

NOTE

Industrial Relations Legislation in 1986

W C Hodge*

This note outlines and discusses the major changes in industrial legislation to take place in New Zealand during 1986.

Introduction

Prominent features of the 1986 legislative calendar include:

- (1) passage of the Union Representatives Education Leave Act;
- (2) non-passage of an Industrial Relations Amendment Act, the first year since 1973 which has seen no IRAA;
- (3) introduction of the Labour Relations Bill, scheduled for passage before mid-1987;
- (4) concentration upon and preoccupation with reorganisation of the commanding heights of industry and commerce.

This note will discuss in detail the Union Representatives Education Leave Act (hereafter, "URELA") and outline the gestation of the Labour Relations Bill in the context of the final days of the Industrial Relations Act.

Union Representatives Education Leave Act

The Union Representatives Education Leave Bill was introduced into Parliament on 11 March 1986, signed into law on 25 July, and came into force on 1 August 1986. URELA establishes a new quango, the Trade Union Education Authority (TUEA), which is to be a body corporate, capable of suing and being sued in its own name (s 33), but funded entirely by Parliamentary appropriation (s 56). The identifiable legal form of TUEA is a 13-person board defined in section 40, consisting of 6 nominees from the central organisations of workers (both public and private sector), 2 private sector employer nominees, 1 public sector employer nominee (only the foregoing 9 have voting rights), 1 person with adult education experience, 1 representative each from the Education and Labour Departments, and an elected TUEA staff employee (the latter 4 lack voting rights). TUEA's presiding officer, appointed under section 42, is at present Mr Jim Knox of the FOL.

URELA's primary brief, as set out in section 34, is to stamp with approval education and training courses conducted by a union (or an unregistered society of workers), and to operate and teach such courses itself. Supplementary briefs include the preparation of resource material, and course outlines (s 34(g)), for the union operated courses, and making recommendations to the Education Department for exposure of non-unionists (school pupils?) to information about unions (s 34(j)).

TUEA's approval (or operation) of an education course triggers a union entitlement, described in section 4, and mathematically enumerated in section 5, to a number of days "paid education leave" (PEL) so that certain workers can attend the approved course. The entitlement, and the allocation of leave to individual "authorised union representatives"

* Senior lecturer in Law, University of Auckland

(AUR) rests with the union (s 15) but the entitlement to wages which might otherwise be lost (s 23) is enjoyed by the worker so "authorised" and identified (although the act does not expressly exclude full-time union employees, assuming they are members of the relevant union, they could never become entitled to PEL because the employer is never otherwise obliged to pay them wages under s 23). The union is not entirely free to nominate any member, but, on the other hand, the union is not restricted to elected officers. Section 2 of the Act defines "authorised union representative" as (a) a member of the union who has a function or role beyond that of ordinary membership; (b) a member who has a "particular educational requirement" which can be met by the designated course; or (c) any member if the employer agrees. The entitlements, measured by an employer's union membership per industrial district, are 3 days' PEL for 1 to 4 workers, 5 days' PEL for 5 to 47 workers, 1 day's PEL for every 8 workers for 48 to 280 workers, and 35 days' PEL for 280 workers plus 5 days' PEL for every 100 workers or part thereof over 280. Applying the formula gives the following results in the following examples: 2 workers, 3 days' PEL; 20 workers, 5 days' PEL; 200 workers, 25 days' PEL; 2 000 workers, 135 days' PEL. The Act places restrictions on the distribution of the entitlement; no single AUR can take more than 3 consecutive days of PEL, nor more than 5 PEL days in a single year. Section 15 of the Act obliges a union seeking PEL to give written notice to the targeted employer, with names and dates, "accompanied by a written outline of the approved union education course ... [bearing] the seal of the Authority". The union is further obliged, under section 16, when it serves notice under section 15, to have regard to the employer's operational requirements, and not schedule courses that "clash with times that are known to be inconvenient to the employer" (s 16(1)(b)).

