

The Current State of Play: Collective Bargaining and Union Membership under the Employment Relations Act 2000

Raymond Harbridge*, Robyn May, Glen Thickett*****

Introduction

The Employment Relations Act is making a difference. But, not the one that unions had necessarily sought. Nor one that employers had necessarily anticipated. We can summarise the trends apparent in the first two years of the Employment Relations Act as fourfold. First, the Act has reversed the trend of union decline. There has been a slow and steady growth in union membership that over the three years to December 2002 has outpaced growth in total labour force. Second, the Act has seen a decline in collective bargaining coverage. Despite the Act's stated intention to promote collective bargaining (at s3(a) iii) our provisional figures for 2002/03 show bargaining levels declining to the lowest seen over the last twenty-five years. Third, a clear trend is emerging that collective bargaining in New Zealand is becoming a public sector phenomenon. Public sector employees under the Employment Relations Act are over four times more likely to be covered by a union negotiated collective agreement than are their private sector colleagues. The drop in collective bargaining coverage since the new Act took force in 2000 has largely been in the private sector. Fourth, there has been no significant restoration of working conditions lost under the Employment Contracts Act. Let us explain.

Method

The Industrial Relations Centre at Victoria University has studied trends in employment conditions attained through collective bargaining and trends in union membership for some years now. In fact, we hold a dataset of collective settlements for the period 1984 – 2003, and a union membership dataset for the period 1990 – 2003. A key aspect in the maintenance of this dataset was the determining of the coverage of each settlement as from 1989/90. This enabled the raw data identified within each collective settlement to be weighted by the numbers of employees covered. The existence of these two datasets enables a long-term comparison of trends in unions' membership and collective bargaining.

Trends reported are derived from a comprehensive analysis of the content of collective employment agreements and certain collective contracts, which have yet to expire. These collective agreements and contracts (collective settlements) have been gathered through extensive and ongoing surveys of employers and trade unions, which we ask to supply, voluntarily, copies of both collective and 'standardised' individual employment agreements that they have negotiated. When a contract or agreement passes its nominal expiry date, we contact the supplying party and request a copy of the renegotiated settlement (where there is one). In this manner, we have established a longitudinal data series from which we can monitor the outcomes of collective bargaining.

* Professor and Head of School, Graduate School of Management, La Trobe University, Australia;

** Senior Research Fellow, Industrial Relations Centre, Victoria University of Wellington;

*** Research Fellow, Industrial Relations Centre, Victoria University of Wellington.

The research reported herein is funded by a grant from the Foundation for Research Science and Technology (VIC903).

141 Harbridge, May and Thickett

Two main caveats with regard to our collective bargaining data need to be stated, these caveats are always applied to analysis based on the data. First, the settlements we receive from employers, unions and bargaining agents are obtained on a voluntary (and confidential) basis. To the extent that some employers and unions have declined to participate in this project, our sample of settlements is incomplete. Nonetheless, the coverage of those settlements we do hold is substantial. While there are no recent official data available on the proportion of the labour market whose terms and conditions of employment are determined through collective negotiation, we have previously estimated that our sample covers around 80 percent of all employees covered by collective settlements.

The second caveat is that our analysis focuses only on the collectivised sector – typically located in the sector of the labour market earning between the minimum wage, now \$8.50, and \$30 per hour. While we do hold copies of standardised individual contracts where these have been supplied to us – these are essentially pro-forma contracts, which apply to an entire workforce with little individual variation – we do not specifically seek to collect or analyse individual contracts. It is quite possible that we would be reporting different trends if we monitored individual employment arrangements. Notwithstanding this, the trends we are reporting are very representative of the collective bargaining sector. Union membership data has been compiled from an annual survey of unions the method and details of which are set out in May et al (2002).

