INTRODUCTION: HISTORICAL PERSPECTIVE

At the moment, the New Zealand system of industrial relations is in transition. For almost eight decades, it was dominated by the Industrial Conciliation and Arbitration Act (1894). With the passage of the Industrial Relations Act (1973) at the behest of the social partners, a significant shift in underlying philosophy has occurred. The full ramifications of this change have yet to develop. They have certainly not yet been grasped by the wider community and even by some within the ranks of the social partners.

The development of the old system of conciliation and arbitration has been amply described elsewhere. Here it will suffice to say that the Act of 1894 largely predated the appearance of modern industrial relations in New Zealand. It provided a rough measure of justice in employment matters by establishing minimum conditions of employment across the mainly small scale industries (and occupations) serving a predominantly pastoral community. It sought to create generalised procedures eliminating the need for industrial stoppages which seemed particularly likely to occur in areas where the community as a whole (and farmers in particular) had a vital interest. With the wisdom of hindsight, one can speculate whether this system was as successful as appeared on the surface. It may well have masked rather than solved problems.

In an egalitarian pastoral society, it was nonetheless acceptable for a long period. In a more complex and diversified economy committed to full employment, it has become less and less relevant to the realities of the world of work. It has fragmented the trade union movement and long delayed the development of solidarity within the ranks of the social partners.

The generalised approach to award making embodied in the Act of 1894 requires a fairly simple and stable environment to be successful. When conditions encourage industrial non-conformity and the introduction of diversified technologies, minimum conditions for the whole of an industry or occupation cease to match the realities of particular work-places. Furthermore, with full employment and consequent competition for labour, ruling rates of pay pull away sharply from those negotiated in awards. As all these conditions became more and more prevalent during and particularly after World War II, direct bargaining (or collective bargaining outside the statutory system) emerged. These facts and the limited range of industrial matters subject to negotiation gradually under-...
minded the credibility of the system. It is surely significant that the old legislation denied registered unions the right to strike, a right that was always assumed. Frequent causes were allegations of unfair dismissal and issues of safety. These were not matters which could be dealt with effectively under the then existing practices and procedures. Indeed even in 1973, the Minister of Labour was constrained to argue that "the country's legislation and institutions were largely 'inapplicable to the circumstances of 1967, let alone 1977" (7).

By the early 1970s it was evident that in-plant and work-site bargaining had become well established in New Zealand. In the private sector this was anything but systematized. A host of different forms of agreement had been superimposed upon the formal system of award making. The problem of "instant" relativities was bedeviling the wage structure in institutional conditions. The realities of institutional employment were clearly at odds with the ideology of the Industrial Conciliation and Arbitration Act although they had long been accommodated within the state system of negotiating terms and conditions of employment. A few large enterprises and organizations had become pace-setters in industrial relations matters. While they amounted to no more than 2% of the total, they generated at least 41% of surveyed employment (8).

THE INDUSTRIAL RELATIONS ACT 1973

The pressures created by this changing climate of industrial relations undoubtedly led to the passage of the Industrial Relations Act 1973 (11). While this statute continues the long established tradition of conciliation and arbitration, its new institutions and procedures point to a significant change in underlying philosophy. The possibility of voluntary settlement by way of the Employment Court remains, although unlikely to be exercised very extensively in practice. More important is the much greater emphasis given to encouraging the social partners to resolve their differences by way of third party procedures, and bringing these matters to the public attention. The Industrial Conciliation and Arbitration Act has been broadened to take tripartite discussions and examinations of issues requiring community involvement. The three new institutions established by the Act (the Industrial Relations Council, the Conciliation and the Industrial Court) are outlined on page 9.

