The Transformation of New Zealand Industrial Relations 1990-2010

Introduction

Summarising the last 20 years of industrial relations in New Zealand is quite a challenge – particularly, as the title for this session notes, the period under discussion involved a complete transformation of industrial relations in New Zealand: from the distinctive conciliation and arbitration model that was historically the basis of the system, to the largely voluntarist system that is in operation today.

Those changes have been reflected in the changes in nomenclature that have been applied to the various pieces of legislation in place over that time – from "industrial relations" to "labour relations" to "employment contracts" to "employment relations".

As a researcher, I would like to be able to assess this objectively and rationally, but having been intimately involved in many of the changes that have taken place, I also have an intensely personal perspective on it.

I began my working life trying to negotiate an exemption to the Wage-Price Freeze Regulations while working for the Early Childhood Workers Union, with the support of Federation of Labour affiliates. I went to work for the Department of Labour in 1983 and as a baby policy analyst took notes at the Long-Term Wage Reform Committee meetings that designed the exit from the freeze. I think, from memory, that the Drivers and Metal Trades awards led off and were allocated a day each for bargaining, with all other awards having a maximum of half a day for negotiations. This was our return to so-called "free wage bargaining"!

I've spent most of the last 20 or so years working in the industrial relations arena, particularly in the Department of Labour and here at the Industrial Relations Centre (IRC), and those perspectives undoubtedly affect what I have to say this afternoon.

The Transformation of Industrial Relations 1990-2010

The industrial relations context has changed immensely over the last 20 years, and industrial relations research and researchers (including the work that has been carried out in the IRC) has contributed to our knowledge of that changing context. There are two particular themes that I want to focus on: the first is how the system itself has changed from one based on systems and institutions to one based much more directly on the relationship between employers and workers, with the participation of the State as an actor very much as an external contributor. Secondly, I want to look at the fact that the industrial relations research agenda is much wider and more inclusive than in the past.

Shifting focus

When I first started studying industrial relations, the subject matter of concern was trade unions, collective bargaining and strike action, usually in mining or car assembly factories. Today, our interests are much broader and encompass a much wider group of workers (such as women, and workers in service sector industries), different types of jobs and industries, and new issues. The world of work has changed dramatically and has resulted in the development of new research agendas.

In my view, the process of transformation of New Zealand industrial relations started prior to 1990. The exit from the wage and price freeze over the 1984-85 period ended the highly interventionist approach by government to wage fixing and dispute resolution that had characterised the previous 20 years.

It was the legislative amendments of 1984 that did away with compulsory arbitration, and started the process of encouraging greater self-regulation by employers and union advocates. Stan Roger, who as Minister of Labour was referred to as "Sideline Stan", was instrumental in this process. He oversaw the 1985 "Green Paper" exercise, a fundamental review of the 1973 Industrial Relations Act and which led to the passage of the Labour Relations Act in 1987.

Labour market flexibility

I distinctly recall my first encounter with the term "labour market flexibility" in the Business Roundtable's submission on the Green Paper, and also in a document issued by the Economic Monitoring Group of the NZ Planning Council. These two documents clearly established two sides of a debate about the optimal degree of labour market regulation or de-regulation that was to dominate policy discussions for the next two decades (replaced more latterly with discussion on the need to improve our productivity performance).

As Minister of State Services, Stan Roger also shepherded through the State Sector Act in 1989, which, amongst other things, brought the public and private sectors together in all aspects of their previously separate industrial relations systems. Simultaneously, public sector permanent secretaries became chief executives, and employers in their own right, in a carve up of the unified public service that created completely new industrial relations issues.

The 1987 Labour Relations Act was designed to find a middle path through the preferred scenarios set out by advocates of both regulation/de-regulation. As one of its key objectives, the Act "encouraged" a single set of negotiations for the employment conditions of a group of workers, and attempted to promote industry (as opposed to occupational) awards and enterprise bargaining through opting out of awards in favour of single-enterprise Voluntary Collective Agreements (VCAs) and Composite Agreements (CAs). An obstacle for employers, however, and one that was to prove a fundamental flaw in the legislation, was that unions that had sole decision-making rights in relation to award "opt-out" provisions.