If the employer objects, he or she may argue, under section 21, that the section 15 claim is procedurally or substantively defective, or the employer may use the deferral clause, section 22, if "operational requirements" (referred to in s 19) justify a delay in releasing the AUR. Section 22 imposes limitations on the employer's right to defer, and enables a union to carry forward PEL entitlements into the following year. Sections 26 and 27 make provision for continuity of employment and maintain the worker's liability for contributions to superannuation schemes. Disputes over a section 15 claim, a section 21 disentitlement, a section 22 deferral of wages payable under section 23 are treated as a dispute of right, and dealt with under the model clause set out in section 115 of the Industrial Relations Act 1973.

URELA has been labelled "controversial", and the political colouration of that controversy is clearly set out in the introductory debate in Parliament (11 March 1986, 469 NZPD 170-187) and the third reading debate (15 and 17 July, pp 3064, 3096-3109). The Government protagonists, chiefly Messrs Roger, Gerbic and Isbey, identified the policy objectives of broadening the base of union participation, as well as encouraging that participation to be better-informed. The Government also noted compliance with the 1974 ILO convention 140, which recommends such subsidised training. Similar statutes in operation in similar jurisdictions were cited. (See, for example, the Australian Trade Union Training Authority Act 1975 (Commonwealth) and the well housed and organised TUTA set up at Albury-Wodonga on the NSW-Victoria border.)

The National opposition labelled TUEA a "state-funded bureaucratic monster", "a political propaganda machine", "the crudest political tool ever to be enshrined in legislation", and a "pay-back to the trade union movement for support at the last election". The opposition spokesman for Labour, Bill Birch, repeatedly declared National's intention to repeal URELA at the earliest opportunity, and complained about the irony of creating another tax-payer-funded, employer-leeching quango.

In fact, the number of quangos does not increase, as section 69 of URELA abolishes the old Trade Union Training Board, which had been administered by the Vocational Training Council under its 1968 Act. As the budget of TUTB was \$280 000 and the budget of TUEA is approximately \$1.4 million, the marginal cost will be somewhat less than the opposition's estimated \$6 to \$7 million.

It might also be noted that the new board has hit the ground running. Under its Director, Ms Linda Sissons, the Authority has moved (temporarily) into the FOL building in Wellington (PO Box 6645, ph 851-334, Wellington) and has already taken on board 5 national coordinators. At the time of writing (early January 1987), TUEA was preparing to appoint 10 regional coordinators (first for Auckland, Wellington and Christchurch, and then for Palmerston North, Hamilton, and Dunedin) and had approved some 150 union operated courses.

The Labour Relations Bill

As was noted in the Introduction, the Industrial Relations Act 1973 has been amended at least once annually in the years 1974-1985 inclusive. The order paper for 1986, however, enjoyed no such legislation, probably for 2 reasons. First, the legislators and drafting officers of Parliament were preoccupied with restructuring the public and private financial, commercial, and industrial sectors, with new laws, such as the Commerce Act, the commercial causes provision of the Judicature Amendment Act, the Fair Trading Act, the State-owned Enterprises Act, major amendments to all tax legislation, and the introduction of the State Enterprises Restructuring Bill. As has been said elsewhere, there is enough substance in that lot to give observers (and participants) the "speed wobbles". Secondly, the industrial relations energies of the Government, and those with a special interest, were devoted to, in succession, the Green Paper of December 1985, 188 submissions on same, and the White Paper which in turn begat the Labour Relations Bill. As clause 367 of the Bill provides for the repeal of the Industrial Relations Act (and its 14 IRAA's), the Government presumably saw little need to tinker with machinery scheduled for demolition before mid-1987.

As the author's brief in this note extends only to statutes of 1986, it is not appropriate to discuss in detail the contents of the Labour Relations Bill. It may be appropriate, however, to note certain salient features of the Bill:

