LEGISLATED APATHY: INDUSTRIAL RELATIONS IN NEW ZEALAND AGRICULTURE

— Howard Gill*

Farm workers are the largest group of unorganised employees in New Zealand; but the 20,000 career farm workers could form one of the nation's largest trade unions. The absence of trade unions in agriculture and the consonant lack of collective regulation of conditions of employment has had major consequences for employer-employee relations in the industry and is a major gap in New Zealand industrial relations. The Agricultural Workers Act 1977 provides, for the first time, conciliation and arbitration arrangements, but continues the long established bias against the development of viable farm worker organisations.

At present less than 10% of agricultural workers belong to any form of association and 1,600, or so, of those organised are members of the Farm Workers Association which is isolated from the general labour movement.[1] This situation arose from the 1907/8 Canterbury Farm Labourers' dispute — developments from that date are described below. The 1977 legislation is described and contrasted with the Industrial Relations Act and it is shown how the differences limit the effectiveness of workers organisation in agriculture. Moreover, it is shown that these differences do not arise by chance but indicate the continuing acceptance of arguments for the extraordinary treatment of agricultural employment.

New Zealand agricultural workers have twice mounted substantial and cohesive campaigns in the industrial arena; in 1905-8 this was in support of trade unionism and award coverage; in 1973-77 the cause was essentially anti-union. The two campaigns show that the lack of unionism, the apathy of the title of this paper, are not fully explained by the social or work situation of farm employees. In 1907 the Canterbury Farm Labourer's Union was the largest group of organised workers in New Zealand and they cited over 7,000 farm and station owners in seeking an award from the Industrial Court.[2] A Board of Conciliation inquired into the dispute and recommended that an award be made including items such as wage rates, hours of work and a preference clause for union members. At the time, this was the largest case to have been brought under the Industrial Conciliation and Arbitration Act; the award would

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1 Accurate figures are unavailable on either the number of farm workers or the number of union members. The estimate of 2000 union members is made up of 1600 members of the Farm Workers Association (quoted in Auckland Herald 3/7/78), 300 members of the New Zealand Workers Union (quoted in Hansard 14/9/77 pg 2970) and a small number in the New Zealand Labourers and Related Trades Union and in the Public Service Association.

2 Through-out this paper the names of tribunals as at the date referred are used.

have firmly established the principles of industrial regulation and union membership in rural industry. However, the dispute was taken by employers to the Industrial Court who, in 1908, rejected the recommendation of the Board of Conciliation and held that an award was not justified. The Court reasoned that there was lack of evidence of grievances, that there would be insurmountable difficulties in enforcing an award in a geographically dispersed industry and that the cost of implementing standard conditions was too great a burden for the agricultural industry.

The Court broadly accepted the contentions of farm employers and flouted two principles of arbitration: the social justice of a floor in the terms of employment and the encouragement of representative organisations of employers and employees. The Court's position was made easier by the procedures of arbitration which placed the onus of proof of unsatisfactory conditions on the applicant workers. The workers case was hampered by lack of funds, the extension of the case, the difficulty of protecting their witnesses against victimisation, the support given by 'expert' witnesses to the employers and by the need for the Court to obtain employer's permission before conducting inspections.

Thompson concludes that the Court's reasons for rejection were inadequate, and that,

> *faced for the first time with a quasi-political decision the Court surrendered to the farmers.*[3]

The effects of the Court's surrender have continued to the present. This is seen, for example, in the continued difficulty of proving grievances and unsatisfactory conditions of employment. It is impossible to assess the level of employment conditions of farm workers because of the paucity of information; a major cause of this is the lack of awards. More importantly, the absence of awards has been used to justify arguments that awards are unnecessary and undesirable. Further applications by the Farm Labourers (as part of the New Zealand Workers Union (NZWU) were refused in 1919 and 1925 and from 1925-1929 the whole of the primary sector was excluded by government regulation from the jurisdiction of the Industrial Court.

The first legislative coverage of agricultural employment was provided in the Agricultural Workers Act 1936. This provided for a system of wage orders, for an inspectorate to enforce prescribed standards of accommodation and for restriction on the employment of juveniles. The accommodation and juvenile employment provisions have continued, virtually unchanged, to the present. The wage orders were considerably different from awards made through the concilation and arbitration system. The most significant differences were:

1. A wage order, prescribing minimum conditions in a section of agriculture, was made by an Order in Council emenating from the Minister of Labour, and not as an award from the Industrial Court.
2. Conciliation and arbitration were voluntary, not mandatory. The Act stated that the parties 'shall be given an opportunity to confer' and that the Industrial Court could 'recommend' to the

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3 Thompson B.J.G. Canterbury Farm Labourer's Dispute 1907-8, M.A. Thesis, Dept. of History, University of Canterbury 1967 P.194

Minister.[4] The Minister of Labour was not given powers comparable to those of the Court, requiring conciliation and binding arbitration on the pain of sanction.

