

The effects of the Employment Contracts Act on representation and collective bargaining in the thoroughbred racing industry in New Zealand

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Abstract

The racing industry in New Zealand mirrors employment generally. Contractors (trainers and jockeys), apprentices (jockeys) and permanent and casual employees work to prepare horses for racing and to organise race meetings and the betting associated with the races. Individual and collective representation and bargaining arrangements both pre and post the Employment Contracts Act are compared across 14 different groups within the industry. The effects of the Act on representation and bargaining that have emerged follow the general patterns established across the New Zealand economy. Small employers have all their staff now on individual employment contracts; large employers have remained party to collective arrangements. Large employers who engage casual staff on an irregular basis have generally found little need to negotiate collectively. Unions or associations who have retained collective bargaining arrangements have done so by complying with Visser's first and second hypotheses on the reverse of union decline. On-course totalisator employees had already established multi-employer industry based bargaining, even though they had been declined recognition under the pre-Employment Contracts Act system. Off-course TAB employees have also retained coverage through an employer specific contract, and journalists and printers have successfully retained enterprise level collective agreements as part of wider industry based coverage.

Stunning quinella by Cambridge mares

A pair of Cambridge mares, both daughters of boom sire Zabeel, ran first and second in the A\$2.8 million (NZ\$3.32 million) Melbourne Cup, returning New Zealand racing to the highest echelon yesterday (*The Dominion*, Wednesday 4 November 1998, p 48)

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Introduction

The Melbourne Cup is an acknowledged world event: the internationalisation of this traditional race took part in the early 1990s, with European horses joining New Zealand and Australian horses in a race over the 3200 metres at Flemington on the first Tuesday in November. The prize money of over NZ\$3 million ranks this race as one of the major races on the world-racing calendar but perhaps more importantly, the trickle-down effects on the horse breeding industry are significant. Zabeel, the sire of the quinellared pair, Jezabeel and Champagne, has had his stud fee significantly increased as a result of demand for his services.

Zabeel, Jezabeel and Champagne represent different aspects of a large, complex industry. Zabeel represents the thoroughbred breeding industry. In the 1998 there were some 283 active thoroughbred stallions, and they combined with 7,750 broodmares, to produce some 5,018 live foals. Many of these foals are auctioned as yearlings and form a valuable part of the export dollar of the country. In the year to July 1998, 1,827 thoroughbreds were exported.¹ New Zealand's major sale, the New Zealand Bloodstock national yearling sales series at Karaka in South Auckland saw, in 1999, 949 yearlings sold for a total of NZ\$47.1m. Of the 949 yearlings sold, 407 (43 percent) were sold offshore (Australia, Hong Kong, Malaysia, Singapore and South Africa) for a total of NZ\$31.4m (66 percent of all dollars spent).² Breeding horses is, in New Zealand, no small business. It is estimated that some 13,000 people earn their livelihood from the thoroughbred horse breeding industry.³

Jezabeel and Champagne represent the thoroughbred racing industry but assist the breeding industry by adding value to their respective families and bloodlines. Apart from the value they give their current owners in terms of winning stakes and prize money, they increase the value of their relatives at forthcoming sales.

The racing industry is an important one. The racing industry is governed by the New Zealand Racing Industry Board, which was formed in 1992. The Board oversees the development of thoroughbred racing, harness racing and greyhound racing in New Zealand. Race meetings are organised by local Racing Clubs. In the 1998/99 racing season there were 325 thoroughbred race meetings held at 71 racecourses. A total of 5,973 thoroughbred horses raced for a total of NZD\$31.4 million in prize money. These horses were raced by 10,618 owners, and prepared by 397 registered public trainers and a further 1,260 owner-trainers.⁴

¹ Source: New Zealand Racing Industry Board (1998).

² Source: New Zealand Bloodstock Ltd (1999).

³ Source: New Zealand Racing Conference and New Zealand Racing Industry Board.

⁴ Source: New Zealand Racing Industry Board, *ibid*.

Betting on the outcome of these races is organised by the New Zealand Totalisator Agency Board (TAB) who conduct both on and off-course totalisator/parimutuel betting systems. All profits generated are returned to the New Zealand Racing Industry Board, which distributes them to Racing Clubs. Thoroughbred racing had a betting turnover of NZ\$453 million in the year to 31 July 1998 – the TAB's total turnover exceeded NZ\$1,000 million.⁵

This paper is concerned with the racing aspect of the New Zealand thoroughbred industry, focusing particularly on the employment relationship and how it has been organised, particularly over the past two decades in New Zealand. This is not a subject that has attracted the attention of academics. In fact, the genesis of this paper came from an inquiry from an English academic considering undertaking a PhD in the area. She inquired through the AIRAANZ⁶ Internet-list (PRIR) about studies in New Zealand and Australia. With the exception of the studies of New Zealand jockeys and trainers by Tolich (1995, 1996) and Tolich and Eichbaum (1997), none came to light despite spirited debate in the ether for a few days. A review of the literature confirms that few have focused on the employment relationship in the racing industry. A brief note by Garneau (1995) reported layoffs resulting from the shutting down of a racing newspaper operation in New Jersey and Gordon (1995) reported on poor accommodation and facilities for 1,500 employees at the Arlington International Racecourse. Tolich (1995) identified just four studies that reviewed employment issues in the industry: Case (1991) and Scott (1968) reviewed occupations in the industry in North America; Vamplew (1976) reported a social and economic analysis of occupations, gambling and the administration of horse racing; while King and Mezey (1987) studied the eating behaviour of jockeys.

