INDUSTRIAL LAW CASES:

PERSONAL GRIEVANCE — UNJUSTIFIED DISMISSAL: WORKER ASSAULTED BY MANAGER

Wellington District Hotel, Hospital, Restaurant and Related Trades I.U.W. v Barretts Hotel Limited

Arbitration Court, Wellington. 28 August 1977. (A.C. 30/78). Horn J.

The Hotel Workers Union applied to the Court under the personal grievance clause set out in s 117 of the Industrial Relations Act and incorporated in the N.Z. Licensed Hotel Employees Award. The Court described the worker concerned, a chef at the Clarendon Tavern in Wellington, as "sometimes arrogant and possibly insolent." During a trivial dispute with the Manager concerning the scope of the chef's employment (was he to respond to the doorbell of the Tavern at a time when the Tavern was not open for business?), the chef answered "in terms that were probably forcible if not cheeky that it was not his job." Apparently neither the Manager nor the chef were men of patience, as the Manager thereupon assaulted the chef with "moderate violence." The chef's dignified response to this battery was to repair to the nearest police station, where he laid a complaint. Some time after the dismissal at issue in the instant case, the Manager was convicted of assault and fined $50. When the chef returned to the Tavern he was summarily dismissed and subsequently given two days' pay in lieu of notice.

The Court found, "as a plain fact of life" that it would have been impossible for the Manager and the chef to continue to work together, and reinstatement as a remedy was out of the question. However, it was the wrongful and violent act of the Manager which created the tension and necessitated the dismissal. Although the assault, as a crime, had been dealt with in another court, it could not be overlooked in connection with the chef's dismissal. Although the chef was found to be a difficult man, he was nonetheless unjustifiably dismissed and the Court awarded him $800 lost wages and an additional $250 in compensation.

SUSPENSION OF NON-STRIKING WORKERS

Wellington District Woollen Mills, Knitting Mills, Hosiery Factories, Carpet Factories, Synthetic Fibre Factories, Flaxmill and Flax Textile Factories Employees I.U.W. v. Feltex Carpets (NZ) Ltd.

Arbitration Court, Wellington. 9 June, 1978 (A.C. 8/78). Jamieson C J.

Nineteen dyehouse workers were given suspension notices by Feltex Carpets, the employer, on Thursday, 8 December, to take effect on Friday, 9 December. The suspension was to continue through Monday, 12 December. Feltex found this step necessary because of strike notice given by boilermen, members of the Engine Drivers Union, which would shut down operations in the dyehouse on Friday and possibly Monday. The company purported to act under s 128 (1) of the Industrial Relations Act 1973, which, as originally enacted, allowed suspension of non-striking workers with a week's notice, but as amended in 1976, allowed suspension of non-striking workers with no notice, where the employer was unable to provide work because of a strike by other workers.

The dyehouse workers, who did not work on Friday or Monday and who were not paid for those two days, appealed to the Arbitration Court under s 128 (3), which gives a right of appeal whenever an employer activates s 128 (1).

The Court interpreted s 128 (1) strictly, and noted that the section could only operate "where there is a strike . . . . "

There was in fact no strike in existence on Thursday, and therefore the suspensions, having been issued prematurely, were of no legal consequence. The Court concluded that the employer had "jumped the gun," albeit with good intentions. Each dyehouse worker was entitled to be paid for the Friday and Monday.

Had the employer been less considerate, it might have waited until Friday morning to suspend the non-striking workers, and thus complied with the letter of the law. Alternatively, the employer could have acted under clause 23 (f) of the Award, recorded at 77 BA 7581, and given notice on Thursday that no work was available on Friday. The Court was unable to treat the s 128 (1) notice as "constructive" notice under clause 23 (f). ⊙

DEMARCATION DISPUTE — COOKS AND STEWARDS AGAINST HOTEL WORKERS: STATIONARY OIL RIG SERVICE VESSEL

Marine Offshore Contractors v **Federated Cooks and Stewards I.U.W. and N.Z. Federated Hotel etc. Employees I.A.W.**

Arbitration Court, Wellington. 22 June, 1978 (A.C. 10/78). Horn J.