3. No provisions were made in the Agricultural Workers Act for a 40 hour week, for union membership or for protection against victimisation.
4. General Wage Orders did not automatically apply to the agricultural wage orders.

Wage orders were made covering various sections of agriculture and horticulture; these specified minimum rates of pay and the orders could be upheld through Industrial Court actions taken by inspectors or unions. A number of differences arose between the orders covering farms and stations and horticulture, especially in the 1960-70's.

The two orders covering Farms and Stations and Dairyfarms were unchanged from 1959 and 1960, respectively, until 1975. The horticultural orders were changed more frequently and provided specified hours of work (usually 44 hours per week) and compulsory union membership. The agricultural orders did not specify hours of week and there was only a vague statement of encouragement of membership in the NZWU.

The lack of amendment of the farm orders caused the situation where the only floor in the rates of pay were provisions of the Minimum Wages Act. An informal labour market developed in which terms of employment were settled between individual employers and employees. Since a large part of the remuneration of farm workers has traditionally been in the form of bonuses and non-cash perks, which were not specified in wage orders, neither employers nor employees had any means of comparing or evaluating the level of reward. In fact, the best form of comparison was by changing jobs; it has previously been shown that this was a major factor contributing to very high levels of labour turnover in agriculture.[5]

The procedures of the wage order system allowed either party to avoid claims by responding, to an invitation to confer, that no dispute existed. The NZWU claims that employers did this in the 1960's-70's; the employers deny this and it remains for further research and, perhaps the release of state documents, to settle the matter. Certainly the NZWU submitted claims in the 1960's; whether the lack of action on these stemmed from the employer, from government or from lack of union pressure must remain an interesting speculation. However, it was obvious by the 1970's that the wage order system was ineffective in providing effective regulation of the farm labour market. This coincided with some public discussion on the farm labour question, especially potential shortages.

The Kirk Labour Government sought to amend the Agricultural Workers Act in 1973 and 1974 and to include agricultural employment within the general processes of the Industrial Relations Act. This was long-standing Labour Policy and contained in the 1972 Election Manifesto. The change was justified by reference to the deficiencies of the wage order provisions, especially the ability to avoid claims, and on the grounds of administrative tidiness.

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4 Agricultural Workers Act 1936 (as amended 1962) clause 16 and 17 (2).
5 H. Gill The Agricultural Labour Force **in Proc. Rural Development Conference 1976.**

Critics of the change raised the spectre of compulsory unionism and the extension of the 40 hour week to agriculture. They also argued that the amendment provided 20,000 forced members for the NZWU, which was affiliated to the Labour Party, and had declining membership.

The strongest antagonisms were aroused by the idea of unionism and the prospect of the 40 hour week. The President of Federated Farmers said:

> *the agricultural industries are now faced with the prospect of an inflexible 40 hour week, with compulsory unionism — both of which will not only harm production as more and more farmers restrict operation by cutting down employment, but will also endanger the long history of harmonious personal relations in the agricultural industries.*[6]

The shadow Minister of Justice, D.S. Thompson saw a greater danger:

> *the Bill represented more socialist regimentation of the country and ignored the special relationship between farm works and their employers.*[7]

The 'long history of harmonious personal relationships' and the 'special relationship' have been considered elsewhere; it is noted there that the claims about the 40 hour week and compulsory union membership were distortions, whether deliberate or inadvertent, of the provisions of the Industrial Relations Act.[8]

The Industrial Relations Act does not make the 40 hour week a mandatory inclusion in awards: the Act states: it shall be included, "unless the Court is of the opinion that it would be impracticable to carry on any industry . . . if the working hours are so limited."[9]

The Court shall hear submissions from all parties on this matter. Likewise the attack on compulsory union membership was exaggerated; under the Industrial Relations Act an unqualified preference clause can only be inserted into an award if it is agreed to by **all** assessors at conciliation, or has the majority support, in a ballot, of all adult workers in the industry.