Racing has however not been completely ignored by academics. Gambling has had its share of attention. Barry (1996) has addressed gambling on horse racing from a mathematical probability perspective. Hurley and McDonough (1995) took an economic approach to reviewing betting, concluding that the betting market does not work efficiently regardless of whether participants have limited or strong knowledge of the environment. The literature on the efficiency of betting markets has been reviewed by Williams (1999). Others have focused on the issue of informed insider trading in betting markets (Schnytzer and Shilony, 1995) and the "uninformed" bettor as a study of market efficiency (Swidler, 1995). Camerer reviewed whether strategic manipulation of betting markets influenced bettor behaviour, concluding such manipulation did not.⁷ Thalheimer and Ali (1995a; 1995b) have studied the demand for different forms of totalisator betting.

⁵ Source: New Zealand Racing Industry Board, *ibid*.

⁶ AIRAANZ is the Association of Industrial Relations Academics of Australia and New Zealand. AIRAANZ operates an electronic list (PRIR - Pacific Rim Industrial Relations) through the Internet.

⁷ Camerer's study involved placing large bets on horses, then cancelling those bets and studying whether other punters followed these large bets. Such activity in either Australia or New Zealand would lead to the expulsion, permanently, of the phantom punter.

Golec and Tamarkin (1998) and Williams and Paton (1997) have struggled with the vexed issue of why bettors support longshots disproportionately to favourites. Field studies were no doubt an integral part of much of this research.

The literature reveals that the bettor and his or her behaviour have been studied. What has not been studied is the people who take the bets, nor the people who work with the horses that are bet on. Herein we focus on those providing the entertainment, reviewing the organisation of employment relations in the New Zealand racing industry over the period 1990 – 1999. We argue that, as part of the entertainment and service industry, the types of employment relationship in the racing industry have presaged the way other parts of the industry would behave over employment relations matters in the Employment Contracts Act era.

Employment in the thoroughbred racing industry

Racing is part of the entertainment and service industry. It has been historically notable however for operating at what would normally be considered non-standard hours. Non-standard hours abound: horses are trained early in the morning – with staff being generally on hand from around 3.30 am; race meetings are run on Saturdays (and other days of the week as well). Until two decades ago in New Zealand, the rest of the service industry operated largely within standard hours (a Monday – Friday week, between 8 a.m. and 6 p.m.). Retail trading was largely illegal on Saturdays, Sundays, public holidays and after 6 p.m. in the evening. Until three decades ago, licensed premises were forced by law to close at 6 p.m. The world of horse racing operated in a different time zone. Awards, negotiated by unions in the general service sector, recognised work undertaken during non-standard hours by providing for penalty payments (increments of the regular hourly rate) for work undertaken on weekends and nights. No such penalty payments applied in the racing industry, largely because the sector was not unionised but mainly because the whole basis of employment was within non-standard hours.

Employment in the thoroughbred racing industry falls into three broad types: Type 1 includes people involved with the preparation and training of horses; Type 2 includes people engaged to work on the race track on race day; Type 3 includes people who work off-course on race day. *Figures 1 and 2* present a summary of these different occupational groups, how they were represented and detail the bargaining arrangements that were in place in 1990 and 1999 respectively. 1990 was the last full year of operation of the then

conciliation and arbitration system that had developed, encapsulated by the Labour Relations Act 1987. 1999 represents a period of time where the effects of the Employment Contracts Act 1991 have largely stabilised.

Type 1 occupational groups fall into four distinct groups:

- Contractors;
- Apprentices;
- Unionised employees covered by a registered award or agreement; and
- Employees not covered by a registered award or agreement and thus covered by individual employment contracts (whether written or verbal), irrespective of whether or not they were members of a registered union.

Type 2 occupational groups fall into two major groups:

- Casual employees engaged on a per day basis, albeit a fairly regular engagement – say on a weekly basis; and
- Permanent employees engaged in the administration of racing.

Type 3 occupational groups fall into essentially a single group:

- Permanent employees.