Results: Union membership

Results of our annual survey of membership for 2002 show 174 registered unions with a total membership of 334783, an increase of 4864 or 1.5 percent on the previous year (May et al, 2003). Table 1 shows trade union membership since 1985. Union density is defined as the proportion of potential union members who belong to a union (Bamber and Lansbury, 1998). Columns 5 and 6 of Table 1 report union density for the total employed labour force, which includes employers and the self-employed, and wage and salary earners respectively. The increase in membership for 2002 edged just slightly behind the growth in the labour force, hence union density is very slightly down on 2001 reported figures. The total labour force grew at 2.4 percent and wage and salary earners component grew at 2.8 percent.

Union membership has increased by some 32,378 employees or 10.7 percent since the nadir of December 1999. Interestingly, the public and community services industry accounts for over two thirds of this increase (some 22,000 employees) whilst the manufacturing industry, a traditional mainstay of union membership, accounts for a further 9,000 employees or 27 percent of membership growth.

The concentration of membership growth, and indeed overall membership, in these two industries represents something of a mixed blessing for unions. Fifteen years of raw membership decline has come to an end, yet membership is not increasing to the same extent in the faster growing sectors of the economy. Between 1999 and 2002 employment in manufacturing and public and community services (which incorporates government administration, health and education) industries grew by 3.0 and 5.5 percent respectively, whilst the retail, wholesale and accommodation industry and finance, insurance and business services grew by 9.9 and 19.9 percent respectively. The latter two industries each have a union density of well under 10 percent.

Table 1: Trade Unions, membership and union density 1985 – 2002

	Union membership (1)	Number of unions (2)	Potential union membership		Union density	
			Total employed labour force (3)	Wage and salary earners (4)	(1) / (3) % (5)	(1) / (4) % (6)
Dec 1985	683,006	259	1,56,9100	1,287,400	43.5	53.1
Sep 1989	648,825	112	1,457,900	1,164,600	44.5	55.7
May 1991	603,118	80	1,426,500	1,166,200	42.3	51.7
Dec 1991	514,325	66	1,467,500	1,153,200	35.1	44.6
Dec 1992	428,160	58	1,492,900	1,165,700	28.7	36.7
Dec 1993	409,112	67	1,545,400	1,208,900	26.5	33.8
Dec 1994	375,906	82	1,629,400	1,284,900	23.1	29.3
Dec 1995	362,200	82	1,705,200	1,337,800	21.2	27.1
Dec 1996	338,967	83	1,744,300	1,389,500	19.9	24.4
Dec 1997	327,800	80	1,747,800	1,404,100	18.8	23.3
Dec 1998	306,687	83	1,735,200	1,379,200	17.7	22.2
Dec 1999	302,405	82	1,781,800	1,414,100	17.0	21.4
Dec 2000	318,519	134	1,818,400	1,454,500	17.5	21.9
Dec 2001	329,919	165	1,860,700	1,500,700	17.7	22.0
Dec 2002	334,783	174	1,905,100	1,543,200	17.6	21.7

Source: Statistics New Zealand, *Household Labour Force Survey*, Table 3, Table 4.3 (unpublished); Industrial Relations Centre Survey.

Note: Column 5 figures in italics are different to those previously reported due to a revision of Labour force figures in 1997 by Statistics New Zealand.

Results: Collective bargaining coverage

The aim of the Employment Relations Act 2000 is to promote collective bargaining and to enable multi-employer bargaining. The data presented in Table 2 take an historical view of total collective bargaining coverage according to whether it took place in the public or private sector and whether it was single or multi-employer bargaining.

The data show that collective bargaining coverage overall has declined throughout the 1990s, with the sharpest fall coming in the first few years of the Employment Contracts Act era. In the two and a half years since the implementation of the Employment Relations Act, collective bargaining coverage has fallen by almost 20 percent. This decline is, to a certain extent, attributable to the way in which free riding is reported. This is discussed further below.

What is apparent however, is that despite an overall decline in collective bargaining coverage, and a decline in multi-employer bargaining, multi-employer bargaining in the public sector has grown substantially. This is attributable to both increasing employment in public sector organisations where multi-employer bargaining predominates and growth in the number of multi-employer agreements in the public sector – particularly in the health and education sectors.