The Hotel Workers Union and the Cooks and Stewards I.U.W. have had demarcation disputes before. In particular, in 1975, both unions claimed coverage of the catering and domestic services on the oil rig **Glomar Tasman.** In that case, which is reported at 75 BA 5943 and noted at (1976) Recent Law 15 (February), it was held that the Hotel Workers had coverage because the Cooks and Stewards' rulebook related only to vessels registered under the N.Z. Shipping and Seamen Act 1952 or trading exclusively between N.Z. ports. Neither alternative applied to the American-owned oil rig, which did no "trading" whatsoever.

The instant case, which is really a decision on two separate applications, concerns the oil rig service vessel known as the **Pacific Installer** and should be read together with the earlier decision. The first application was by the Cooks and Stewards, as an appeal against the Registrar's decision to refuse to accept an amendment to the Cooks and Stewards' rulebook. The amendment would have increased union coverage to all vessels, whether or not operating under N.Z. legislation and "whether or not trading exclusively between N.Z. ports or not trading at all." The Registrar rejected this amendment, under s 174 (1) of the Industrial Relations Act, because the proposal would include "persons eligible to join another union." The Court agreed with the Registrar, noting that the Taranaki Hotel Workers' Union rulebook covers vessels operating off the coast. This result comes about, not by the express words of the Hotel Workers' rulebook, but by the legal fictions created by the Continental Shelf Act 1964, s 7 (1) (b), which deems the Maui oil rigs to be operating above the high water mark on the Taranaki coast. The Court also noted that the proposed change to the Cooks and Stewards' rules was far too wide, as it would cover, quite literally, anything that floated, including an American nuclear warship or a Soviet fishing vessel. The decision of the Registrar was therefore upheld.

The second application was brought under s 118 of the Act by the employer as a classic demarcation dispute. The Court considered that the nature of the work done (s 119 (2) (b)) was more appropriately the domain of the Hotel Workers, and that, historically, the Hotel Workers had had coverage (s 119 (2) (f)). The Court also considered, under s 119 (2) (e), other "relevant decisions of the Court" and found that the **Glomar Tasman** case, noted supra, had favoured the Hotel Workers. The Hotel Workers, therefore, retained coverage of the relevant workers on the **Pacific Installer.** ⊙

SALE OF LIQUOR — SPORTING CLUBS: EXEMPTION FROM HOTEL WORKERS AWARD

Various Sporting Clubs v New Zealand Federated Hotel, Hospital Restaurant and Related Trades' Employees I.A.W.

Arbitration Court, Wellington. 30 June, 1978 (A.C. 12/78). Williamson J.

It is well known that many sporting clubs in New Zealand serve or provide liquor on their premises. Some of these clubs operate legally under ancillary licences issued under the Sale of Liquor Act 1962, as amended. Several such clubs in the Wellington area, possibly as a test case, sought exemption from the N.Z. Chartered Clubs' Employees Award, registered by the Industrial Commission on 12 January 1978. The clubs, representing golf, football and bowling, sought relief under either the exemption provisions of s 83 (3), or the analogous provision in s 89 (2) or the amending powers contained in s 97. (The exact section of the Industrial Relations Act 1973 relied upon by the parties was not specified by the learned judge. It should be noted that a s 83 (3) application must be made within one month of the date of registration of the agreement). The Hotel Workers Union opposed the application.

The clubs submitted that they had not taken part in the conciliation council, and that the employers at conciliation were not representative of sports clubs. Counsel for the applicants cited **I/A v R. & W. Hellaby Ltd** (1933) NZLR 938 as authority, but the Court distinguished that case by noting that there the applicant employers had been denied assessors and excluded from conciliation.

The clubs also argued that their labour was voluntary, that liquor sales were only ancillary to their main activity, that they paid higher prices for liquor supplies than other liquor outlets, and that the weekend penal rates were too high for their primary trading hours.