Representation of Type 1 occupations

Trainers and jockeys (1990 – 1999)

Trainers and jockeys have strong representation within the industry. Both groups have formal Associations registered under the incorporated societies legislation. The New Zealand Trainers Association Inc was registered as an Incorporated Society in 1982. The New Zealand Jockeys Association was registered in 1937. For both groups little has changed in terms of representation in the period 1990 – 1999. Trainers retain a formal voice through the New Zealand Racing Conference and through that to the Racing Industry Board. Jockeys however have no such voice. Both groups serve important functions as lobbyists: on issues such as tax reductions on the betting dollar within the industry; on the roles of the Racing Industry Board and the TAB; on the structure of racing dates and prize monies paid out. Jockeys play an important role in race-day health and safety and are generally consulted should there be doubts about the safety of the racing surface (usually following unseasonable rain that had made the racing surface slippery). From time to time, jockeys have “withdrawn their labour” when in disagreement with race club officials over safety issues and often such withdrawal leads to the abandonment of a race meeting as there are insufficient jockeys available to allow the meeting to continue. The Jockey’s Association represents jockeys on matters of pay: negotiating the so-called “losing riding fee” with the Racing Conference and the percentage of the winning prize money paid directly to jockeys (though this has remained at five percent of the total prize won for many years). While not generally recognised as such, both the Trainers and Jockeys Associations behave like registered unions – without having the benefits of such registration.

Apprentice jockeys (1990 – 1999)

The title “apprentice jockey” implies that a formal apprenticeship between a master and apprentice exists under the Apprentices Act 1948, or more recently the Apprenticeship Act 1983. Despite the use of the title “apprentice”, no apprentice-board was registered under the relevant legislation, and the racing industry appears to have handled informally any matters relating to apprentices and the trainers they were “apprenticed” to. No Apprenticeship Order was registered with the Arbitration Commission in (or before) 1990 and conditions of employment were essentially determined by individual employment contract. The industry sought to regularise this situation, and in 1987 the New Zealand Racing Conference created the New Zealand Racing Conference Apprenticeship Board under the Rules of Racing.⁸ This Board was modelled on the traditional Apprenticeship Board administered by the Department of Labour, and more recently the Industry Training Organisations supported by the Education Training and Support Agency of Government.

By the late 1990s, the Apprenticeship Board was supported by the Equine Industry Training Organisation, which had entered into contractual arrangements with educational providers to offer training courses for apprentice jockeys, thus formalising the “educational” aspect of the “apprenticeship”. Standard learning units had been registered with the New Zealand Qualifications Authority. The Racing Conference Apprenticeship Board has, since the mid-1990s, developed a standard individual employment contract. This contract provides for the minimum code of employment conditions as specified in various pieces of employment legislation, incorporates the relevant aspects of the Rules of Racing, and sets out specific terms regarding the relationship between trainer and apprentice. (As Tolich (1995) reveals, the relationship is more than a regular master-servant or master-apprentice relationship, with the trainer generally having a high level of control over the apprentice jockey’s personal time and life).

Stable hands, strappers and track riders (1990 – 1999)

Stable hands, strappers and track riders had remained unrepresented throughout the history of the New Zealand racing industry. No registered union had ever sought to include such employees in their bargaining coverage rule, though it is possible that various unions had the correct membership rule coverage that would have allowed them to do so. As a result, by 1990, individual employment contracts, almost always unwritten in any shape or form, were the norm. In August 1990, following 1987 amendments to the industrial relations system which allowed existing unions (or new organisations) to represent employees where no bargaining coverage existed, the Equine Workers Union of New Zealand was given provisional registration as a union. At that time the union had declared that it had 250 members. The membership rule of the Equine Workers Union covered not just stable hands, strappers and track riders, but also jockeys, apprentice jockeys and barrier

⁸ Rule 509, at p.64, Rules, of Racing, New Zealand Racing Conference.

Figure 1: Occupational groups, representation and bargaining arrangements in horse racing in New Zealand in 1990

Location of work	Occupational group	Employment relationship	Represent-ation	Type of representation	Bargaining types
Type 1: Stable work	Trainers	Contractor to owners	NZ Trainers Assn	Registered incorporated society	Nil - contract for service
	Jockeys	Contractor to trainer and/or owners	NZ Jockeys Assn	Registered incorporated society	Nil - contract for service set by Industry Board
	Apprentice jockeys	Apprentice	Nil	Master/ Apprentice controlled by Apprentice Board	Nil - conditions agreed by Apprenticeship Board
	Stable hands & track riders	Employee	Equine Workers Union	Registered union	IEC - failed to negotiate award
	Stable admin staff	Employee	NZ Clerical Workers Union, unless exempt	Registered union	Registered Award, nil
Type 2: On course race day work	Tote clerks	Employee	NZ Totalisator Employees Assn	Registered incorporated society	Registered Agreement
	Race day officials: judges, starters, etc	Employee	Nil	Nil	Individual Employment Contract
	Gate & ground staff etc	Employee	Liquor Food etc Union	Registered Union	Registered Award
	Bar & catering staff	Employee	Service Workers Union	Registered union	Registered award
	Permanent race club staff	Employee	NZ Clerical Workers Union, unless exempt	Registered union, or nil	Registered award, others IEC
Type 3: Off-course race day work	TAB clerical staff in TABs & phone bet staff	Employee	NZ Clerical Workers Union	Registered union	Registered award
	Radio, television and other ancillary staff	Employee	Public Service Assn for public broadcasting staff	Registered union	Registered agreement
	Print journalists, printers etc	Employee	Journalists Union	Registered union	Registered award
	Permanent staff of the RIB, TAB, NZRC etc	Employee	NZ Clerical Workers Union except if exempt	Registered union, nil if exempt	Registered award or IEC