While the extension of the Industrial Relations Act to agriculture would have increased the opportunities for a union to improve its membership and to press for a definite working week it would not have guaranteed these. If the farmers believed that they had an incontravertible case for a longer week than 40 hours they should have been willing to submit this to an independent tribunal. On the other hand, the farmers may have been less certain of their case and felt that they would have faced the Australian judgement:

> *We believe that the time has come when the grazing industry must realise that this award (Federal Pastoral Award) alone contains provisions for a 44 hour week. Forty hours a week is now not simply a standard for manufacturing industry it is a standard for all industry, including rural industry.*[10]

It was a shrewd and legitimate tactic for the farmers to avoid this risk by op-

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6 Dunlop quoted in Christchurch Press 18/2/75.
7 Quoted in Christchurch Press 13/9/73.
8 The present paper is an extract from one titled 'Can Deference Survive' presented to 49th ANZAAS Congress, Auckland, January 1979.
9 Industrial Relations Act (reprinted April 1978) clause 93.

posing legislation which might pose it.

The rhetoric of the dangers of unionism and the fixed 40 hour week were most effective in mobilising farmer and farm worker support against the amendments. Opposition coalesced in the New Zealand Farm Workers Association (FWA) which received support from farmers and from the National Party. The FWA made great play of the links of the NZWU with the Labour Party and industrial labour argued that the amendments meant that control of farm workers affairs would pass from agricultural and rural people.[11]

The extent of financial support the FWA received from farmers is a matter of contention but substantial moral support was provided when the farm employers concluded an interim wages order in 1975. This was proclaimed by the Labour Government despite a counter-claim from NZWU.

The Labour Government did not proceed with the amendment bill and the National Party promised separate legislation in its 1975 Manifesto: this duly became the Agricultural Workers Act 1977. This continues the accommodation and juvenile employment provisions, provides some safety and welfare provisions and replaces the wage orders with a conciliation and arbitration arrangement.

The two innovations in the Act are the creation of an Agricultural Tribunal and the rights of representation. Only one organisation of workers and one of employers shall be registered to represent the respective interests in any specified category of work. The Act gives rights of representation in dairy farming, in sheep farming and in general farming to the Farm Workers Association: fruit and vineyards work and tobacco plantations are covered by the Workers Union; vegetable production and berry fruits by the Labourers Union. Coverage of these categories can be changed either by agreement between the workers organisations concerned, or where a rival organisation recruits 25% more members than the existing one.

The Agricultural Tribunal provides compulsory conciliation and arbitration procedures for disputes in agriculture and can make awards binding on all employers and employees in the specified classes of work. The Tribunal is chaired by the President of the Arbitration Court and has two other members nominated by the respective organisations of employers and employees of the class of work for which an award is sought.

Thus the membership of the Tribunal, apart from the President may differ between the seven classes of work. The Tribunal is limited to award making, all questions of award interpretation and of personal grievances are heard by the Arbitration Court.

The legislation was jointly drafted by the Federated Farmers and the FWA but seems to reflect the employer's interests rather than those of employees. It represents the minimum of labour market regulation and the maximum disincentive to the involvement of workers associations at the farm level. Three aspects of the legislation are significant to this, the separate tribunal, the definition of dispute and the absence of preference clauses. Below these are compared with provisions of the Industrial Relations Act.[12]

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10 Judgement of Australian Federal Industrial Commission reported in Australian Industrial Law Reviews 1978 : 18.
11 Despite the origin of the NZWU and its organising attempts in agriculture.
12 All comparisons are between the Agricultural Workers Act 1977 and the Industrial Relations Act (reprinted April 1978).

1. The Agricultural Tribunal.

The creation of an Agricultural Tribunal, distinct from the Arbitration Court, is justified by the 'special circumstances' of agriculture. Principally these are the inappropriateness of a rigid 40 hour week and of trade unions interfering in the personal relations of farmers and their workers. However, the absence of trade unions and the 40 hour week arose because of the initial exclusion of agriculture from award coverage in 1908. This, in part, caused the special circumstances; it is equally likely, that the present legislation will ensure their continuation. The Tribunal is not explicitly charged with considering the 40 hour week or union membership — quite plausible grounds that it 'should not' entertain such arguments. Moreover, the separation from other sections of employment will reduce the 'flow-on' of decisions made more generally; the extension of the 40 hour week to the Federal Australian Pastoral Award is an instructive comparison.