Table 2: Collective bargaining coverage 1989/90 – 2002/03

Type of Settlement	1989/90 Coverage (000s)	1993 Coverage (000s)	1999/00 Coverage (000s)	2000/01 Coverage (000s)	Provisional 2002/03 Coverage (000s)
Multi-Employer					
Private Sector	384.6	38.2	34.3	37.3	23.5
Public Sector	169.3	51.8	54.0	56.6	68.2
Total Multi-Employer	553.9	90.0	88.3	93.9	91.7
Single-Employer					
Private Sector	29.0	238.3	210.5	182.2	144.2
Public Sector	138.5	98.8	121.8	115.3	91.7
Total Single-Employer	167.5	337.1	332.3	297.5	248.0
Total Coverage	721.4	428.7	420.6	391.4	339.7

Note: The data for 1989/90 is unofficial and is the result of comprehensive surveys of unions and employers as to the coverage of awards and collective agreements (Harbridge, 1991). The data for 1993 is official data and is reported in Statistics New Zealand (1994). Data for the years from 1999/00 is unofficial data resulting from extensive surveys of employers and unions and is derived from data reported above. Care must be taken in interpreting the 2002/03 data as it is provisional and these figures may change when the final analysis is undertaken (see Thickett et al, 2003 forthcoming).

Results: Collective bargaining and the public sector

Collective bargaining is increasingly more likely to a public rather than a private sector phenomenon. Exact data on the split between private and public employment in New Zealand is difficult to ascertain and we have used Quarterly Employment Survey to estimate total employment by sector. While the QES data certainly under reports total employment, it is a useful indicator of the balance of employment between the private and public sectors (the QES counts filled jobs rather than employment and it also excludes the self employed and the agriculture industry). In February 2003, private sector employment was estimated at 1,271,400, public sector employment at 284,300 and total employment at 1,555,700 (Statistics New Zealand, 2003). Collective bargaining coverage in the private sector is reported in Table 2 above as 168,000, which gives a collective bargaining density rate of some 13 percent. The equivalent public sector collective bargaining density rate is around 61 percent. While these density rates are probably overstated, for the reason that employment is probably understated, the ratio between the two rates is revealing. Collective bargaining density in the public sector is over four times greater than that is the private sector. The trend is demonstrated historically in Table 3.

Table 3: Private and public sector collective bargaining density 1990 – 2002

Year	Private sector		Public sector		Density pvte sector	Density public sector	Ratio public/pvte
	Coverage (000s)	QES data (000s)	Coverage (000s)	QES data (000s)			
1990	413.6	869.1	307.8	317.5	48%	97%	2.02
1995	217.0	1,022.0	156.1	265.4	21%	59%	2.80
2000	244.8	1,128.9	175.7	253.8	22%	69%	3.14
2002	218.1	1,231.7	181.0	268.2	18%	68%	3.77
2003	167.7	1,271.4	172.0	284.3	13%	61%	4.69

Source: Statistics New Zealand, VUW collective bargaining database

The results are quite dramatic and show the falling share of private sector involvement in collective bargaining. Under the system of industrial conciliation and arbitration that operated until 1990, private sector multi-employer bargaining through the award system, with a limited amount of enterprise bargaining in addition, gave private sector unions a respectable collective bargaining density rate of just under 50 percent. Private sector bargaining density more than halved through the Employment Contracts Act regime but had stabilised around 22 percent. Under the Employment Relations Act, private sector bargaining density has dropped to just 18 percent. Public sector collective bargaining density on the other hand was remarkably high at around 97 percent prior to the Employment Contracts Act. It dropped sharply under the Employment Contracts Act but has risen to slightly more than 68 percent under the Employment Relations Act. While the absolute numbers may be misleading, the ratio between public and private sector density is a believable pattern. In 1990, under industrial conciliation and arbitration, public sector collective bargaining density was twice that of the private sector. By the end of the Employment Contracts Act, this figure had risen to three times; under the Employment Relations Act, it is well over four times.