Figure 2: Occupational groups, representation and bargaining arrangements in horse racing in New Zealand in 1999

Location of work	Occupational group	Employment relationship	Representation	Type of representation	Bargaining types
Type 1: Stable work	Trainers	Contractor to owners	NZ Trainers Assn	Registered incorporated society	Nil - contract for service
	Jockeys	Contractor to trainer and owners	NZ Jockeys Assn	Registered incorporated society	Nil - contract for service set by Industry Board
	Apprentice jockeys	Apprentice	Nil	Master/apprentice controlled by Apprentice Board	Nil - conditions agreed by Apprenticeship Board
	Stable hands & track riders	Employee	Nil	Nil	IEC - generally verbal
	Stable admin staff	Employee	Nil	Nil	IEC - sometimes written
Type 2: On course race day work	Tote clerks	Employee	NZ Totalisator Employees Assn	Registered incorporated society	CEC
	Race day officials: judges, starters etc	Employee	Nil	Nil	IEC
	Gate & ground staff etc	Employee	Service Workers Union	Registered incorporated society	IEC - No CEC agreed
	Bar & catering staff	Employee	Service Workers Union	Registered incorporated society	IEC - No CEC agreed
	Permanent race club staff	Employee	Nil	Nil	IEC, often written
Type 3: Off-course race day work	TAB clerical staff in TABs & phone bet staff	Employee	Service Workers Union	Registered incorporated society	CEC
	Radio, television and other ancillary staff	Employee	Nil	Nil	IEC
	Print journalists, printers etc	Employee	NZ Engineering etc Union	Registered incorporated society	CECs
	Permanent staff of the RIB, TAB, NZRC etc	Employee	Nil	Nil	IEC

attendants, along with employees in the horse breeding industry including stud-workers. With the passing of the Employment Contracts Act 1991, the union was registered as an incorporated society. It was struck off the incorporated societies register in January 1997. The progenitor of the union was Sue Moroney, sister of Michael, a prominent and successful Matamata based trainer, and Paul, a bloodstock agent involved in the buying, selling, management and syndication of horses. A review of the *Appendix of the Book of Awards* indicates that the union failed to register a single collective agreement or award. Presumably none had been negotiated.

Stable administration staff: 1990 - 1999

All stables have administration associated with their activities. Duties include: phone duties; nominating and accepting horses for race meetings; and the all important matter of keeping the stable accounts – including sending owners a monthly account. The number of people so engaged is usually small – often a family member and thus not generally an employee. Where an employee was engaged, the provisions of the New Zealand Clerical Workers Award⁹ applied in 1990/91. Where an employee earned in excess of the salary exemption stated in Clause 38 of the Award (\$22,912 in 1990) the Award did not apply. The Award set minimum pay rates and other conditions of work. Where the Award applied, membership of the New Zealand Clerical Workers Union¹⁰ was, for all intents and purposes, compulsory. Following the passing of the Employment Contracts Act 1991, the New Zealand Clerical Workers Union lost significant numbers of members – leading to its eventual collapse in 1992 (See Franks, 1994). The New Zealand General Clerical Workers Award expired on 8 February 1992, and was not replaced by any general occupationally based multi-employer collective employment contract. Accordingly from 1992, clerical employees engaged by trainers were deemed to be covered by an individual employment contract, whether written or not.

Representation of Type 2 occupations

Totalisator clerks

On-course betting was the only official form of betting allowed on racing in New Zealand until 1958 when off-course betting was arranged through the NZ Totalisator Agency Board

⁹ Document 69, *Book of Awards*.

¹⁰ The “New Zealand Clerical Workers Union” was formed in 1990 being an amalgam of the various regional Clerical Unions. These unions negotiated collectively under the umbrella of the Clerical Workers Federation until 1990 and thereafter the NZ Clerical Workers Union undertook the collective bargaining functions. For a more detailed description of the structure of these various Clerical Unions, see Harbridge and Hince 1994: 90 – 92). For simplicity, the term “Clerical Workers Union” is used in this paper to refer to the relevant Clerical Union.

(TAB). Bookmaking has always been illegal, though in the absence of the off-course betting agencies, it flourished. On-course either the Race Clubs, a consortium of regional race clubs, or the supplier of the betting equipment, operated totalisators. Totalisator clerks were engaged and paid on a daily basis. As clerical workers, they were eligible for membership of the various registered Clerical Workers Unions.

The Clerical Workers Union(s) negotiated their first General Clerical Awards in the period 1936 – 1938. From the outset, employers resisted coverage of the General Clerical Workers Award(s) being extended to on-course totalisator clerks. The Northern, Wellington, Westland, and Otago and Southland Clerical Workers Award, registered 14 July 1938 contained an exemption that stated:

Nothing in this award shall apply to racing, trotting or hunt clubs in respect of any employees engaged on the totalisator at race meetings.