- * Repeal of the Aircrew Industrial Tribunal Act 1971, the Whangarei Refinery Expansion Project Disputes Act 1984, the Fishing Industry (Union Coverage) Act 1979, as well as the Industrial Relations Act and amendments (Clause 367; Schedule 9).
- * Elimination of the Human Rights Commission as a potential watchdog over the union rule book, by repeal of section 68(1)(a) of the HRC Act 1977 (Clause 354).
- * Use of multiple schedules, as in British industrial legislation, which enables more legal information to be enclosed in one document (there are 10 schedules, as opposed to 4 schedules in the 1973 Act).
- * Substitution of a single Mediation Service for the older 2 services. Mediators will perform all the functions of conciliators, and Clause 313(e) provides that a scale of fees may be set for certain ad hoc functions under Clause 245.
- * Limitation of eligibility to register societies having at least 1000 members (clause 6) or a likelihood of attaining that minimum number within 2 years. No affinity of interest between groups of workers will be required.
- * Expansion of the scope of interest (or right) negotiation, with the omission of a definition of "industrial matters" and a new definition of "dispute" as any dispute between employer(s) and union, with no reference to industrial matters.
- * Elimination of the old section 184 nominal strait-jacket - unions can shed the clumsy suffix "I.U.W.", and call themselves what they like, from the informative Otago Union of Truckdrivers to Auckland Registered Society of Engineers or the small Palmerston International Society of Skilled Operators and Finishers of Furniture.
- * Balloting of workers to insert a union membership clause if the employers, at conciliation, do not agree to compulsory unionism (Clause 58).
- * Balloting of workers concerned in cases where an existing union seeks to expand its coverage to workers covered by another union ("contestability": Part IV, Clauses 95-104). As Clause 95(a) plainly states:

... the object of the Part of this Act in relation to union coverage, is to establish that — a union's coverage may be challenged by an existing union seeking to extend its membership coverage.

Demarcation disputes are also regulated in Part IV, in Clauses 105-106. The substantive aspects of Clause 105 are similar to the current section 119 of the Industrial Relations Act, but with the addition of Clause 2(b), which provides for a "demarcation ballot", under Clause 106, the result of which will be binding on all the parties to the dispute (Clause 106(4)).

- * Bifurcation of the arbitral and judicial modes of the Arbitration Court, as with the Industrial Court — Industrial Commission of 1974-78. Disputes of Interest will be arbitrated by an Arbitration Commission, while Disputes of Right, and other legal questions will be decided by a Labour Court.

- * Expansion of powers of the new Labour Court, to include, in Clause 269, "full and exclusive jurisdiction to hear and determine any proceedings founded on [the industrial torts of conspiracy, intimidation and unlawful interference with contract or prospective contract]" and applications for review of the exercise of statutory powers of decision, including decisions of unions registered under the Act. In other words, the Labour Court is being upgraded to hear the applications for the equitable remedy of injunction, in cases of allegedly illegal strikes: in addition the Labour Court can hear the *Finnegan and Recordan v New Zealand Rugby Football Union (1985)* — type administrative law challenge to the bona fides and reasonableness of the decision of a registered union. As one observer predicted (9TCL No 37 (7 September 1986, pg 1)), "there being some reason to suspect that the High Court bench is jealous of its present powers and jurisdiction, a lively debate over this particular proposal seems both likely and desirable".
- * Elimination of second- or third-tier bargaining by requiring such second-tier targets to be identified at the outset. Clause 130(g) and Clause 130(3)(c) require the union to specify the name or names of any employer selected for separate negotiations. That employer would not be bound by the award, but would be bound as the sole party to a negotiated agreement: Clauses 158(c)(i) and 160. Unions are free, however, to re-open interest negotiations, at any time, re either the industry award, or an industrial agreement in cases of "new matters" arising: Clause 173.

It might also be noted here the Industrial Relations Act 1973 extended the Fees and Travelling Allowances Act 1951 to assessors at conciliation. No such provision appears in the Bill. Conciliation Councils will now be self-sustaining; perhaps their attention span will be sharpened.

This is a bill, with some 380 clauses and 10 schedules, designed "to include all labour relations matters under the one system established under the Bill". It also seems designed to wean the aging trade union infant off the state teat; if the infant cannot walk unaided, it will cease to enjoy the preferred status of registration. Given the contentious provisions of the Bill, as well as ill-concealed divisions in the Labour Caucus, it will be truly remarkable if the Bill, as stated in Clause 1(2), comes into force on 1 June 1987. Still, nothing concentrates the legislative mind so wonderfully as election year.

References

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- Hodge, W C (1985) Industrial relations legislation in 1985 *New Zealand journal of industrial relations* 10(3): 157-161.
- New Zealand Parliamentary Debates (various issues).

Cases

- Finnegan v New Zealand Rugby Football Union Inc (No 2)* (1985) 2 NZLR 181.