2. The Definition of Dispute

The two Acts contain very different definitions of 'dispute'; that is of those matters which come within the jurisdiction of the Court and the Tribunal. The definition in the Industrial Relations Act is:

> *''Dispute'' means any dispute arising between one or more employers or unions or associations of employers and one or more unions or associations of workers in relation to industrial matters:*

in turn *''industrial matters''* are

> *. . . all matters affecting or relating to work done or to be done by workers, or the privileges, rights and duties of employers or workers in an industry, ...*[13]

This provides a wide set of issues which may be handled through the Act's procedures, whether as disputes of interests or disputes of rights.

In comparison the definition of dispute in the Agricultural Workers Act is more restrictive:

> *''Dispute'', in relation to any class of worker, means a dispute or question between workers of that class and their employers relating to their conditions of employment that cannot be resolved informally:*

in turn

> *''Class or worker'' means those workers performing work of a recognised category.*

and

> *''conditions of employment'' includes rates of remuneration.*[14]

The term 'informally' is not defined, but it seems that this means directly between employer and employee without trade union involvement. This interpretation is supported by the lack of mention of trade unions in the definition and the absence of decision on union membership.

The Agricultural Workers Act appears to be confined to the dispute of interests provisions of the Industrial Relations Act and to the part of the disputes

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13 Industrial Relation Act clause 2.
14 Agricultural Workers Act clause 2.

of rights which refer to interpretation of awards.

There is no mention to employment issues which are outside the area of 'personal grievances'; that is part (c) of the Industrial Relations Act definition of "disputes of rights":

> *"any dispute which arises during the currency of a collective agreement or award".*[15]

Indeed, The Agricultural Act repeats the Industrial Relations Act limitation on personal grievance procedures that they are not available for 'an action applicable generally to workers of the same class employed by the employer'.[16]

The Agricultural Workers Act is extremely ambiguous regarding managerial issues which affect more than one person employed by the same employer. There appears to be no recourse to the tribunal on issues such as bonuses or working methods where they are not mentioned in the award. It might be possible for a union or associaton to seek a new award on such matters but this could face the argument that it was outside the jurisdiction of the Tribunal and not within the definition of dispute. A second difficulty is that the Act makes awards applicable to all workers of a recognised category; although section 33 allows the Tribunal to make exemptions. It does not appear that the spirit of the legislation is to cover small groups of workers, and the convoluted use of the terms 'class of worker, 'recognised categories' and 'specified categories' further confuses. It is likely that only a legal test case will clarify the situation.

3. The Encouragement of Unionism.

While the Industrial Relations Act provides for the insertion of preference clauses in awards and for the rights of entry of union officials neither of these are mentioned in the Agricultural Workers Act.

This does not exclude either being placed in an agricultural award by agreement or at arbitration; but given the frequently expressed opposition of farmers to union membership this seems unlikely.

The lack of a mandatory provision for right of entry is more significant. The Industrial Relation Act states . . .

> *"and it (The Court) shall include provisions to confer on the secretary or any other officer or authorised representative of any union of workers the power to enter . . . upon the premises of any employer bound by the award" . . .*[17]

The agricultural awards covering farms, stations and dairyfarms, made in 1978, do not contain such a cluase. The effect is to confine the activities of the FWA to labour market matters and to enable individual employers to refuse to negotiate with the Association over on-farm matters. This is, with the exception of personal grievances where local officials are charged with taking up grievances referred to them; however, it is not clear whether the employer, in the absence of the right of entry, is obliged to allow the union official to inspect the farm work-place or to meet the worker on the farm.

The lack of right of entry provisions make the individual worker dependent on

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15 Industrial Relations Act clause 2.
16 Industrial Relations Act 117 (1).
Agricultural Workers Act 39 (1)
17 Industrial Relations Act 96 (1).

his or her own resources and on the Inspectorate to ensure compliance with award conditions. The development of farm worker organisations is also weakened: under the Industrial Relations Act the task of ensuring union membership rests with the union and not the Inspectorate. While this restriction on the Inspectorate is excluded, along with preference provisons, from the Agricultural Act, inability to gain entry to farms and stations poses major difficulties for an association seeking to increase or to maintain its membership.

Although the Agricultural Workers Act is a distinct improvement on the preceding wage order system in that farm worker organisations can, and have, forced farm employers to conciliation and arbitration the provisions are still substantially less than those that would have stemmed from an award in 1908 or from the 1973-4 Amendments. Despite improvements obtained in regard to wages, to security of tenure of housing and redundancy, the FWA is effectively confined to the area of labour market regulation.