In retrospect, the political compromises made in 1986 and 1987 did not provide strong enough incentives for change to happen at a pace that satisfied the concerns of employer groups. Certainly, late in its term, the Labour Government put forward an amendment that would have allowed employers a right to initiate procedures for negotiation of an enterprise agreement and removal from award coverage. However, this proved to be "too little, too late".

Restructuring and de-regulation

As is well known, the 1980s and 90s were a time of major restructuring and de-regulation across the whole economy. The desire to create a more flexible labour market led to a dismantling of the old award system that had been in place in one form or another since the turn of the century. By 1990, the deregulation of product and financial markets was recognised as being more comprehensive than that which had occurred in the labour market, where de-regulation was perceived as having fallen behind.

This brings us to 1991, and the passage of the Employment Contracts Act (ECA) that is now regarded as the final break with the previous system. The incoming National Party government argued for a policy goal of increasing "freedom" for employers and employees in their choice both of bargaining agents and bargaining unit. The ECA was controversial legislation. It took a laissez-faire approach that favoured market regulation of wages and conditions of employment over regulation through collective bargaining. From an employee perspective, the consequences were a significant drop in trade union membership, loss of collective bargaining coverage, cuts in labour standards and a general deterioration of wages and conditions of employment.

It is important to acknowledge, however, that not all employees were negative about the legislation. Many highly skilled workers, and those in occupations where there were skill shortages saw improvements in their wages and conditions, particularly as the economy started to grow. In addition, employers generally felt more positive about the greater flexibility it gave them to organise their workplace operations. It also provided workplaces with greater scope to establish terms and conditions specifically designed to meet their individual needs (whether on a collective or individual basis).

The argument at the time was that this would better allow employers to compete, by reducing labour costs and reorganising workplaces to be more efficient and productive. Although critics of the Act were concerned that this would lead to inequitable outcomes, advocates argued that equity did not require statutory intervention, but would be delivered by the market. Not surprisingly, this contention was robustly debated.

I am not going to rehash the debate on the ECA and I feel certain that people will debate its significance and impact for many years to come. But there is no doubt that it resulted in several irrevocable consequences over the course of the nineties – an individualisation of the employment relationship as a substitute for a collective approach, a huge loss of membership in the trade union movement

and a move towards a focus on actual workplaces and management practices rather than on regulation of the system as a whole.

A change of government in 1999 resulted in the election of the Labour-Alliance coalition and the passage of the Employment Relations Act in 2000 based on principles of good faith. Both parties had made pre-election commitments to a re-shaping of labour laws in favour of a greater balance between efficiency and equity. New laws were needed, it was argued, not only because of concerns from unions and workers that a deregulated environment had created unfairness. Both the Prime Minister and the Minister of Labour argued at the time that the ECA had resulted in a myopic focus on cutting labour costs, when what was needed was a concerted push to increase productivity, in order to facilitate the transition to a high wage, high value economy.

Globally competitive

Margaret Wilson, then Minister of Labour, noted in 2001 that the Employment Relations Act was not an ideological countering to the ECA, but rather was a "… real attempt to reposition New Zealand by making it truly competitive in the global marketplace."(Wilson, 2001:6). It did this by moving the focus of legislation away from prescription around the processes of bargaining, towards attempting to build more cooperative relationships and partnership arrangements between employers and employees at the workplace. The shift has been described as being a move from a contractual to a relational approach to the employment relationship.

While the principle of "good faith" was originally conceived as applying largely to bargaining relationships, arguably the most important achievement of the ERA has been its extension to all aspects of the employment relationship. It has also been incorporated into related legislation such as the Health and Safety in Employment Act 2002. Thus the most fundamental principle on which the Act is built is about promoting relationships at the workplace that are built on mutual trust and confidence between employers and employees.