Results: Employment conditions as determined through collective bargaining

The Employment Relations Act has not seen any restoration of working conditions lost during the period of the Employment Contracts Act. The bargaining trends developed during the Employment Contracts Act have continued though in the 2000s. Much of the focus of bargaining in the first few years of the Employment Contracts Act was the removal of penal rates of pay for working what might be called unsocial hours. In the later part of the 1990s, overtime payments started to be removed from collective settlements. A key component in those removals centred around the issue of the existence or otherwise of clock hours in the settlement. Herein we briefly report trends in clock hours, overtime, leave and redundancy over the period from 1994 to 2003. These variables make useful examples to demonstrate that the trend of "no restoration" is the vogue. Notwithstanding this, trends established throughout the 1990s have continued under the new legislation – albeit in some matters providing for an improved entitlement. The figures reported for 2002/2003 are provisional and maybe subject to change when final analysis is undertaken (see Thickett et al, 2003 forthcoming)

In Table 4, we report the trends in the removal of clock hours in the period since 1994. The major period of activity in removing clock hours from settlements took place in the period from 1994 to 1998. Thereafter the pattern has been a steady and ongoing removal of clock hours.

Table 4: Existence of clock hours 1994 – 2003

	No clock hours	Clock hours specified	Coverage (000s)
June 1994	43%	57%	339.2
June 1995	42%	58%	374.0
June 1996	45%	55%	403.0
June 1997	49%	51%	416.0
June 1998	52%	48%	418.7
June 1999	51%	49%	421.4
June 2000	52%	48%	420.6
June 2001	55%	45%	391.4
June 2002	55%	45%	399.1
June 2003	53%	47%	339.7

Prior to 1991 most awards and agreements included standard premiums for overtime work. It has been our observation that the trend in collective employment contracts has been to remove the eligibility for overtime rates. In 1993/94, we identified that 10 percent of employees were on contracts which did not include overtime; by 2000/01 that figure had risen to 30 percent and has continued to rise, for 2003 we estimate it to be 37 percent. The data are reported in Table 5 for the period from 1994.

Table 5: Existence of overtime premiums 1994 – 2003

	No Overtime premiums provided	Overtime premiums provided	Coverage (000s)
June 1994	10%	90%	340.3
June 1995	15%	85%	374.0
June 1996	18%	82%	403.0
June 1997	24%	76%	416.0
June 1998	28%	72%	418.7
June 1999	29%	71%	421.4
June 2000	28%	72%	420.6
June 2001	30%	70%	391.4
June 2002	34%	66%	399.1
June 2003	37%	63%	339.7

The Holidays Act 1981 provides for an annual entitlement of three weeks' paid leave after one year's service. Traditionally a fourth week's leave has been available after a longer period of service with the same employer. The data showing recent trends is in Table 6.

Table 6: Service for fourth week's annual leave 1994 – 2003

	No fourth week	After 1 year	After 2 to 4 years	After 5 years	After 6 years	After 7 or more years	Cover (000s)
June 1994	5%	10%	4%	11%	39%	30%	319.9
June 1995	6%	15%	4%	11%	40%	24%	374.0
June 1996	7%	16%	4%	13%	38%	22%	403.0
June 1997	7%	17%	4%	14%	40%	18%	416.0
June 1998	7%	18%	4%	16%	36%	18%	418.7
June 1999	8%	19%	3%	17%	36%	17%	421.4
June 2000	7%	20%	4%	16%	36%	17%	420.6
June 2001	10%	22%	7%	13%	33%	15%	391.4
June 2002	10%	23%	5%	17%	31%	14%	399.1
June 2003	7%	26%	6%	18%	29%	14%	339.7

The data confirm that typically a fourth week's annual leave is available through the collective settlement. Over the decade, the qualifying period for this annual leave has continued to be reduced: from 7 years to 6; from 6 years to 5; and now for one quarter of employees in the sample, after just the first year of service.

The data for sick leave entitlements is presented in Table 7. The main trends are: the consistent removal of the traditional public service formula for providing sick leave based on an expectation that the employee would be in the public service for their whole career; the development of 'unlimited' sick leave provisions; a general increase in the minimum entitlement.

