When the unions try to assert their role as they see it, this inevitably leads to a clash between the government of the day and the trade union movement. This is precisely what is happening at the moment. You have a government that is changing to a traditional, perhaps outdated, industrial relations policy, a policy based on procedures and penalties if the procedures do not work. I agree that if you accept a system like this, and we have, then of course, unless you are going to make a joke of your procedures, you presumably have to follow up with some form of penalty, and that is what we have always done. The interesting thing, however, is that we do not enforce those penalties. We never have enforced the penalties except very early in our history. We now have more penalties. Will they be enforced? The Minister of Labour has said that there is really no intention to enforce this legislation. Why enact it? Is it going to prevent strikes? — it never has

in the past. But if the government is serious about this legislation it had better start enforcing it. What will then happen, of course, is that the dispute will move from the primary issue to the question of penalties being imposed. Once you are in the game of being serious about your laws you also have to face up to the consequences and I wonder if this government is prepared to face up to those consequences. It seems slightly irresponsible to me to introduce law and then say we have no intention of enforcing it. And that is precisely the situation we seem to have got ourselves into.

We should also recognise that the Human Rights Commission Bill, now before a select committee, contains provisions that will effect every trade union and professional organisation in New Zealand. It enables members of a trade union, if they have any complaints against the way in which the union is administered, to take that complaint to the Human Rights Commission which will then try to conciliate and, if it cannot conciliate, will pass the matter to the Industrial Court. What the Industrial Court will do is a mystery because the Human Rights Commission Bill just says that the Industrial Court will apply whatever remedies are available under the Industrial Relations Act and there are none. There is already existing law to cover such situations. We do not need more. It is superfluous. But it does score political points.

I want to measure up the type of industrial relations policy that the government is pursuing against the statements from the Minister of Labour about worker participation — 'worker participation is the answer, we must be more constructive and positive in our industrial relations, we need trust and understanding and co-operation.' So what do we do? Introduce legislation that imposes penalties. Do we actually look at the causes of our industrial relations problems? Worker participation may well be the answer but what is being done apart from fine statements? There are some firms that are trying and it would be very interesting if we could do a survey to see just what their strike record, their industrial relations record is. In New Zealand industrial relations, however, the encouragement, the initiative and the incentive has to come

from government. It has to come from government because our industrial relations system is confined in legislation and major changes have to come about through the political process. I am not necessarily advocating legislation on worker participation. What I am suggesting is that, while in their policies the government talks about greater co-operation between employers and workers, nothing has been done so far.

In conclusion, if the government wants this legislation, fine. The decision has been made. Let them enforce it and see what happens, see if it will in fact bring people to the table, will in fact stop industrial trouble. If the government does not want to pursue that line, does not want to enforce their penalties, then let them give us an alternative. That is what is desperately needed at the moment in industrial relations and you do not provide that alternative by polarising the parties.

**(4) MR JONES, Industrial Advocate,
Auckland Employers' Association,**

was also a member of the panel but preferred not to have his remarks recorded.

AN INDEPENDENT POINT OF VIEW

Numerous organisations and individuals made submissions on the Industrial Relations Amendment Bill (No. 3) to the Select Committee. The edited extracts below are from submissions* prepared by Rev. J. R. Randerson, National Chairman of the Inter-Church Trade and Industrial Mission (ITIM), a body set up in New Zealand in 1970 by the Roman Catholic, Anglican, Methodist, Presbyterian, Baptist and Congregational Churches, the Churches of Christ, the Salvation Army and the Society of Friends.

General Considerations

'Our experience has been that industrial relations in New Zealand are basically sound. There exists a spirit of reasonableness and co-operation between management and shop-floor workers in most industries, and at higher levels viable methods of negotiation allow employers and trade union leaders to resolve satisfactorily the conflicts of interest and of rights that arise. This desirable state of affairs is contrary to the prevailing public image that our industrial relations are conflict-ridden, and that our economy is gradually being ruined by excessive strikes and undemocratic union activities. ITIM believes this public

* The full text of the ITIM's submissions is available from the ITIM, P.O. Box 10078, Auckland.

image to be inaccurate. While any interruption in work is regrettable, yet it is well established that time lost through strike activity is small. In 1973 0.11% of available working time in New Zealand was lost in strikes. By contrast time lost through accidents at work was 1.8% and through absenteeism 6%. It should also be noted that a strike is not wrong per se: attention needs to be given to the issue that provoked it.

The proposed legislative amendments appear to be based on a "conflict-ridden" perception of the industrial scene. Because we believe this to be unrelated to reality it follows that the legislative amendments are likewise unrealistic and will prove ineffective. But there is a worse consequence. While industrial relations are good there is ample potential for improvement. Industrial chaplains have found that individual frustrations and poor productivity in industry could be diminished by better communications and participative styles of management. Such concepts, however, depend on goodwill and qualities of mutual trust and respect. ITIM's great concern is that even if the legislative amendments prove ineffective their introduction, together with the presuppositions on which they are based, will do immense damage to the reserves of goodwill that undoubtedly exist in many trade unions, hence providing a major setback in the improvement of industrial relations and the attainment of higher productivity.

Penal Provisions and Non-Industrial Strikes

It is these provisions that appear to be based on the assumption that strikes are a major problem in New Zealand and must be eliminated at all costs. As noted above ITIM believes this assumption to be erroneous and that too much attention is given to the symptoms (e.g. strikes) of bad industrial relations, and not enough to the causes (e.g. inadequate consultation between employers and unions).

The proposed clauses virtually outlaw any stoppage of work and this will be seen by unions as excessively restrictive. The penal provisions that are provided have proved ineffective in the past, and if reintroduced now will either remain unused (in which case they serve no point) or if used are likely to provoke retaliatory action. In addition the provision for members of the public to take civil action lays the way

open for those who understand nothing about industrial relations to initiate a suit out of malice or prejudice. It is ITIM's prediction that these provisions will serve to polarise the trade union movement and hence have an effect opposite to that intended. ITIM recommends that they be not introduced.

The matter of non-industrial strikes raises the question of the proper role of trade unions. ITIM believes that it is legitimate for a union's concern to extend beyond "wages and conditions," to include concern for their members' total well-being. Such well-being may include, on occasions, matters of broad social or international significance. It is to be noted that a company has the right to refrain from the production of goods it considers socially harmful, or to refuse to conduct business with another party if this would create or continue an injustice. Such issues involve moral principles and the exercise of conscience, and ITIM is opposed to the introduction of legislation that will limit the ability of a trade union, or individual members thereof, to take a stand on a matter of conscience or social morality. This is a matter of fundamental freedoms. It is a freedom which has not been abused by unions in the past — nor would we expect it to be abused in the future. Likewise provisions that individuals who aid or abet such actions are also liable, restrict conscientious action and thus represent a diminution of civil rights.

Conclusion

The basic provisions of this proposed legislation are based on the assumption that trade unions cannot be trusted to act responsibly and therefore must be tightly controlled. ITIM believes this assumption to be a wrong one and that the effect of industrial stoppages in New Zealand is greatly over-rated. Industrial chaplains have discovered extensive evidence of sound industrial relationships and a great willingness on the part of employers and unions, managers and shop-floor workers, to sit down and reach agreement on almost any issue. Hence we believe that any legislative changes should aim at developing this collaborative potential, not introducing restrictive elements of threat and penalty as these proposals seek to do. The net result of these provisions we believe will prove injurious to the promotion of improved industrial relations and productivity in New Zealand. ©