It has also widened the scope of topics that are the subject of discussion between employers and unions. The establishment of the Partnership Resource Centre has also made a contribution to the development of a more cooperative climate for industrial relations and new thinking about workplace development. At a national level, strong relationships between the social partners have contributed to a vastly more collaborative approach to the design of policy interventions that impact on social and economic development.

The 2000s also saw the widening of legislative regulation in ways that had significant social impacts. It was during this decade that regulated in favour paid parental leave for the first time, as well as providing a range of important minimum employment standards and protections for workers. Growing attention was paid to the need for the workforce to have a work-life balance and legislation was passed that allowed employees to request a flexible work arrangement. The Pay and Employment Equity Unit also undertook

groundbreaking work into the value accorded to work traditionally undertaken by men and women.

The impact on unions, employer and government functions and activities

So what has been the collective impact of the changes that have been put in place? I want to talk about the impact on the parties that have traditionally been seen as the main actors in the industrial relations system – trade unions, employers and managers, and the government.

Let us start with the impact on trade unions. The decline in trade union density in New Zealand has been similar to that which has occurred in other industrialised countries. Leaving aside debates about how membership is measured now (given the range of non-standard work arrangements and non-standard forms of union memberships), general suggestions are that it has dropped from around 50% of the workforce in 1990 to between a fifth and a quarter now. These numbers, together with the reduction in collective bargaining coverage, have been used to argue that trade union membership has become irrelevant to many people, that unions are outdated and that in the 21st century workers and employers have more enlightened approaches to the employment relationship.

Union amalgamations

However, I venture to suggest that numbers are not always the best indication of strength or effectiveness. The 1987 Labour Relations Act was predicated on the recognition that trade unions needed to be viable, self-reliant and democratic organisations that could operate without the legislative props of compulsory unionism and blanket coverage.

The trade union movement responded to this challenge through a series of amalgamations that saw a reduction in the number of unions, and also in my view, an increase in effectiveness. There are varying perspectives on how successful they have been at this. Some point to a drop off in militancy and activism as a sign of weakness, and arguments about whether the CTU should have called a general strike in 1991 is a debate that I'm sure will continue to be held for another 20 years. On the other hand, trade unions have continued to develop over the past 20 years, adopting new strategies and tactics, and have been successful in organising in areas that have previously been unorganised or difficult to organise.

While trade unions may have less say on a national stage, they may be more influential at the workplace. Forty percent of collective agreements include provisions for joint union-management consultative committees, although the make-up of such committees, and the substance of the issues that they are dealing with is largely unknown. Whether unions should be involved in partnership arrangements and union-management committees related to high performance workplace practices continue to simmer. But from where I am sitting, and looking at the position of national union movements in many

countries, the New Zealand trade union movement is in good heart despite the fall off in numbers. Its leadership over the past two decades, both within the CTU and in unions themselves has been pro-active and forward thinking. It has taken on difficult issues at national, industry and workplace levels, and it has not shunned controversy. In that respect, it has made a valuable contribution to social and economic development in New Zealand.

Implications for business

I want to turn to look at the implications of the transformation of IR for managers, businesses and chief executives. I think this is an area that is seriously under-researched in New Zealand, and we know very little about how employment relations are managed at the workplace. The last 20 years have placed greater focus on the direct relationship between employers and employees but we know little about how employers and managers managed this transition.

Personally, I believe that the legislative reforms of the 1980s/1990s (including the State Sector Act, the Labour Relations Act and the Employment Contracts Act) left employers and managers (particularly those in small workplaces) having for the first time to deal directly with employment relations issues at their workplaces and being horribly unprepared for doing so. Many employers were left floundering, although during the 1990s, the suggestion that management practices in New Zealand left something to be desired was akin to high treason.

