

CHRONICLE

June 2002

Together with rumours of an early election, the secondary teachers' collective negotiations dominated media headlines in June. The government's three-year settlement proposal, including a 5.5 percent pay rise and a \$3,500 allowance for those working on the National Certificate of Educational Achievement (NCEA), was overwhelmingly defeated in a nation-wide ballot of teachers. While there was agreement about an increase in teachers' non-contact hours, the sticking points were pay – the government's proposal was less than the projected inflation level – and workload levels. There also appeared to be a rising level of militancy amongst some teachers and the union, the Post Primary Teachers Association (PPTA), had difficulty in controlling wildcat strikes and creating a common bargaining agenda. The announcement of further strike action prompted both supportive and critical reactions from pupils and their parents. With no end in sight after the 15 months negotiations, concerns were raised whether the implementation of the NCEA could be delivered on time. Finally, the high turnover amongst principals and deputy principals – particularly in rural areas – was also a media theme.

A Dutch study comparing secondary teaching conditions found that New Zealand teachers received significantly less pay per hour of instruction than in most other OECD countries. The *Jobs Letter* also noted that "the average age of a secondary school teacher has risen from 38 years to 48 years over the last decade".

There were several developments in the health sector. Over 4,000 nurses, working in the lower half of the North Island, voted in favour of a 21-month multi-employer collective employment agreement. The nurses were employed by several district health boards and the agreement allowed for common wage rates, with pay increases varying between two to six percent. Three Auckland health boards were faced with a strike amongst 5,000 nurses and midwives when a strike ballot backed strike action in July. However, three days of mediated talks were scheduled to prevent the strike action. Around 400 Auckland laboratory and blood bank workers also voted in favour of strike action. Stalled negotiations of a new collective employment agreement for 170 nurses at the Christchurch Nurse Maude Hospital prompted a one-hour strike.

Following unsuccessful negotiations of a new collective employment agreement, Air NZ Link ground crew, engineering staff and network operations staff in Nelson gave notice of strike action on 13 and 14 June.

The restructuring at the Kinleith pulp and paper mill (see May *Chronicle*) became part of mediation attempts by the Mediation Service. The Engineering, Printing and

Manufacturing Union's attempt to have the case heard by the Employment Court before mediation was declined.

The pending introduction of paid parental leave raised the issue of coverage of self-employed and casually employed women who did not qualify for the current paid parental leave scheme (see February *Chronicle*). According to the *NZ Herald*, it had been estimated that around 70,000 self-employed and casually employed women were not covered.

The Minister of Labour, Margaret Wilson, raised employer concerns when she started a consultation process of employer organisations and unions to gauge their views on the ratification of conventions 87 and 98 of the International Labour Organisations. These conventions support collective bargaining and they would allow strikes on economic and social grounds.

The Minister of Labour, Margaret Wilson, raised further employer concerns when it was revealed that a discussion paper from Women's Affairs department had raised the spectre of Pay Equity legislation. While the paper only discussed various options and canvassed various research issues it was the first time pay equity had surfaced on the government's policy agenda since the Employment Equity Act was repealed in 1991. The paper suggested four tools: an independent pay equity agency, regular workplace-based pay reviews, the development of gender-neutral job evaluations, and occupational pay comparisons.

A survey by the central branch of the Employers and Manufacturers Association found the implementation of the Employment Relations Act associated with extra costs. According to the *Dominion*, The Minister of Labour, Margaret Wilson, retorted that the compliance costs were only mentioned by a minority of respondents, were relatively small in terms of time and money, and mainly related to one-off costs associated with the new Act's introduction. The survey, covering 250 businesses, found a shift from individual to collective employment agreements amongst 20 percent of employers, and extra costs associated with training of managers and staff. However, over 70 percent of employers said that the good faith requirements had had little or no impact on their negotiation approach and most employers found that the new mediation service worked well.

Police continued to have a high level of staff turnover with more than 1,000 staff leaving over the last two years. Figures released by Minister of Police, George Hawkins, showed that 971 staff left in the 22 months to April last year and that figure did not include staff turnover in the Auckland district.

One result of the John Davy case (see May *Chronicle*) was a focus on the role of the recruitment company, Millennium People, and a wider discussion of whether the unregulated market of recruitment companies should continue. Currently, anyone can set up a recruitment business, with no registration or licensing being in place and with

no need to provide proof of skills or experience. According to the *NZ Herald*, there are three "camps": "those who welcome some sort of state licensing; those who favour self-regulation; and those who reckon New Zealand business is regulated enough, and have faith that the market will decide". The Recruitment and Consulting Services Association favoured self-regulation and audited its members' policies and practices. However, many recruitment firms were not members of the Association.

