

REVIEWS

Anderson, G.J. *Jurisdiction under the Industrial Relations Act 1973: some problems and issues* Occasional Papers in Industrial Relations No. 24, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.v and 30. Price: \$2.00

In this monograph the author examines two inter-related issues which have caused, and no doubt will cause, many difficulties in the interpretation and application of the *Industrial Relations Act 1973*: the definition of "industrial matters" and the distinction between disputes of interest and disputes of rights. They affect not only the jurisdiction of the Arbitration Court but also the powers of industrial unions when endeavouring to include certain clauses in collective instruments.

The first part of the essay looks at the meaning of "industrial matters", and points out that the few decisions of superior courts concerning this problem are limited to narrow issues with very little attempt of clarifying complex legal questions in order to guide the Arbitration Court in future cases. The view is taken that the tendency of the New Zealand courts has generally been to regard the Arbitration Court as having special expertise within its area of operation and not to unduly limit its jurisdiction, though accepting that it cannot act *ultra vires*. For this reason the Industrial Court (as it still was called in 1977) in the *Bank Officers'* case had to turn to Australian authorities for principles. The High Court of Australia has interpreted several times the similar phrase in Commonwealth Statutes. Mr Anderson correctly draws attention to the peculiar nature of Australian industrial legislation resulting from the federal constitution and warns that the courts really examine constitutional limitations when they consider the extent of "industrial matters". After this cautioning the author surveys a number of judgments and, though he emphasises the divergence of opinions, summarises their effect in the words that "a dispute between employers and employees does not make it an industrial dispute unless the dispute is concerned directly with the relationship between employer and employee as such or with matters incidental thereto".

Analysing the *Bank Officers'* case Mr Anderson strongly criticises the approach of the Industrial Court and the tendency to regard Australian cases as of "strong persuasive value". He argues that the New Zealand legislature takes a much wider view of industrial relations than the Commonwealth Constitution allows the Australian Parliament. The Arbitration Court, he asserts, should have first looked at the IR Act and interpreted it in accordance with the principles laid down in the Act's *Interpretation Act 1924*. The majority of the Court held that the issue of granting loans to the employees of the Bank on more favourable terms than to the general public was not an industrial matter but "at best peripheral or collateral to [the] relationship" of employment.

While ostensibly agreeing with the dissenting judgment of the workers' member (Mr McDonnell), the author criticises it for the lack of legal analysis. It must not be forgotten, however, that the role of the nominated members, who are untrained in law, but have practical experience in industrial relations, is not legal reasoning but the infusion of industrial realities in the determination of actual frictions between the

parties. No doubt, had the majority accepted the minority view the Court would have been able to support it with sound legal reasons. It could have been asserted that a staff loan is an incidence of the employment, not only peripheral or collateral, but essential and customary in individual contracts in a particular industry, and consequently a matter relating to the privileges of workers within the definition of the Act. Valid arguments may have been advanced that the word "privileges" expressly covers staff loans. Furthermore, if the employer would be prepared to include a staff loan clause in some individual service contracts, as distinct from the collective agreement extending to all workers, the question of "industrial matters" or *ultra vires* could not arise. If such a clause would be voluntarily inserted in a collective agreement, and the Court registers the instrument, the fact of registration indicates that it can be enforced in its entirety with all its clauses. The possibility of attacking an alleged *ultra vires* clause at the time of purported enforcement, however, cannot be ruled out.

The solution proposed advocates the distinction between mandatory and permissive subjects in bargaining as recognised in the United States. Bargaining is compulsory on mandatory matters, but allowed on permissive issues. If agreement is reached the whole of the collective contract will be enforceable.

The second part of the essay is devoted to the distinction between disputes of interest and those of rights. In the author's view, though the distinction is sound in theory, the line between the two kinds is blurred, as "any interpretation may involve some interest element" which "may alter, however slightly, the basic conditions". The truth of this observation seems manifest, but it must be emphasised that "may" is the operative word: "may", but not necessarily "will". In the majority of cases the line between interest and rights disputes is clearly drawn and only in a relatively small number of disputes will the distinction be blurred. These are some of the group disputes under s.116 of the *Industrial Relations Act 1973*, where the interpretation of the clause in question (e.g. whether the duty to provide "protective clothing" would include steel-capped boots) may result in a substantial extension of the original provision.