The Court considered that these submissions might well be sound reasons for seeking a separate award, but failure to advance one's own cause at conciliation was not an adequate ground for exemption. To the extent that the clubs utilised only volunteer labour of members, no exemption was necessary since they had no contracts of employment, and no "workers" under s 2 of the Act. To the extent that the clubs employed staff, they had not sufficiently justified special treatment. All the applications for exemption were declined. ⊙

BANK OFFICERS STRIKE — DEDUCTION FROM WAGES UNLAWFUL UNDER WAGES PROTECTION ACT

McClenaghan v Bank of New Zealand

Supreme Court, Auckland 11 July, 1978. (A 95/76, 96/78, 97/78, 98/78, 99/78, 2025/78). Chilwell J.

This decision should be on the desk of every personnel manager and union executive in the country. It will presumably be reported in the NZ **Law Reports** by late 1979; until then copies can be obtained from the Auckland Registry of the Supreme Court by quoting the name of the case, the docket numbers, the date of decision, and the judge of record. The significance of the judgment lies in its discovery of that best of all possible worlds for unions involved in direct action: a withdrawal of labour which shuts down the employer's retail operations while preserving the right of the union members to receive their salaries. (Compare the right of workers to receive statutory holiday pay while on strike: **Hellaby Shortland Ltd v Weir,** noted at (1976) 1 NZJIR 19 and 72, reported at (1975) 2 NZLR 204 (S.Ct), (1976) 2 NZLR 355 C.A.)).

Chilwell J declared in the present case that if workers withdraw their labour during a particular pay period (in this case, a

fortnight) any adjustments to their pay (as a computation, not a deduction) must be made during that same pay period, and not at some later time. If the "unearned" pay is taken out of a later pay packet, the employer has made an unlawful deduction — unless the worker concerned consents in writing — under the Wages Protection Act 1964.

In this case the workers concerned, members of the N.Z. Bank Officers I.U.W., withdrew their labour from the five trading banks in New Zealand, being BNZ, ANZ, National Bank, the Commercial Bank of Australia, and BNSW, on Wednesday and Thursday, 19 and 20 November 1975. (The issue in dispute, not relevant to the present proceedings, was lack of progress in award negotiations). The next fortnightly pay day at BNZ after the strike was Thursday, 27 November. That fortnightly payment was made in full, even though the union members had worked only 8 of the 10 working days in that fortnight. Two weeks later, on 11 December 1975, in the pay packet covering 28 November through 11 December, BNZ made a deduction from its employees' pay packets in respect of the two days lost in the previous fortnight.

The plaintiff in the instant case — an employee of BNZ — sought a declaration in the Supreme Court that the deduction of 11 December 1975 was illegal in respect of her own entitlements from BNZ and as a consolidated test case, in respect of the employees of the other banks. The plaintiff relied on s 4 (1) of the Wages Protection Act 1964, as follows:

> Except as otherwise provided in this Act, the entire amount of wages payable to any worker shall be paid to the worker in money when they become payable.

The gravamen of the statutory complaint is that an employer must make adjustments to the pay packets of striking employees during the pay period of the strike.

The first defence offered by BNZ was that the 1964 Act, a re-enactment of the 1831 Truck Act (UK), was inappropriate in the computer age and impossible of compliance. BNZ had 4,500 employees of different grades, and pay scales, with various overtime and shift work entitlements in its 220 branch offices. A computer payroll is made out centrally in each case. The Court found, as a matter of fact, that the computer system:

> could not have coped nor could it be expected to have coped in time to prevent a full fortnight's pay being credited in each case to each employee's account . . . (It) was impracticable if not impossible to alert the system of each bank to make any lawful adjustments in respect of time not worked due to absences from work and to make the adjustments coincide with the pay period during which the absences took place. That evidence was not significantly challenged.