There is now a broader understanding of the need to build our management capability with a recent study published by the Ministry of Economic Development of 152 medium and large-sized manufacturing firms (MED 2010). This study made use of a survey was developed at the LSE and is now being used for international benchmarking purposes. It shows a relatively poor performance by New Zealand of 14th out of 16 countries against six indicators of people management (installing a talent mind-set, rewarding top performance, addressing poor performance, promoting high performers, attracting high performers, retaining high performers).

At the same time, it is important to acknowledge that a number of New Zealand workplaces, in particular in the manufacturing sector, adopted so called "high road" practices from an early stage. Workplaces participating in the two Workplace NZ conferences in 1992 and 1995 were a good example of this. This resulted in research on what we then called "workplace reform" at companies such as Macpac, Nissan, Toyota, Formway Furniture and others. Despite the general trends, we continue to see some workplaces continuing to work cooperatively with unions and adopting what are now referred to as high performance workplace practices.

The role of the State

Lastly, I want to discuss some issues about how the transformation that has taken place over the last couple of years has impacted on the role of the State in New Zealand industrial relations.

Prior to 1990, the State and state institutions very much played the role of 'referee' between unions and employers. It wrote the rules of the game, mediated disputes between the parties and at its worst intervened directly to over-rule decisions that had been agreed by the parties.

The underlying philosophy of the Employment Contracts Act and the later Employment Relations Act were based on a more hands-off role for the State It resulted in a changed role for Government in industrial relations in its role as both regulator and as an employer. Firstly, while the Government set the framework for employers and employees and their representatives to manage their own relationships, it also increasingly regulated to establish minimum conditions for workers who were not in a good bargaining position, and where unions had not been successful at drawing them within the coverage of collective bargaining.

Secondly, the government increasingly looked at non-regulatory policy interventions. In particular, it worked collaboratively with the social partners, Business New Zealand and the Council of Trade Unions to achieve its industrial relations and economic policy objectives particularly around skill development and improving workplace productivity To some extent these reflected new thinking in public management based on drawing in non-profit organisations and agents of civil society in the development and execution of public policy.

Lastly, in its role as an employer, the Labour government of the 2000s adopted a partnership framework with the Public Service Association, known as Partnership for Quality, and based on the principles of quality work within quality public services. During its three terms of Government, three partnership agreements were signed. While originally focussed at macro-level objectives, the third agreement was more closely linked in to individual public sector employers and was designed to give union members a stronger voice through effective delegate structures and workplace partnership agreements.

The role of the Industrial Relations Centre in mapping the transformation of Industrial Relations

The Industrial Relations Centre has played an important role over the past 20 years in mapping the transformation of industrial relations that has occurred. Information from maintenance of the database of collective agreements is distributed widely in an annual *Employment Agreements: Bargaining Trends and Employment Law Update* publication. This provides general information on wages and conditions of work in workplaces with formal collective agreements, negotiated with a registered trade union. An annual survey of trade union also provides much needed data on union membership and coverage.

Research undertaken by people associated with the Centre has shifted over time to reflect the changing industrial relations context. New areas of research have

been developed around sexual harassment, work-life balance, family-friendly workplaces, pay equity and breaking the so-called glass ceiling.

Work also has considered labour market trends for other disadvantaged groups, including workers with disabilities, youth, Maori workers (although this remains shockingly under-researched), multiple-job holders, people working in precarious employment, Pacific workers and new migrants. Other new themes include workplace productivity, the knowledge economy, the development of human capability, impact of demographic shifts and workplace practices related to an ageing workforce, immigration, the impact of technology at work, and social partnership.

The Industrial Relations Centre has played an important role over the last 40 years as an objective and independent commentator on issues related to the operation of workplaces. It continues to play an essential part in contributing a critical perspective that recognises the contribution of trade unions and workers to economic and social development. To voice such a view is sometimes considered to be akin to being synonymous with "anti-business" or anti-management" sentiment. The challenge to future Industrial Relations Centre researchers is to provide evidence that effectively tests that proposition.

Bibliography

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