In 1940 the first (almost) national General Clerical Workers Award was registered – excluding only the Canterbury Industrial District. The exemption was re-worded so as to be slightly less specific, but the effect was to be the same. Totalisator employees were exempted from the award. The new clause, which remained unchanged through to 1991, stated:

Nothing in this award shall apply to the clerical staff of any trotting, hunting or racing club other than its permanent staff.

The Northern Totalisator and Allied Employees Association became a registered incorporated society on 16 March 1939. In the 1970s and 1980s it twice applied for registration as a union under the provisions of the Industrial Relations Act 1973. Its applications were unsuccessful as the Federation of Labour and the New Zealand Clerical Workers Union appealed under the “multiplicity of unions” provisions of the Act arguing that the Clerical Union was the appropriate body to hold the exclusive representation rights offered under the Act. Other regional Totalisator Associations were incorporated over time; the Waikato association in 1948; the Southland Association in 1982; and the Canterbury Association in 1985. The New Zealand Totalisator Association was registered in 1987. The Totalisator Association(s) had for many years negotiated pay and conditions for on-course totalisator employees. From 1973, these informal agreements were negotiated under Part X of the Industrial Relations Act 1973, and thereafter under Section 163(c)(iii) of the Labour Relations Act 1987. The last Voluntary Agreement was negotiated under the provisions of the Labour Relations Act 1987 but, as a voluntary agreement was not registered with the Commission. The Association, since the Employment Contracts Act, has continued to negotiate a Collective Employment Contract based on the provisions of the earlier Voluntary Agreement.

Race day officials: judges, starters and their assistants etc

Such officials were engaged on a daily basis, had no formal representation and were employed under the terms of a (generally unwritten) Individual Employment Contract. The only change in status for this group of employees was that following the implementation of the Employment Contracts Act, the personal grievance provisions of the Act applied to them. Various individuals have, since 1991, used those provisions.

Gate and ground staff etc

Historically such employees were covered by a front of house union – a union with coverage of people in the entertainment industry generally. In 1988 the Northern Racecourse and Sports Bodies Union (with 200 members) had registered as a union with coverage in the then “Northern Labour District” only. This union amalgamated in November 1988 with the New Zealand Liquor and Allied Trades Employees Union that later became the Liquor, Food and Allied Workers Union (Harbridge and Hince, 1994:108). Elsewhere in New Zealand, such employees were covered by the New Zealand (except Northern) Theatrical and Places of Amusement and Related Employees Union. This union merged with the Service Workers Union in May 1991 (Harbridge and Hince, 1994: 67). By 1990 the relevant registered award was the New Zealand (except Northern) Racing, Trotting, Hunt and Greyhound Racing Clubs Attendants Award,¹¹ last registered on 2 March 1990. This award expired on 15 December 1990 and was not replaced by a new award or a collective employment contract. Staff are now engaged on the basis of individual employment contracts.

Bar and catering staff

Historically, these employees were covered by the (various, regional) Service (previously Hotel) Workers Unions. The general award applying in the hotel industry, the New Zealand Licensed Hotels Award applied to persons engaged on racetracks. This award collapsed after the implementation of the Employment Contracts Act 1991. It was not replaced by any collective employment contract. Employees are now engaged on individual employment contracts.

Permanent race club staff

All such staff were eligible for membership of the New Zealand Clerical Workers Union but, depending on seniority and salary level, few were probably members. Nonetheless, the General Clerical Workers Award applied to some staff. The rest were engaged on

¹¹ Document 545, *Book of Awards*

individual employment contracts. Since 1991, and the collapse of the Clerical Workers Union and its General Award, all such employees are now on individual employment contracts.

Representation of Type 3 occupations

Clerical staff in TABs and TAB Phone Bet staff

These employees were represented by the New Zealand Clerical Workers Union which negotiated the New Zealand TAB Clerical Workers Award.¹² This was last negotiated and registered on 6 April 1990 and expired on 31 January 1991. With the collapse of the Clerical Union, and transfer of memberships, the Service Workers Union negotiated a collective employment contract in successive years.

Radio, television and other ancillary staff

Broadcasting of racing is an integral part of betting turnover: people unable to attend the racetrack, bet on what they can hear and see. Such coverage is important. Racing broadcast on radio has been in the private sector since the 1980s and on television since the mid-1990s. Radio racing in New Zealand has been covered by Radio Pacific, a private radio station in part owned by the TAB. Prior to the mid 1990s, feature meetings only were covered by State Television, through TVNZ. The establishment of the Trackside channel (a free-to-air television station owned by the TAB) in the mid-1990s, brought television coverage almost exclusively into the private sector. In 1990, the New Zealand Public Service Association covered public broadcast employees. The Public Service Association had negotiated enterprise agreements with both Radio NZ and TVNZ.¹³ Private sector broadcast staff were eligible to join the New Zealand Journalists and Graphic Process Union but that union had no award or agreement applying to broadcast staff in 1990. By 1999, public broadcasting of racing had ceased to exist with the exception of a handful of high profile race days such as the Auckland Cup on New Years Day. Accordingly staff engaged in broadcasting of racing are now employed on the basis of individual employment contracts.