In spite of the practical soundness of this defence, the learned judge could not accept it as a matter of law. It was, after all, the banks' deliberate policy to use a central computer payroll. "The banks should not have adopted a system which did not make room for section 4 (1) of the Act. They cannot place themselves above the law."

The banks also contended that the phrase "wages payable" in s 4 (1) contemplated the computational arithmetic of adding and subtracting adjustments necessary to correct overpayments (or under payments) made in previous fortnights. Chilwell J rejected this defence by relying on **O'Halloran** v **A-G** (1968) NZLR 472 and **Smith** v **A-G** (1974) 2 NZLR 225, where civil servants, overpaid by the Ministry of Works and Social Welfare Department, respectively, refused to consent subsequently to deductions. In each case the Court found that a deduction was illegal, albeit an overpayment had been made earlier. Furthermore, the employing authority could not justify the deduction by treating the employee as a salaried worker entitled only to moneys earned over a 12-month period. In each case an award or regulation or contract required fortnightly payments, and it was to each fortnight that the Wages Protection Act applied. Furthermore, Chilwell J distinguished **Sagar** v **Ridehalgh** (1931) 1 Ch 310 where "deductions" for bad work were permissible **during the pay period** as a step in the arithmetical process of calculating wages payable.

Chilwell agreed that his literal interpretation of the Act could produce harsh results, but

> Parliament clearly intended to place a restriction upon employers in exercising a remedy by way of deduction from wages payable. Inconvenience to

employers was intended. Parliament must have been prepared to tolerate some anomalies in the interest of the overriding objectives of the statute, one of which was to prevent the employer from being judge, jury and enforcement officer in his own cause.

COMMENT

The employer in this case made no serious attempt to counterclaim for the damage done by the two-day shut down. Most employers, by assembly line stoppages or loss of retail and wholesale markets, would be able to quantity their losses, and successfully set off that loss against the wage claim. Could a bank, however, like a retail grocery, simply show loss of two days' retail sales? Every trading bank in New Zealand was closed at the same time. Could any individual bank demonstrate loss of custom? Furthermore, even if such an exercise was economically feasible, would the banking industry be so willing to open its books, even to win an expensive court case?

The lesson for trade unions is clear. Withdrawal of labour near the end of a pay period, but not on the day when payment is due, against an employer unwilling to open his books to prove a counterclaim, should prove an effective weapon. It should be noted, however, that direct action in breach of contract could lead to extensive claims by the employer for consequential damages.

The employer can politely request the employee to sign a consent form under s 7 of the Wages Protection Act to allow a deduction to compensate for an earlier overpayment. Can the employer demand such a signature and justifiably dismiss any servant who refuses to consent to a deduction to satisfy an admitted debt?

Another alternative for the employer would be to hold back the pay packet, in the case of a two day strike, for two days, so that it covered 10 working days in a 16-day fortnight. The next fortnightly pay period could thus cover a 12-day fortnight with 8 working days, while making no "deduction." This technique involves a certain amount of risk for the withholding of pay packets at the end of the first fortnight.

Employers should note that PAYE (by statute) and union dues (by some awards) can be deducted without a signature; otherwise employers risk a $200 fine under the Wages Protection Act s 10, and a $500 fine under s 27 of the 1976 Industrial Relations Amendment Act (No. 2) for each illegal deduction. ⊙

SUSPENSION OF CONTRACT OF EMPLOYMENT

NZ Engineering, Coachbuilding, Aircraft, Motor and Related Trades I.U.W. v NZ Steel Ltd

Arbitration Court, Auckland. 14 August 1978. (A.C. 25/78) Jamieson C J.