Subject to this observation the author ably examines the grey areas and discusses in detail the decision of the Court of Appeal in the *AHI NZ Glass Manufacturing* case concluding that it had created uncertainty between interest and rights disputes. He further states that the judgment has restricted the meaning of disputes of rights, and its clear effect is that no instrument can be regarded as final, as either the employer or the union may at any time during its term be faced with fresh claims governing basic terms and conditions. This is so, but the statement contradicts the earlier one on the restricted meaning of rights disputes. It rather indicates that certain matters approximating interest claims may be dealt with under s.116 in the guise of interpretation.

One is tempted to approve the practice in the United States where collective bargaining is a continuous process and grievance procedure includes also matters which in New Zealand are dealt with under s.116. In grievance arbitration there is power to alter the basic conditions, if the nature of the claim justifies it. Mr Anderson advocates the "simple" solution, "at least in theory", that the parties insert a clause to the effect that terms and conditions in the award are final and conclusive, but can be added to with mutual agreement. House agreements and negotiation of specified items would be excepted. This reviewer may mention another possible, though not tidy, solution: power vested in the Arbitration Court to make a decision in any borderline dispute where the disputes committee has no jurisdiction. Obviously such a decision would amount to the virtual variation of the instrument, and parties not involved in the particular dispute (commenced as a rights dispute) could be adversely affected as they had no opportunity of expressing their views.

All in all, the reviewer cannot but agree with the author that the issues are most complex and no easy solution can be found. Mr Anderson has performed a most valuable service by focussing attention on, and presenting a thoroughly penetrating analysis of, these troublesome problems.

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New Zealand Planning Council *Employment: towards an active employment policy* Wellington, Government Printer, 1980, pp.76. Price: \$5.25.

Were it not for the fact that Government seems to implement the suggestions of the New Zealand Planning Council with monotonous regularity (the push towards a "more efficient, flexible and competitive economy" was, among other things, a recommendation of the Planning Council document *Economic strategy 1979*), it would be tempting to take a brief glance at Planning Council reports and then to place them in a "permanently pending" file. Unfortunately Government has obviously decided that the document makes a worthwhile contribution to one aspect of the great unemployment debate, since the Consultative Committee on Employment is already considering the merits of the Planning Council recommendation to establish a Labour Market Advisory Board. With this in mind, *Employment: towards an active employment policy* probably deserves a second, and closer look.

The Council canvasses all the important aspects of an active employment policy: income maintenance; employment creation; education and training; research and information; administration; and planning for skill utilisation. Naturally some of these matters are discussed in more detail than others. What might have been useful for readers, but is not included in the report is an evaluation of the components and administration of active employment policies in other countries. Nevertheless the Council does discuss a broad range of matters related to an active employment policy such as new technology, migration and shorter working hours.

The layout of this report is infuriating for readers who wish to study the Council's recommendations rather than just glance through the text out of interest. Topics are dealt with in seemingly random order making it difficult for the main thrust of the report to be identified and some issues (e.g. part-time work) are alluded to several times throughout the document but never dealt with exhaustively. Perhaps the most puzzling aspect of this report is the failure by the Council to ensure that its recommendations can be easily separated by the reader from the remainder of the text. One expects in a document which makes recommendations for action as well as comment, that those recommendations will be numbered, or set in bold type, or placed apart from the remainder of the text so as to be easily identifiable for the purposes of discussion and evaluation. This omission ensures that the reader will waste a lot of time scanning through the report each time she wishes to refer to a particular recommendation in order to find it. On the other hand the report is not so glossy that it cannot be marked by the reader.

Employment: towards an active employment policy proceeds on one of the assumptions detailed in *Economic strategy 1979*: that a "more market", "growth at all costs" approach will solve all New Zealand's economic problems. The Council, in looking at the narrower question of an active employment policy, says that such a policy can "contribute to economic efficiency in its widest sense" but can also "soften the harshness of unemployment for individuals and their families". The Council's recommendations, however, lean more towards promoting economic efficiency than alleviating the plight of unemployed workers. For instance, the Council insists that the

need for structural and technological change to promote the growth needed for sustained full employment requires "greater geographical mobility on the part of the workforce". Put more bluntly the Council is saying that workers who are not prepared to adopt an itinerant lifestyle will not get jobs. The geographical immobility of industry, on the other hand, is not mentioned.