Print journalists, printers etc

While broadcast media is important in racing, so too is print media coverage. Daily reporting of racing usually gets a full page of coverage in the daily newspapers, and specialist-racing publications are produced on a weekly basis. The journalists involved

¹² Document 984, *Book of Awards*.

¹³ Documents 2421 and 2408 respectively, *Book of Awards*.

were covered by the New Zealand Journalists and Graphic Process Union and the printers by the New Zealand Printers Union. Multi employer awards were negotiated covering daily journalists throughout New Zealand, except those in the Northern Labour District, whom a separate award covered.¹⁴ Further, newspapers with circulations in excess of 4,000 were covered by a series of enterprise agreements and were excluded from award coverage.¹⁵ Printers and journalists largely retained their collective bargaining coverage under the Employment Contracts Act with multi-employer awards being replaced by enterprise level collective employment contracts. The largest publishing group involved in racing publications negotiated a separate collective employment contract to cover racing journalists.

Staff of the Racing Industry Board, TAB, NZ Racing Conference etc

As was the situation regarding administrative and clerical employees in stables, the General Clerical Workers Award applied in 1990 to administrative staff engaged by the Racing Industry Board, the TAB and the Racing Conference. Employees earning in excess of the salary exemption figure in the award were exempt. With the demise of the Clerical Workers Union all such staff are now engaged on individual employment contracts.

Changed representation and bargaining arrangements 1990 – 99

The changes identified in representation and bargaining arrangements in the pre and post Employment Contracts Act era are reported in *Figure 3*. Again the occupational types are grouped by location of work.

The information in *Figure 4* summarises the changes to representation in the period 1990 – 1999. In 1990 all but two occupational groups could be described as organised – or at least having the potential to be organised legally. By 1999 the number of occupational groups of organised workers fell to seven groups with seven groups being un-organised. (Though we have discussed trainers and jockeys, as they are contractors and not employees they have been excluded from *Figures 4 and 5*).

¹⁴ Documents 453, 979, 902, 297 and 382 were registered as awards, *Book of Awards*.

¹⁵ Documents 899 and 50 were registered agreements, *Book of Awards*.

Figure 3: Changed representation and bargaining arrangements in horse racing in New Zealand in 1990 - 1999

Location of work	Occupational group	Type of representation 1990	Bargaining types 1990	Type of representation 1999	Bargaining types 1999	Change in bargaining type 1990-1999
Type 1: Stable work	Trainers	Registered incorporated society	Nil - contract for service	Registered incorporated society	Nil - contract for service	No change
	Jockeys	Registered incorporated society	Nil - contract for service set by Industry Board	Registered incorporated society	Nil - contract for service set by Industry Board	No change
	Apprentice jockeys	Master/apprentice controlled by Apprenticeship Board	Nil - conditions set by Apprenticeship Board	Master/apprentice controlled by Apprenticeship Board	Nil - conditions set by Apprenticeship Board	No change
	Stable hands & track riders	Registered union	Nil - failed to negotiate award so IEC	Nil	IEC - generally verbal	No change
	Stable admin staff	Registered union	Registered Award, nil	Nil	IEC - sometimes written	Collective bargaining to IEC
Type 2: On course race day	Tote clerks	Reg incorporated society	Registered Agreement	Registered incorporated society	CEC	No change
	Race day officials: judges, starters, etc	Nil	IEC	Nil	IEC	No change
	Gate & ground staff etc	Registered Union	Registered Award	Registered incorporated society	IEC - no CEC settled	Collective bargaining to IEC
	Bar & catering staff	Registered union	Registered award	Registered incorporated society	IEC - no CEC settled	Collective bargaining to IEC
	Permanent race club staff	Registered union, or nil	Registered award, others IEC	Nil	IEC, often written	Collective bargaining to IEC
Type 3: Off-course	TAB clerical staff	Registered union	Registered award	Registered incorporated society	CEC	No change
	Radio, TV & other ancillary staff	Registered unions	Registered agreements	Nil	IEC	Collective bargaining to IEC
	Print journalists, printers etc	Registered unions	Registered awards	Registered incorporated society	CECs	No change
	Staff of the RIB, TAB, NZRC etc	Registered union, nil if exempt	Registered award or IEC	Nil	IEC	All now IEC

Figure 4: Summary of changed representation arrangements in horse racing in New Zealand in 1990 - 1999

Representation	Degree of formality	1990	1999
Organised workers	Incorporated societies	1	5
	Registered union	9	-
	Subtotal	10	5
Un-organised workers	Apprentices	1	1
	No organisation	1	6
	Subtotal	2	7
Total		12	12

Figure 5: Summary of changed bargaining arrangements in horse racing in New Zealand in 1990 - 1999

Collectivity	Bargaining structure	1990	1999
Collective	Awards	7	0
	Agreements/CECS	2	4
	Subtotal	9	4
Individual	Apprentice	1	1
	IEC	2	7
	Subtotal	3	8
Total		12	12

Note: The numbers in this figure relate not to the total number of awards etc but to the predominant bargaining type for each occupational group.