In October of 1977, the union and the employer began voluntary negotiations preparatory to renewing a voluntary agreement. Unhappy with the progress of these negotiations, the union membership resolved on 8 and 9 October to begin immediate "rolling stoppages . . . until negotiations (were) satisfactorily concluded." Such stoppages began on Wednesday, the 9th of October. The union advised the company that there would be at least 24 hours' notice of such action, but the company's response was to advise the union that no further work would be made available to union members after 4 p.m. on Friday, 11 November. The company issued notices to each union member in the form of a letter. The letter began by referring to the rolling strikes and stated the company's position as follows:

> We therefore have no choice but to inform you that until such time as your union has assured us that you are prepared to resume and to continue your normal working practices, no further work will be made available to you . . . and no further remuneration will accrue to you . . . (When normal working practices are resumed) normal work allocations will resume.

The word "suspension" nowhere appears in the letter, but it is plain that both parties assumed that mutual rights and liabilities under the contract of employment were not abrogated and terminated; both parties clearly understood that the employment relationship was in some sort of contractual limbo, unconscious perhaps but not dead. Normal work practices did in fact resume on Wednesday afternoon, 16 November. The union refused to accept the legality of the suspension and sought recovery of wages for its members for the time lost during the period 11-16 November 1977. The parties purported to bring the dispute to the Court under the disputes clause set out in the current agreement of 20 December 1977, recorded at 77 BA 10179. The Court noted that the relevant clause may well have been set out in the agreement relevant to the time of the dispute — an earlier agreement, recorded at 77 BA 3011. Both agreements, however, contain the same disputes clause, the model disputes clause set out in s 116 of the Industrial Relations Act 1973, and nothing turned on that fine point. A more fundamental procedural problem was the Court's concern that the parties had come to the Court under a disputes mechanism when the union should have proceeded under a s 158 "Recovery of Wages" action. Again, nothing turned on this point as both parties and the Court agreed to treat the problem as a referral from a Disputes Committee. It should be noted, however, that it is not competent for parties to give a court jurisdiction when the relevant statute does not create such jurisdiction.

The Court began by dismissing any discussion of s 128 of the Act. Although that section does contain a suspension power, it was not relevant to the instant case and the company could not have and did not rely on s 128. The dispute was, resolved, therefore, by analysis of the underlying common law contract of employment.

The company cited and the Court relied upon three previous decisions. The first, and perhaps most relevant, was **Australian National Airlines Commission** v **Robinson** (1977) VR 82 where a pilot was stood down from a roster because he claimed the right to stop work when his association called a stoppage. He was found not ready and willing to perform his contract of service and, in fact, he was attempting to import a new term into the contract. As he himself had repudiated the contract he was not entitled to sue for damages on that contract. Similarly, in **NZ Engineering etc IUW** v **Shortland Freezing Co Ltd** (1973) 1 NZLR 326; 72 BA 3097 it was held that workers who had brought about a stoppage could not pursue a claim for lost wages when the "lockout" was a result of their own contractual breach. Judicial language to the same effect was also found in the **NZ (except Westland) Meat Processors etc IUW** case at 71 BA 596.

The Court found these cases persuasive and decisive in the instant dispute. The employer had lawfully suspended the contract of employment and the workers were not entitled to wages during the period of suspension.

COMMENT

With all due respect, it must be said that although the Court approached and decided the case under s 48 (4) of the Act (mistakenly cited as s 47 (4) in the Judgment) in accordance with equity, precise analysis of contract law was lacking. For example, Jamieson CJ did not discuss a leading English case relied upon by the union, **Hanley** v **Pease & Partners Ltd** (1915) 1 KB 698, where Lush J found that an employer cannot "suspend" a worker for breach unless there is such an express term in the contract. Discussing a one-day absence of a worker, the judge in that case said:

> Assuming that there has been a breach on the part of the servant entitling the master to dismiss him, he may if he pleases terminate the contract, but he is not bound to do it, and if he chooses not to exercise that right but to treat the contract as a continuing contract notwithstanding the misconduct or breach of duty of the servant, then the contract is for all purposes a continuing contract subject to the master's right in that case to claim damages against the servant for his breach of contract. But in the present case after declining to dismiss the workman — after electing to treat the contract as a continuing one — the employers took upon themselves to suspend him for one day; in other words to deprive the workman of his wages for one day, thereby assessing their own damages for the servant's

misconduct at the sum which would be represented by one day's wages. They have no possible right to do that. Having elected to treat the contract as continuing it was continuing. They might have had a right to claim damages against the servant, but they could not justify their act in suspending the workman for the one day and refusing to let him work and earn wages.