Because an active employment policy comprises largely what the present Minister of Labour likes to call "palliatives" to the unemployment problem, one might have expected the tone of the Planning Council's document to be one of realistic concern for the unemployed. People with such expectations are unfortunately doomed instead to ivory tower "objectivity", a method used particularly by academic writers to disguise their support for the existing order and opposition to effective solutions to a particular problem which involves the presentation of untested assumptions as facts. This method is used extensively in the "Education and training" section of the report to represent employers' demands that state education provide students with work skills as the only possible basis for a discussion of general education and skill training.

Other recommendations cast serious doubt on the Council's claim to be deeply concerned about unemployment as it affects those most affected by the lack of jobs - the unemployed themselves. The Council states that "periods of sustained unemployment... impose costs on the whole community. Symptoms of social stress, such as crime and racial tensions, tend to increase." The report, however, recommends that the age limit of 16 years on eligibility to receive unemployment benefit should be retained. As those who deal with the results of poverty know, it is precisely this Victorian attitude which forces a large number of unemployed fifteen year olds living in cities to turn to crime in order to survive.

It is perhaps inevitable that the Planning Council's isolation from the "real world" makes the production of documents like *Employment: towards an active employment policy* more of an academic exercise than an attempt to assist people in overcoming economic and social problems. Be that as it may, the report offers little to the 70,000 people unemployed or on job creation programmes at the moment. The Council cannot, therefore, be surprised that its report has not been acclaimed by those people.

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Burt, E.J. *Labor in the American economy* Scranton, St. Martin's Press, 1979, pp.xvii and 489. Price: \$57.00.

This latest publication is an extremely useful addition to the expanding literature in the broad area of Labour Economics. The text is divided into four major sections. The first, on the "Economics of the labor market", covers labour supply and demand, labour market segmentation and mobility. Sections two and three cover the "Development of unions and union policy" and "Collective bargaining and government controls". The fourth section deals with "Wages, unemployment and economic security". The book is well produced and includes a bibliography and footnote readings for each chapter. A rather novel Glossary of terms in labour economics and industrial relations is helpful to students and the total package makes this a good teaching text for undergraduate classes.

For teaching use in the New Zealand context, there are, however, two important considerations. *Labor in the American economy* is in direct competition with a number of excellent texts. There is little doubt in the reviewer's mind that Bevars D. Mabry, *Economics of manpower and the labor market*, Belton M. Fleisher and Thomas J. Kniesner, *Labor economics: theory, evidence and policy*, and Don Bellante and Mark Jackson, *Labor economics* are more useful texts for courses that are narrowly directed

at the Labour Economics area. Even in the more general area, this new publication will be competing with the popular Lloyd Reynolds, *Labor economics and labor relations* and the recent edition of Neil W. Chamberlain, Donald E. Cullen and David Lewin, *The labor sector*. A lot will depend, of course, on teacher preference, but there is nothing unique in Burt's publication that puts it clearly ahead of its competitors.

There is, perhaps, a more important criticism. Burt follows the example of a number of American authors in including an extensive background to American unions and union legislation. One has to admit that the title suggests an important "labour" content, but the fact that over 200 pages are devoted to the institution of trade unionism does weaken the value of this work for those teaching in New Zealand. Many will welcome this new contribution; most will still be waiting patiently for the ideal Labour Economics text.

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Turkington, D.J., and D.F. Smith *Strikes and participation* Occasional Papers in Industrial Relations No. 25, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.28. Price: \$2.00

These two separate papers represent the New Zealand contribution to the Fifth World Congress of the International Industrial Relations Association held in Paris, 1979. Turkington's paper analyses the causes of the declining propensity to strike in the New Zealand coal industry. Smith's article discusses recent developments in workers' participation in management in New Zealand. Unfortunately no connecting link is made between the two papers, although the extension of worker participation into management is often seen as a method of reducing industrial conflict.