Table 7: Annual sick leave entitlement 1994 – 2003

	5 days	6 – 9 days	10 days	More than 10 days	Public service	Discretionary	No limit	No sick leave	Cover (000s)
June 1994	37%	7%	23%	4%	23%	6%	0%	0%	340.0
June 1995	36%	11%	21%	5%	18%	5%	1%	3%	374.0
June 1996	35%	14%	22%	10%	9%	4%	4%	2%	103.0
June 1997	36%	16%	22%	8%	8%	4%	4%	2%	416.0
June 1998	36%	16%	19%	8%	8%	4%	7%	2%	418.7
June 1999	32%	18%	20%	9%	7%	4%	8%	2%	421.4
June 2000	31%	17%	22%	9%	7%	5%	8%	1%	420.6
June 2001	30%	17%	20%	9%	8%	3%	11%	2%	391.4
June 2002	29%	19%	19%	10%	8%	2%	11%	2%	399.1
June 2003	25%	22%	20%	11%	9%	2%	10%	2%	339.7

The data in Table 8 reports on the existence in redundancy provisions. In June 1995, around the time of the Court of Appeal's decision in *Brighouse*, 22 percent of our sample were on contracts that did not include redundancy provisions. Only 38 percent of employees were covered by a contract that dealt in detail with the matters of notice and compensation in event of redundancies. The trend since *Brighouse* has seen a steady growth in the number of employees covered by settlements that include a comprehensive redundancy provision setting

out details of notice and compensation to be paid to employees declared redundant during the term of the settlement.

Table 8: Redundancy provisions 1995 – 2003

	No provision	Notice only provision	Pay only provision	Pay & notice provision	Provision but no details	Stand alone agreement	Cover (000s)
June 1995	22%	15%	11%	38%	8%	5%	374.0
June 1996	13%	17%	10%	47%	9%	4%	403.0
June 1997	12%	14%	4%	59%	7%	4%	416.0
June 1998	11%	12%	5%	61%	7%	4%	418.7
June 1999	10%	10%	9%	66%	2%	3%	421.4
June 2000	9%	10%	10%	66%	2%	3%	420.6
June 2001	7%	8%	14%	68%	1%	2%	391.4
June 2002	7%	7%	13%	70%	1%	2%	399.1
June 2003	6%	4%	12%	73%	2%	2%	339.7

The data reported in this section are a selection of variables where we have noted important levels of change over the past decade, under two differing bargaining systems. What is apparent from the data, is that regardless of the direction, the trend has not been changed by bargaining under the Employment Relations Act. Where conditions have been worsened from the employees' point of view, there has been no restoration of lost conditions.

Discussion

Provisional analysis of collective bargaining data for the 2002/03 year suggests that the trends noted above are likely to continue – and indeed, in some cases become exacerbated.

One noteworthy change apparent in the provisional 2002/03 data is a fall in collective bargaining coverage. 2003 has presented something of a challenge in terms of finalising a dataset of collective agreements from which to report. By law, all collective contracts negotiated under the Employment Contracts Act are deemed to expire at the very latest by 31 July 2003. This in itself represents no real difficulty however we do hold settlements that expire after that date. More importantly however, only unions are able to negotiate collective agreements and collective agreements apply to union members only. Herein lies something of a conundrum. Our traditional approach has been to look at the "reach" of a collective settlement. We have included in our coverage figures, not just those employees named as party to the settlement, nor the number of union members on site where the union was a party to the settlement, but also those employees who were covered by the settlement where the employer indicated that the settlement extended to all employees. Our approach to "reach" led to the reporting of free riding. Under the Employment Contracts Act employees who were not a member of a union were permitted to be covered by a collective contract. The Employment Relations Act does not allow such employees to be covered by a collective agreement. Accordingly, as employment contracts are replaced by agreements we are recording the number of union members covered by the agreement. This approach, and indeed the Employment Relations Act, effectively excludes free riders from our analysis and thus contributes to an apparent fall in collective bargaining coverage. The reality is however that we no longer have any basis upon which to estimate and therefore make any analysis of collective bargaining reach.