Reminiscent of the John Davy case, an Auckland business person was convicted for presenting himself as a chartered accountant and obtaining a job on this basis, even though his practice certificate and membership were falsified. The person was fined \$3,000 and had already resigned from his job.

Another Auckland building site accident renewed calls for building industry reforms (see February *Chronicle*). A worker employed by a labour hire firm had his legs crushed when a wall collapsed. The accident coincided with the release of occupational safety and health figures which showed that work-related deaths had almost doubled over the last 12 months compared to the previous year. Seventy-one people died in the year to July 2002, compared to 39 people the previous year.

Surveys conducted by the Employers and Manufacturers Associations show a decline in the importance of performance-related pay and fringe benefits during the 1997 to 2001 period. Fringe benefits, such as company cars, superannuation contributions and medical insurance allowances, had become less prevalent and less than two-third of managers received such perks in 2001.

The WestpacTrust bank announced that the bank would top up the new paid parental leave entitlement to full salary levels. Employees would first have their salary topped up to 66 percent of their normal level and then they would receive the remaining 34 percent three months after resuming their full duties. The bank's proposal was aimed at reducing the turnover levels amongst its predominantly female staff. According to the *NZ Herald*, the bank's research had found that less 50 percent of employees returned to work after parental leave and the cost of replacing an employee amounted to around 2.5 times the annual salary.

The publisher of the *NZ Herald*, Wilson and Horton, was fined \$2,500 for using freelance journalists during a strike by the newspaper's journalists last year. The decision indicated the shift towards strikes under the Employment Relations Act since it underlined that outside employees could not be hired to do the job of striking employees, except when warranted by health and safety reasons.

A decision by the Employment Relations Authority vindicated Telecom in its dismissal of an employee who had a history of sexual harassment complaints. Despite counselling and several warnings, concerns about the employee's behaviour were still an issue and this prompted the company to dismiss him. In its rejection of the employee's case, the

ER Authority found that company had made a decision that "a reasonable and fair employer would have taken".

An Employment Tribunal case ended with a sweatshop employer being ordered to pay more than \$126,000 in penalties. The employer had exploited several Thai women who had worked seven days a week and sometimes up to 16 hours per day (see also September 2001 *Chronicle* for a similar case). Besides breaking the Minimum Wage Act and the Holidays Act, the employer had also known that the women were working illegally in New Zealand.

July 2002

While the General Election on the 27 July was the main media event during July, there were reported several important employment relations developments in the media. These included new public policy positions, continuous unrest amongst secondary school teachers, strikes and collective bargaining in the Auckland health sector, negotiations and restructuring at Air NZ, kindergarten teachers voting on the introduction of pay parity, and, unfortunately, further workplace deaths.

The various political parties announced their employment relations policies. With the Labour Party's election win, it was of importance that the party re-launched the proposal to protect the continuity of employment conditions for employees when businesses were sold or work was contracted out. A ministerial advisory group had already discussed this issue and the fundamental disagreement between employer and union representatives was clear from the report released in May. It was also foreshadowed that paid parental leave would be extended and cover more employees, if "resources permitted it" (see June *Chronicle*). However, it was a surprise when the Minister of Employment, Steve Maharey, ruled out that a Labour Government would increase statutory minimum annual holidays from three to four weeks during its next term in office. It brought criticism from the Engineering, Printing and Manufacturing Union and its National Secretary, Andrew Little, promised to pursue the goal through collective bargaining.

It was relatively quiet regarding the secondary teachers' dispute since the teachers scaled back their strike actions and an independent panel was appointed to provide an arbitrated settlement of the dispute.

The kindergarten teachers started to vote on whether to ratify a new agreement which would phase in pay parity with primary teachers over the next four years. The agreement would annually raise the pay of kindergarten teachers until pay parity would be achieved in 2006. According to the *Dominion*, it would lift the salary of a top-of-the-scale teacher (with a degree) from \$38,000 to \$51,000 a year over the next four years.