Turkington uses an ad-hoc regression model in an attempt to provide a statistical explanation for the decline in strike propensities in the coal-mining industry. However, the choice of explanatory variables is far from ad-hoc - only economic determinants are used. He uses the three traditional measures of strike incidence - the number of strikes per thousand miners, the percentage of the mining labour force involved in strikes, and the number of man-days lost per miner employed. The model shows that the most important explanation for the decline in strike propensities has been the fall of coal usage relative to our total primary energy supply. The degree of tightness of the labour market, as measured by vacancy rates, and the rate of past inflation were also found to have explanatory significance.

The model contained two other variables - the relative size of underground to opencast mining and wage changes - but neither were found to influence strike activity. This, however, indicates the problems of trying to explain the complexity of strike activity with a single variable. For instance, Turkington uses wage changes within the industry, arguing that expectations of future wage increases are based upon past increases rather than the "orbits of coercive comparison" which would require testing for the difference between the national average round of wage settlements and that for coal mining. Moreover, the expectation that the relative growth of the opencast mining sector would decrease strike propensity is an attempt to incorporate into a single variable all the determinants of interindustry propensities to strike as well as the effects of productivity changes both in underground and opencast mining.

Whilst regression analysis is becoming increasingly popular in analysing strike trends, those involved in strikes would undoubtedly query the pride of place given to economic variables. Strikes invariably involve social relations between the actors in the workplace, and these interactions are socially, politically and psychologically

determined in addition to economic forces. Furthermore, the distinction between disputes of right and disputes of interest must be made, with the former only having tenuous links at best with economic activity. Turkington alludes to these in a section called "other considerations", but because of the lack of a statistical proxy, cannot test for the influences of nationalization or the Coal Mines Council. Yet it is precisely these factors which will have changed the perceived relations within the industry, eliminating many of the causes of tension (such as differences in rates of pay between the pits), and providing a mechanism by which industrial conflict can be amicably settled without the need to resort to a strike. Thus one can question whether Turkington's qualms about increasing strike propensities in the industry will have much validity as the demand for coal rises relative to other energy sources. But equally one could argue that nationalisation and the change in the method of disputes settlement are themselves functions of the economic climate of the industry.

The paper by Smith on worker participation in management in New Zealand is totally different in character. It is far more of a resumé of recent articles, survey results, and attitudes of the parties involved in industrial relations than original research. It is useful to have this information summarily presented, and provides a more expedient insight into current thinking in New Zealand on industrial relations in general than Turkington's paper.

What could an overseas researcher learn from Smith's paper? The foremost issue would be the limitations imposed upon determination of the appropriate management/worker relations at shopfloor level by the *Conciliation and Arbitration Act*. This act, whilst placing constraints upon managerial prerogatives has hardly challenged their unitary perspective of decision making. Management has grudgingly conceded union involvement in disputes of interest, but disputes of right, which is the area covered by worker participation, are usually resolved externally by arbitration or conceded, to form part of the custom and practice rules of the enterprise.

The second issue logically follows, i.e. the extremely blinkered view as to what constitutes industrial democracy. One survey reported by Smith showed that the majority of firms had no form of worker participation, whilst those which had were restricted to joint consultation, autonomous work groups, profit sharing and employee shareholding. This limited view, as intimated by Smith, stems directly from the unitary framework of management, abetted by successive governments. Even trade unions only see worker participation on the distant horizon; a more immediate task is the extension of collective bargaining.

For the researcher, Smith's paper raises more questions than it solves. Why does management maintain its unitary perspective, why is collective bargaining only in its infancy and how are day-to-day industrial relations carried out at the workplace? The limitations of Smith's descriptive paper also become apparent: there is no conceptual framework within which to analyse the form and content of workers' participation in management which is most suited to the aspirations of employers and employees within the legal, social, political and economic constraints. Furthermore, there is no reference to the now famous debate between Clegg (1963) and Blumberg (1968) as to whether collective bargaining is one form of worker participation in management. Moreover, is collective bargaining really a prerequisite for worker participation? The German experience with Works Councils and Supervisory Boards with little bargaining undertaken at plant level suggests not.