Further, we have also reviewed the status of those contracts that have expired. They have presented particular difficulties in some cases. We are aware of collective employment contracts that expired some years ago and which have not been renegotiated. In certain cases, we have been advised by the unions involved that the terms and conditions held in those "expired" collective employment contracts are vastly superior to what might be negotiated in the current environment. Accordingly, these unions have worked to enforce the "expired" collective contract and have rebuffed employer suggestions that they enter into negotiations for a new agreement – on the grounds that any new agreement could only contain worse conditions than that which currently apply.

Essentially, reporting collective bargaining coverage in this way is contributing to an alignment of collective bargaining and union membership figures. In past years we have observed a ratio between private and public sector collective bargaining of 60:40, in 2001/02 this ratio was at 55:45. For the 2002/03 year we expect that collective bargaining will be roughly 50:50 between the private and public sectors. From this one can ascertain that free riding was much bigger in the private sector than in the public sector and now these figures are approaching what has been reported in union membership data for the past few years.

Conclusion

If the current trends reported herein continue, public sector bargaining will be the mainstay of collective bargaining in New Zealand, with very large numbers of private sector employees disenfranchised outside the formal bargaining system. The key results indicate that while union membership decline has been halted, the growth in union membership under the Employment Relations Act has been lessened each year since the implementation of the Act. Whilst for the three years to December 2002 membership growth has outstripped growth in the total labour force, for the year to December 2002 it failed to do so. While the decline has been halted, density has only marginally increased. The patterns and trends of terms and conditions of employment reached within collective settlements are unaltered under the new system.

This raises a significant issue for public policy consideration. A central aim of the Employment Relations Act was to reinvigorate collective bargaining. Section 3(a)iii states that "promoting collective bargaining" is an objective. Has the Government made bargaining too hard under the Employment Relations Act? Is the result reported what they intended? And what for the disenfranchised? How might this be dealt with by the review of the Act that is currently underway?

Industry wide, multi-employer collective settlements were the mainstay of ensuring minimum standards for working conditions in New Zealand's private sector. Not only are such settlements now largely gone, but they are an anathema in terms of public policy considerations. It appears unlikely in the short term that we will see a return either legislatively or through a collective bargaining process to such a system.

References

Bamber, G., and Lansbury, R. (1998) *International and Comparative Employment Relations*, Sage, London.

Harbridge, R. (1991), Collective Bargaining Coverage in New Zealand: The Impact of the Employment Contracts Bill. *Australian Bulletin of Labour*, 17(4), pp. 310-324.

Harbridge, R. and Wilkinson, D. (2001), Free-riding: Trends in Collective Bargaining Coverage and Union Membership levels in New Zealand. *Labor Studies Journal*, 26(3), pp. 53-74.

May, R., Walsh, P., Harbridge, R. and Thickett, G. (2002), Unions and Union Membership in New Zealand: Annual Review for 2001. *New Zealand Journal of Industrial Relations*, 27(3), pp. 307-323.

May, R., Walsh, P., Harbridge, R., and Thickett, G., (2003, forthcoming) *Unions and Union Membership in New Zealand: Annual Review for 2002*. Victoria University of Wellington, Industrial Relations Centre. Working Paper.

Statistics New Zealand (various years), *Household Labour Force Survey*.

Statistics New Zealand (various years), *Quarterly Employment Survey*.

Thickett, G., Harbridge, R., Walsh, P. and Kiely, P., (2002) (eds). *Employment Agreements: Bargaining Trends and Employment Law Update 2001/2002*, Wellington, Industrial Relations Centre, Victoria University of Wellington.

Thickett, G., Harbridge, R., Walsh, P. and Kiely, P., (2003, forthcoming) (eds). *Employment Agreements: Bargaining Trends and Employment Law Update 2002/2003*, Wellington, Industrial Relations Centre, Victoria University of Wellington.