Jamieson CJ did not refer to the **Hanley** decision, and preferred the three cases cited by the employer. Presumably, he found **Hanley** not relevant to the instant case, or he concluded it was no longer good law in New Zealand. Alternatively, he could have made the implicit finding that there is an implied term in contracts of employment, necessary to give business efficacy to the agreement, that employers can answer strike notice with suspensions.

Perhaps the most cogent discussion of strike notice and suspension was the well-known discussion of Lord Denning MR in **Morgan** v **Fry** (1968) 2 QB 710, at 728, where the learned Master of the Rolls examined the industrial realities of a strike as follows:

> The truth is that neither employer nor workmen wish to take the drastic action of termination if it can be avoided. The men do not wish to leave their work for ever. The employers do not wish to scatter their labour force to the four winds. Each side is, therefore, content to accept a "strike notice" of proper length as lawful. It is an implication read into the contract by the modern law as to trade disputes. If a strike takes place, the contract of employment is not terminated. It is suspended during the strike: and revives again when the strike is over.

Lord Denning's remarks are, no doubt, good common sense, but they are only an introduction to the concept of "suspension" of contract. The Donovan Commission (1967-68 Command Paper 3623, para 943) and Phillips J in **Simmons** v **Hoover** Ltd (1977) 1 All ER 775 at 782-786, have pursued a more careful examination of the contradictions implicit in lawful suspension, an examination which is frequently required in dissecting an industrial tort.

It is submitted here that New Zealand courts have not yet begun such consideration, and, indeed have not yet come to grips with the legality of strike notice and reactive suspensions. As an example, see the obvious difficulty suffered by Blair J in the **Meat Processors** case noted above, 71 BA 596, 598 where he said the words "suspended without pay" were "tantamount to a dismissal notice." A mere suspension would have left the workers in that case entitled, under clause 32 (2) of the relevant Award (recorded at 70 BA 656), to a minimum weekly payment, just as the workers in the **Hellaby** case were entitled to statutory holiday pay. (See **McClenaghan** also in these pages).

What does happen to the contract of employment during a suspension? Has suspension been imported into the law of contract as a half-way house between dismissal and standing on the contract? ⊙

ELECTRICIANS CLAIM FOR DANGER MONEY AT OAKLEY HOSPITAL

Auckland Hospital Board v **North Island Electrical & Related Trades I.U.W.**

Arbitration Court, Auckland. 22 August, 1978 (A.C. 14/78). Williamson J.

The North Island Electricians I.U.W. argued before a Disputes Committee, convened under the standard disputes clause as set out in Clause 32 of the relevant award, at 77 BA 7663, that electricians at Oakley Hospital in Auckland should be paid time and a half for working in close proximity with mental patients who are potentially dangerous. If the union based their claim on a specific clause of their award, that clause was not referred to by the learned judge. If no specific clause was relevant to the dispute, then the jurisdiction of the Disputes Committee was doubtful, although apparently no objection was taken by counsel for the Hospital.

This case might be compared with a claim made by the same union against Wattie Canneries, decided by the Court on 20 September 1976 (I.C. 45/76) and noted at (1976) 1 NZJIR 75. There the union claimed and received a disability allowance under Clause 6 of the Award (75 BA 9653), "Dirt Money," for working at height without a platform. By sub-clause (g) of Clause 6, the electricians received the allowance because other tradesmen (engineers) were receiving an allowance for working under the same conditions.

Under the present award, the disabilities sub-clause (g) (which referred to "tradesmen") has been separated from the Dirt Money Clause 6, and now appears independently as Clause 7 (referring to "workers"). Therefore, if engineers working at Oakley received a danger money allowance, the electricians would be similarly entitled. No such claim was made, although it appeared from the facts of the case that nurses did receive an extra payment whilst serving at Oakley. The learned Judge did not discuss the possibility that nurses were "workers" for the purpose of Clause 7.