This restricts the development of the organisation and means that it must continue to rely on the grace and favour of farmers. At the height of the 1973-5 debates the FWA claimed 8,000 members but in 1978 this had reduced to 1,500 and the association was threatening to disband because of 'farm workers apathy'. The prime cause of this apathy lies in the legislation itself: individual farm workers will be no better off as members of FWA. The legislation has removed the 'threat' of the NZWU, the award automatically binds their employer, they have individual access to the Arbitration Cout through the personal grievance procedure, and finally the Association cannot act at the farm level.

The Association has sought the co-operation of employers in encouraging membership through a system where farmers enrol their employees in FWA. This was rejected by Federated Farmers in 1978 but the Association is continuing its campaign with individual farmers using similar anti-union arguments to those of 1974-77. Employers can, perhaps, afford to avoid this, and similar claims, as the NZWU is unlikely to be able to replace FWA through the Act's provisions.

In the medium term, however, the declining membership of FWA must limit their activities, unless the farmers are prepared to organisationally and financially support a client organisation.

The FWA is only likely to convince farm workers of the merit of membership if it has the opportunity to become involved in the managerial as well as the labour market aspects of industrial relations. But, if FWA adopts a more conscious 'union role' there is little need for its continued separation from the labour movement. If the FWA fails, the Workers Union, so long as it maintains some farm worker members, will automatically be able to claim coverage. In the last decade the NZWU has been more militant and more effective (from a worker's viewpoint) in the shearing industry. It is very doubtful that it would be prepared to accept the restrictions placed on the FWA, and through its links with other unions would be better placed than FWA to exert industrial pressure.

On the other hand, the non-industrial activities of the FWA have been impressive, perhaps more so, than its industrial ones. They have gained representation on industry training and apprenticeship boards and have become involv-

ed in rural, social and economic issues and so have started to provide a voice for farm workers in wider issues. It seems inevitable that there will be some fusion or arrangements made between FWA and NZWU. The present passions and the tensions of the mid-70's must first subside but it is extremely unlikely that it will take a further 70 years before the farm workers are fully admitted to industrial citizenship. In the meantime, farmers must contemplate whether they have shot an albatross.

INDUSTRIAL STRUGGLE: NEW DIRECTIONS IN SOCIAL RESEARCH*

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INTRODUCTION

Studies of labour struggle span a wide range of analytical and methodological standpoints. At one extreme one finds quantitative modelling of strike behaviour[1] while at the other there are the sociological accounts of specific incidents of conflict.[2] Clearly, the choice of research strategy and methodology depend upon the issues addressed and the disciplinary context from which such questions emerge. Our concern is to understand and explain variations in inter-industry patterns of industrial action. By working at an intermediate level of analysis we hope to steer between the Scylla of extreme abstraction (evidenced by most national level strike studies[3]) and the Charybdis of interpretive empiricism (exemplified by many plant level case studies of strikes[4]). There are two further important considerations underlying our research strategy: previous studies suggest that certain industries in different countries exhibit similar strike features[5] but there is no satisfactory theory at present

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1. For example, D. Britt and O. Galle, "Industrial Conflict and Unionisation", **American Sociological Review**, Vol. 37, 1972, pp. 46-57; J. Vanderkamp, "Economic Activity and Strikes in Canada", **Industrial Relations**, Vol. 9, 1970, pp. 215-230; and R.N. Stern, "Inter-metropolitan Pattern of Strike Frequency", **Industrial and Labor Relations Review**, Vol. 29, 1976, pp. 218-235.
2. For example, A.W. Gouldner, **Wildcat Strike**, Routledge and Kegan Paul, London, 1955; E.V. Batstone, I. Boraston, S.J. Frenkel, **The Social Organisation of Strikes**, Blackwells, Oxford, 1978, Part II.
3. For a critique of national level quantitative studies (and others) see R.N. Stern, "Methodological Issues in Quantitative Strike Analyses", **Industrial Relations**, Vol. 17, No. 1, 1978, pp. 32-42.
4. For example, T. Lane and K. Roberts, **Strike at Pilkingtons, Fontana**, London, 1971.
5. C. Kerr and A. Siegel, "The Inter-industry Propensity to Strike", in A. Kornhauser, R. Dubin and A. Ross, **Industrial Conflict**, McGraw Hill, N.Y., 1954, pp. 189-212. There are exceptions: see for example, G.V. Rimlinger, "International Differences in Strike Propensity of Coal Miners: Experiences in Four Countries", **Industrial and Labor Relations Reviews**, Vol. 12, 1959, pp. 389-406.

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