Figure 5 summarises the success, or otherwise, of the representatives in collectively bargaining. In 1990, just two groups were reliant on individual employment contracts for determination of their conditions of employment. By 1999, this number had risen to eight and there were just three groups where collective bargaining had led to formal collective employment contracts being put in place.

All but two of the nine unionised groups in 1990 have failed to negotiate collectively in 1999. The successful unions were the Service Workers Union, which has managed to maintain collective bargaining coverage for TAB and Phone TAB workers and the Engineers etc Union that had maintained bargaining arrangements for journalists and printers. The other group which has retained their collective representation (on-course totalisator employees) had never benefited historically from the sanctity of registration as a union, yet the de-collectivising effects of the Employment Contracts Act have had no significant impact. Apprentices too, have remained largely unaffected by legislative changes to the bargaining system and it could be argued that their position has strengthened. The contractors, trainers and jockeys, have too lost no benefits and have retained their representation.

Discussion

The impact of the Employment Contracts Act generally on bargaining and representation arrangements has been well documented. The effects can be summarised as:

- A general decollectivisation of employment relations;
- A reduction in union membership from some 610,000 in 1990 to some 337,000 in 1997;
- A reduction in collective bargaining coverage from some 720,000 in 1990 to some 420,000 in 1998;
- A collapse of multi-employer bargaining and a shift to bargaining at the level of the enterprise;
- A reduction in employee benefits – notably benefits related to working time arrangements (See Crawford and Harbridge, 1998; Crawford, Harbridge and Hince, 1998; Harbridge and Crawford, 1998 for a detailed analysis of these trends).

These overall trends summarised above have not taken effect evenly across industries. Some industries (manufacturing and the public sector) have remained more collectivised than have others (services). Some unions (notably those in manufacturing and the public sector) have suffered less heavy membership losses than have others. A small amount of genuine multi-employer bargaining has taken place, but only in the manufacturing sectors.

Collective bargaining at the level of the enterprise has been strongest where there was a recent history of such bargaining. The New Zealand Engineers etc Union had successfully invoked the single-set-of-negotiations principles in the Labour Relations Act 1987 to develop enterprise level collective agreements – agreements that were supported by their multi-employer national awards. Other unions rejected enterprise level bargaining in the period of the Labour Relations Act (1987 – 1991) and on losing their multi-employer awards were poorly placed in the Employment Contracts Act environment to negotiate enterprise level collective agreements (See Harbridge and McCaw, 1992). They simply had no history of doing so, and now operated in a hostile environment.

The services sector (restaurants, cafes, hotels, hospitality and entertainment generally) had a single dominant union – by 1992 named the Service Workers Union of Aotearoa (the union also covered certain health employees in hospitals and caretaking and cleaning staff generally). Throughout the 1980s various regional service (hotel and restaurant) unions (including front-of-house entertainment based unions) merged to form this single national union.¹⁶ Bargaining was developed almost exclusively around a handful of major national multi-employer awards;¹⁷ enterprise bargaining was rare. The resultant collapse of these

¹⁶ See Harbridge and Hince, 1994: 67 - 68 for a summary of these mergers.

¹⁷ List some of these major awards and their document numbers – include the racecourse one.

national awards following the passing of the Employment Contracts Act led to a significant collapse in the membership levels of the Service Workers Union. Membership fell from some 40,000 members in 1991 to fewer than 17,000 in 1997.

Employer size too has been an important determinant of the decollectivisation process. Large employers have found it more difficult to remove themselves from unions generally and collective bargaining specifically. With the collapse of multi-employer bargaining, small employers have been largely ignored by unions who have found the transactional costs of attempting to negotiate too high.

Casual employees, or employees engaged on an irregular basis, have proved difficult for unions to find, let alone persuade to join. Without membership, collective bargaining cannot be undertaken. Employers of casuals and irregular employees have too escaped the collective bargaining arena.

These general trends have occurred in the racing industry. If the various Occupational Types discussed earlier are re-grouped according to employer size, we can identify three types of employers:

- small employers (trainers who employ apprentice jockeys, stable staff etc, racing clubs who engage a small number of permanent staff, and racing’s administrative bodies);
- large employers (the TAB, Radio and TV, Print media companies – all of which employ large numbers of employees, not all of whom are exclusively dedicated to racing matters); and
- large race-day employers who employ at irregular intervals.

To review whether the general effects of the Employment Contracts Act have been replicated in the racing industry, we have re-grouped the data in *Figure 5* according to employer size. This appears in *Figure 6*. For simplicity, we have grouped the data according to whether the type of bargain was agreed collectively or individually.