The Chairman of the Disputes Committee, from whose ruling the Hospital appealed, ruled that electricians were to receive time and a half for working at Oakley, Wards 3 and 7, unless the patients were removed from those wards while the electricians were at work.

Williamson J noted that Wards 3 and 7 comprise Oakley Hospital in toto. Therefore, if the bonus payments were to be avoided, the Hospital would have to send patients outside when electrical work was to be done. Noting that the payment of "danger money" has no bearing whatsoever on protecting workers from dangerous patients, and noting further that no electrician had ever suffered the personal injury feared by the union, Williamson J replaced the Chairman's decision with the following order:

> "(when any electrician) is required to carry out work in either Ward 3 or 7 of Oakley Hospital the **immediate work area** shall be cleared of any patients who are potentially dangerous before such work commences and while it continues." (emphasis added).

Presumably the nurses will continue to protect the electricians as well. ⊙

REGISTRATION OF UNREGISTERED SOCIETY: APPEAL AGAINST REGISTRAR'S DECISION

Nelson, Marlborough, Buller Electrical Workers Society v NZ Engineering, Coachbuilding, Aircraft, Motor and Related Trades I.U.W.

Arbitration Court, Wellington. 22 August 1978. (A.C. 31/78). Williamson J.

The Nelson, Marlborough, Buller Electrical Workers Society applied to the Registrar of Industrial Unions under sections 163-164 of the Industrial Relations Act 1973 for registration as an industrial union of workers. The Registrar refused so to register the applicant society on the grounds that, pursuant to subsection 168 (2), "the members of the society might conveniently belong to a then existing union," being the NZ Engineers I.U.W. The Society appealed to the Court, under subsections 168 (6) and (7), that on grounds of distance and diversity of interest it would be more convenient for its members to have the society registered, than for them to remain Engineers. The Society put forward three main submissions.

It was submitted, first, that as the Society membership was based in Blenheim, Nelson, Motueka, Richmond and Westport, the nearest Engineers Union Office at Christchurch had difficulty in providing service.

Secondly, it was suggested that there was a basic diversity of interest between electrical workers, and the mainstream of the metal-working Engineers Union.

Finally, the Society informed the Court that, if it gained registration, the Society would seek affiliation with other electrical workers' unions, being the North Island and the Otago-Southland Electrical Workers

Unions. The Court was advised that those two unions covered 90% of the relevant electrical workers in New Zealand. At present those two electrical unions, with some 10,500 members, formed a New Zealand (except Canterbury, Marlborough, Nelson and Westland) industrial association. The Engineers covered some 1,000 electrical workers in the excepted districts. Officers from the Society, and the North Island and Otago-Southland unions as well, testified that their goal was a New Zealand Electrical Workers I.U.W.

The Engineers submitted that in 20 years' coverage of electrical workers, dissidence was a recent phenomena. Furthermore, the respondent Engineers pointed out that the applicant Society represented only 230 of the 1,000 electrical workers covered by the Engineers. Finally, the respondents introduced into evidence a letter from the Secretary of the Federation of Labour, advising that the Federation was opposed to the registration of the applicant Society. (If that opposition was based on the FOL's policy against undue multiplicity of unions, it may have been misplaced in this case, as success for the Society may mean one less union in existence, not one more).

The Court found that the applicant Society had met the burden imposed in section 168 (7) and that "its members should be given the opportunity to fulfill their aspirations."

Successful appeals against the Registrar's decision are rather infrequent. See other decisions noted at (1976) 1 NZJIR 45, (1977) 2 NZJIR 103, (1978) 3 NZJIR 36 and (1978) 3 NZJIR 80. Only one of the six appeals discussed in those pages was successful. In four of the six appeals, Engineers opposed the separate registration.

⊙ BILL HODGE