Here the role of the new statute in accelerating workplace bargaining must be considered particularly important. The distinction between disputes of interest and disputes of rights. A dispute of interest is generally defined as "a dispute created with the intent to procure a collective agreement or changes in terms and conditions of employment in any industry. What constitutes an interest is not defined in any detail. A dispute of rights is broadly defined to cover disagreements over the interpretation or enforcement of collective agreements, awards and any related enactment or contracts of employment. It also covers conflicts which are not disputes of interest including any dispute arising from the interpretation of industrial relations, as well as personal grievances. Industrial relations are declared to mean "all matters affecting or relating to work done or to be done by workers, or the privileges, rights and duties of unions, associations, and their officers; preferential employment; and items which any statute or rules of any body have provided to be matters to be considered. It will be noted that apart from the three matters just spelled out, the question of what constitutes a right is left deliberately vague.

Linking the latter interpretations with the disputes and personal grievance procedures, it is evident that the scope of collective bargaining has been expanded. A peace obligation has been introduced where the parties are disputing the meaning or application of rights which they have written into a collective agreement or statutory enactment. The role of the Industrial Conciliation and Arbitration Act appears to have been twofold: to update industrial legislation in terms of emerging industrial relations practice (institutional employment) and to undermine the public interest in avoiding unnecessary industrial conflict. The latter objective is meant to be achieved by providing machinery which makes recourse to direct action unnecessary in settling disputes of rights.

The widening of the scope of collective bargaining comes out clearly in the matter of personal grievances. Not only is a claim for reinstatement to be considered, but the aggrieved employee may ask for a personal grievance, so too is any claim of discriminatory treatment (11) to the disadvantage of the individual employee. The concept of "just cause" has been introduced into the framework of industrial relations. In other words, whilst employers remain free to initiate action affecting individual employees, they are now under an obligation to exercise due care and not to discriminate in their actions. Practically this would seem to involve a host of matters which have not previously been generally negotiable in the private sector: promotions, demotions, transfers, lay-offs and disciplinary action. If allegations of discriminatory treatment can now be challenged and reviewed by way of personal grievance procedure, the role of the trade unions has been changed just as much as that of the employer. The enhancement of the trade union's representative functions (the evidence of the scope of workplace bargaining) has been balanced by a peace obligation in all disputes of rights. "Industrial massage" is clearly not permitted in such conflicts as an alternative method is provided for the peaceful resolution of disputes of rights.

The essence of the new legislation is considerably to encourage the parties to make their own rules as far as possible. Once these rules have been established, matters of procedure and matters of substance become rights. Even then the employers remain free to initiate action affecting individual employees. The role of the Industrial Court seems to be essentially that of a backstop resolving issues of particular difficulty or more general interest. Demarcation disputes, however, provide a specific example of the Court replacing normal procedures which would not be adequate for the problems involved.

TRANSITIONAL ASPECTS

It is too early to assess the impact of the new legal framework upon those covered by its provisions. Some idea of possible developments may, however, be obtained by examination of "public sector" industrial relations. Industrial relations have long existed in the public sector. In terms of Kenneth F. Walker's definition and categorisation of worker participation in management (13), trade unions in state organisations in New Zealand have been highly successful in creating countervailing power through collective action. This has gone well beyond establishing fair wages and relativities. Influence over terms and conditions of employment and many areas of management decision making is extensive. Moreover, in some

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areas both ascending and descending participation are evident (14).

Most public servants would accept the view that a democratically elected government must decide what policies it wants to have implemented. Nonetheless, many of them would argue that "there is scope, and considerable scope, for public servants to have a say in how their work may be done" (15). With widely differing standards of efficiency and the rising levels of public opinion, such a desire is unlikely to be confined to public service employment. What is already common practice in the public sector must almost inevitably spread to private employment over the long run.