Figure 6: Summary of changed bargaining arrangements in horse racing in New Zealand in 1990 – 1999 by employer size

	Bargain type	1990	1999
Small employers	Individual contracts	2	5
	Collective bargains	3	0
Large employers	Individual contracts	0	0
	Collective bargains	3	3
Large employers on irregular basis	Individual contracts	1	3
	Collective bargains	3	1
Totals		12	12

Three clear trends emerge:

- Small employers who, in 1990, had some staff on individual contracts and some on collective contracts, now have all staff on individual employment contracts;
- Large employers have all remained subject to collective bargaining arrangements; and
- Large employers who engage staff on an irregular basis have, with one exception, been able to shift their collectivised staff to individual employment contracts. (The exception is on-course totalisator employees).

Racing has followed exactly the trends observed elsewhere in the economy as a result of the Employment Contracts Act's deregulation of the labour market.

Conclusion

In many ways, employment in the racing industry in New Zealand typified employment elsewhere: it comprised contractors; apprentices; and employees who were both unionised and non-unionised. Collective bargaining arrangements were in place for nine of the 12 identified occupational groups prior to the existence of the Employment Contracts Act. At that time just two groups could be described as completely unorganised.

The Employment Contracts Act brought changes to representation and bargaining arrangements in the racing industry, as it had done elsewhere. The patterns are broadly similar. Groups of employees who had relied on national multi-employer award coverage became individualised and rely for their terms and conditions of work on individual employment contracts. Groups of employees who had negotiated on a (racing) industry basis (totalisator employees; jockeys; trainers; TAB clerical staff) were largely able to keep collectively bargained arrangements in place.

Union decline, and with it the decline of collective bargaining, is an international trend. Visser (1991) reports that virtually all OECD countries have experienced negative or reduced union growth and that throughout the 1980s union density fell in all OECD countries except Finland, Iceland, and Sweden. Visser (1991) presents four hypotheses for reversing the decline of unionism in any given country. First, unions need to have participated in and to have developed industry wide bargaining and to have maintained multi-employer bargaining. Second, unions need a secure, non-contested (by employers and other unions) and institutionalised presence in the workplace. Third, unions need to undertake inclusive bargaining – negotiating for members and non-members alike, and fourth, unions need to over-come the “free-loader” problem – where non-members get the benefits of union actions without being union members.

Harbridge and Honeybone (1996) demonstrated the effect of the removal of external legitimisation of unions by the state in 1991 with the introduction of the Employment Contracts Act. Therein we concluded:

Unions were unable to meet the conditions for the first hypothesis, as they have been unable to secure industry-wide, multi-employer bargaining. Unions have had only limited success in securing a non-contested and institutionalised workplace presence, the condition required by the second of Visser's hypotheses. The last two hypotheses, inclusive bargaining and freeloading, place irreconcilable demands on unions. A limited form of compulsory unionism or traditional "closed shop" is the usual method of resolving this contradiction, but this is specifically outlawed by the Employment Contracts Act (Harbridge and Honeybone, 1995, p.441).

Horse racing, as part of the entertainment division of the service industry, had, as we have shown, been organised differently from those other parts. Registered unions with the legal right to coverage in many parts of the racing industry had generally failed to recruit employees and to collectively bargain for them. Labourer's and Worker's Unions could have organised the "equine" industry. They didn't, and a late endeavour by the newly established Equine Workers Union in 1990 arrived too late, given the decollectivising environment that had emerged. The Clerical Workers Unions unsuccessfully attempted to organise on-course totalisator workers but were unsuccessful even though the legislation of conciliation and arbitration offered them the opportunity of settling awards.

Unions that had been successful in negotiating for racing employees had done so on the basis of national multi-employer occupationally based award coverage alone. A national industry award that was partially specific to the racing industry covered gate and ground staff – but that award covered other types of sporting grounds as well. Bar and catering staff, journalists and printers, and various clerical and administrative staff were covered by national awards that were in no way specific to the racing industry. The only groups that have retained collective bargaining are the journalists and printers – who have retained their coverage within the racing sector as racing is reported as part of the regular coverage of the media, and the exceptions (racing specific newspapers) are largely owned by a media conglomerate of which the racing is but a small part.

Independent groups, largely outside the formal structures of the industrial relations system did however organise and bargain to successful conclusions. Jockeys and trainers (while being contractors) formed associations and negotiated with racing's administrative bodies. The Totalisator Associations negotiated outside the parameters of the formal system and entered into annual voluntary agreements with their employers. They too continued to do so in the Employment Contracts Act era. The success of the Totalisator Associations was due to the industry specific, multi-employer bargains they reached. They had fulfilled the requirements of Visser's first hypothesis.

Many groups of employees in the industry had never been unionised and had never bargained collectively. They had always been on individual employment contracts –

though that expression was rarely, if ever, used to describe the arrangement. In the Employment Contracts Act environment they have remained on individual employment contracts while being joined by other groups of employees.

The patterns of bargaining type in the racing industry conform exactly to the patterns established throughout the rest of the New Zealand economy. Small employers are exempted from collective bargaining, as are large employers of casual or irregular employees. Large employers have not been exempted and remain subject to collective bargaining arrangements. Those unions or associations who had developed multi-employer industry based bargaining prior to the implementation of the Employment Contracts Act have retained those bargains. Those unions that had relied on occupationally based multi-employer awards to secure collective bargains have failed in the new environment.

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