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References

- Clegg, H.A. (1963) *A new approach to industrial democracy* Oxford, Blackwell.
Blumberg, P. (1968) *Industrial democracy* London, Constable.

Lansbury, R.D. (Ed) *Democracy in the work place* Melbourne, Longman Cheshire, 1980, pp. 259. Price: \$11.94

This edited collection of articles brings together contributions from many of those whose names are associated with writings on industrial democracy in Australia, and a handful of overseas writers also. It is divided into four sections, each containing articles on different aspects of industrial democracy. An introductory section is followed by sections on the Australian experience, overseas experience and comparative perspectives. Leaving aside the introduction, only two of the articles appear to have been specially written for the volume. The others are reprints from journals or other collections of articles, or rewritten versions of authors' previous publications.

The introductory section contains only one article, that by Lansbury and Prideaux who attempt to give some background on industrial democracy and set out a framework for understanding the various forms of participation in decision-making. Unfortunately the section is far too brief to do much to aid the understanding of the newcomer to the field, and skates quickly over the ideological issues on to the firmer ground of a consideration of decision-making typologies. The book would have benefited from a much longer and more detailed introduction.

The section dealing with the Australian experience of industrial democracy begins with an article by Lansbury in which he summarises Australian developments. This article is rather repetitive of the opening section, containing another discussion on forms of decision-making, using a different typology from the one developed earlier. Other articles by Isaac, Pritchard, McIntosh, Hull, Cupper, Yerbury, and Ford deal with issues ranging from the impact upon the development of industrial democracy of the Australian system of industrial relations, to case studies of participation in practice. This section contains little that is new to even the most casual observers of the Australian scene. All the papers have appeared elsewhere in one form or another, and some, such as Cupper's account of self-management in the Dynavac organisation, actually suffer a loss of detail in the reduced form in which they appear here.

Section three contains articles on Sweden, Yugoslavia, West Germany, the United States, and Israel, all of them more than adequately documented elsewhere, often by the same writers. The brief treatment given to each country in this collection will do little more than whet the appetite of the interested student.

The final section on comparative perspectives contains articles by Emery, Deutch, Walker, and Lansbury on the apparent inevitability of the growth in participation in enterprises in many countries, albeit taking different forms according to the predominant culture and traditions of the countries in question.

As a book on democracy in the work place, frankly I found it disappointing. There was little in it that I had not already read elsewhere, often in more detail. As a student text for a course on industrial democracy in Australia the book may have some merit. It pulls together a collection of articles under one cover thus reducing the need for students to agonise over reading lists. For those with a more detailed interest in industrial democracy, the book will be of limited value. The attempt at a broad coverage of topics and countries leads to an inevitable loss of depth.

One final word should be said about the quality of the publishing. Although the cover was attractive, the quality of typesetting and layout was poor with frequent large gaps at the end of lines which were distracting to the reader. My own review copy had sixteen pages of text missing and in its place were sixteen pages from earlier in the book. Such sloppy quality control by the publisher detracts from the overall impact of a book whatever the quality of its content.

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Books Received

Routh, G. *Occupation and pay in Great Britain 1906-79* London, Macmillan, 1980, pp.xvii and 269. Price: \$30.20.

Poot, H.J. *Industrial relations in the Netherlands: harmony or conflict?* Occasional Papers in Industrial Relations No. 26, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.28. Price: \$2.00.

Bell, R.H. *The role played by local authorities in the New Zealand industrial relations system* Student Research Papers in Industrial Relations No. 6, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.55. Price: \$2.00.

Christie, A.R. *An account of major activities in the Canterbury Labour Trades Council District 1929-1936* Student Research Papers in Industrial Relations No. 7, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.38. Price: \$2.00.

Ditchfield, G.C. *Unionism and the Fire Service Executive Officers 1942-1976* Student Research Papers in Industrial Relations No. 8, Industrial Relations Centre, Victoria University of Wellington, 1980, pp.82. Price: \$2.00.

Hamner, W.C. *Organizational shock* New York, Wiley, 1980, pp.430. Price: \$19.75.