In fact, there is evidence of some stirring in the private sector in the direction just mentioned. Before the passage of the Industrial Relations Act, the Department of Labour undertook a survey of worker participation in management in manufacturing industry. In July 1972, 12.5% of 2,027 firms employing more than 20 persons reported operating some form of participation in their establishments (16). While the Department's definition of worker participation is less rigorous than that employed by Walker (he would exclude profit sharing and employee shareholding), the results are nonetheless significant. Nearly 60% of the instances of participation involved joint consultation alone or in association with some other element. Autonomous work groups were present in the vast majority of cases, while profit sharing and tradeable shares were found in 15% and 20% respectively. The incidence of participation clearly increased as the size of the labour force involved increased; however, the autonomous work groups were less frequent the larger the labour force, joint consultation was definitely associated with larger work-groups. The survey turned up no evidence of worker directors or other forms of ascending participation in top management (17).

Current public concern about industrial conflict is perhaps illustrative of the strain being felt in an industrial relations system in transition. The concern is not surprising and because the various measures of stoppage activity (by themselves) point to a long-term increase in levels of industrial strife. With certain industries being more stoppage prone, the ripple effect of a particular dispute is often very evident. Yet in terms of the experience of industrialised or industrialising countries, New Zealand does not stand very high in the international league tables. Furthermore, mandates lost in disputes as a proportion of total possible man-days of work can hardly be termed statistically significant: 0.08% in 1971, 0.07% in 1972 and 0.13% in 1973 (18). It is nonetheless evident that environmental factors have been associated with particularly sharp outbreaks of conflict. Few observers would doubt that the impact of overseas hygiene regulations has increased strife in the meat freezing industry. The introduction of containerisation on the wharves and the secular decline of employment in the maritime trades have certainly not been painless. Redundancy and the erosion of training in the primary industry have been persistent problems for many months. While some people may still cherish the myth of "a land without strikes", there is another reality, which is that, without labour peace, society will suffer from the cost of conflict.

The limited effectiveness of statutory controls has in fact been admitted since 1970. In that year, legislation was amended to establish a mediation service. So far only three mediators have been appointed, but reports indicate that they have had a considerable measure of success in resolving conflicts. It is perhaps significant that a mediator, unlike a conciliation commissioner, does not have the power to hand down a decision: acceptance of his ruling depends upon the consent of the parties (19).

In the writer's opinion, New Zealand now stands at a watershed in industrial relations. On the one side lies the uncertainty associated with all innovation and experimentation. On the other, the prospect is one of retrogression associated with idiosyncratic activities which are becoming more and more outmoded in a modern organised society. The issues involved are further complicated by the fact that around 85% of the country's overseas earnings come from pastoral products. There is still a considerable disparity of interest and understanding between the urbanised industrial community and the farming sector. Yet many of the imported raw materials essential to urban and pastoral exports. Apart from conflict over the joint product, a similar dichotomy exists within the urbanised industrial community. It has a number of dimensions associated with age, education, experience and environment. In sum, all these pressures point to a society and industrial relations system in transition.

FUTURE DEVELOPMENTS

As far as industrial relations is concerned, there are clear pointers to the direction of future developments. Tripartism is well established at the national level in various organisations involved in economic and social planning. More specifically the social partners involved in this process are also well represented in a number of institutions and agencies. In addition to those set up under the Industrial Relations Act (20), a coherent theme throughout many of these activities has been the upgrading of industrial relations skills. In this respect, the discussion of labour and training in the Report of the Commission of Inquiry into the Meat Industry (1974) makes useful reading. The recommendations are of more general application.

There is now widespread acceptance of the value of education and training in improving the quality of human effort and materials. Attempts appear to be under way to work out the linkages between national activities and workplace industrial relations. Issues are being accepted which were ignored or denied a decade ago. The aim is to create conditions in which collective bargaining is undoubtedly under way, particularly in the workplace.

This expansion of collective bargaining certainly mirrors the growth of institutional employment which is taking place, not only in the public service, but also in many other sectors of the economy. It is probable that collective bargaining is now the norm, if not the rule, in the private sector. The aim of some extends to the private sector, but beyond a certain point the extent to which bargaining is effective and the extent to which it leads to a reduction in conflict will depend upon the nature of the bargaining process and the way in which it is used.