Nurses and midwives in the Auckland health sector agreed to a new multi-employer collective agreement which would lift their pay rates around nine percent over the next three years. The settlement included a four percent pay increase which would be backdated to February 2002. The Auckland settlement continued the pattern of multi-employer agreements for nurses (see June *Chronicle*). However, a 48-hour strike amongst hospital orderlies and food service staff went ahead in order to improve on the pay offer of two percent now and two percent next year.

The announced two-day strike amongst Air NZ pilots was averted when the two sides agreed to re-start negotiations. The strike concerned a new collective agreement (which expired in March 2001) as well as Air NZ's plans to transfer a number of pilots to its budget subsidiary, Freedom Air. The transferral was expected to have negative implications for the pilots' employment conditions and their future career options. Air NZ also managed to settle the collective negotiations for its engineering staff. Around 900 engineers accepted an 18-month agreement which initially would include a 12-month wage freeze (as accepted by other Air NZ staff), then a 2.5 percent pay rise in a year's time and another 1.2 percent pay rise after a further three months.

Court action continued over the restructuring at the Kinleith pulp and paper mill. The Employment Relations Authority dismissed the union's case when it found that the company had not breached the Employment Relations Act's good faith requirements. The Engineering, Printing and Manufacturing Union had argued that the company had violated the good faith requirements by refusing to negotiate over its plans to outsource maintenance at the mill. However, the union lodged an appeal at the Employment Court and the case started shortly after the ruling of the Employment Relations Authority.

Customs officers belonging to the Customs Officers Association announced a three-hour strike action to further their agreement negotiations. The strike action concerned nearly half the country's customs officers. The negotiations were complicated since the Customs Service wanted to streamline pay structures through lifting the base wage rates but cut allowances and overtime payments. Negotiations were also complicated by the fact that they involved three unions, though the other two unions – the Public Service Association and the National Union of Public Employees – had already rejected the proposal of the Customs Service.

The Court of Appeal found in favour of the Corrections Association's attempt to pursue a collective employment agreement with Australasian Correctional Management. The company operates Mt Eden prison in Auckland and it had signed a five-year employment agreement with the Public Service Association (PSA) in 1999. The company argued that the PSA agreement prevented it from negotiating with another union. However, most of the full-time prison officers were member of the Corrections Association and the union declared after the court decision that it would lodge a pay claim of over 10 percent.

The fall-out from the John Davy case continued (see May and June *Chronicle*) when the involved recruitment company, Millennium People, closed down. The company was faced with a sharp drop in demand for its services when its mainly public sector clients took their business somewhere else.

Two maintenance workers at the Pacific Steel factory in Otahuhu were killed when a load of steel rods fell on them. The accident immediately closed the factory and it highlighted media attention to the sharp increase in workplace deaths over the last year (see June *Chronicle*). The accident happened just a week after the company had received an ACC safety award for its improved safety and health record. While the Pacific Steel factory is owned by Fletcher Building, the two workers were subcontractors and an outside company ran the accident area.

An Auckland school principal was dismissed and then investigated by the police for having pornography on his work computer. According to the *Dominion*, he is "at least the fifth teacher or principal sacked or charged over pornography in the past three years".

The Council of Trade Unions (CTU) continued its campaign against longer working hours by publishing a report on its impact on thirty families. The CTU announced that another study of leave entitlements and how to balance work and family life would be published later this year.

August 2002

The secondary school teachers' 16-month long employment contract negotiations finally came to an end. The appointed panel of arbitrators recommended that the teachers should be paid an extra \$250 million over the next three years, a figure that was almost double what the Government had offered the teachers at the beginning of the dispute. Under the new pay deal, secondary teachers would receive pay increases of around 6.5 percent on average over three years, compared to the Government's original offer of 3.5 percent over two years. Teachers with degrees would receive more than the average 6.5 percent; in some cases the pay increases would be close to 10 percent over three years.

However, a group of secondary teachers expressed anger because some of the new pay increases would not apply to teachers who did not have a three year university degree and a one year teaching diploma, regardless whether those teachers had qualifications that were equivalent to a degree. However, the President of the Post Primary Teachers Association (PPTA), Jen McCutcheon, said that the PPTA and the Government were committed to ironing out any inconsistencies in the deal for secondary teachers with equivalent qualifications.

The primary teachers' union (NZEI) also expressed concerns over the secondary teachers' pay deal. The union said that the deal threatened to undermine pay parity between primary and secondary teachers. According to the *Dominion*, the pay deal was worded in such a way that it appeared to make primary and kindergarten teachers ineligible for the same pay increase that had just been awarded to secondary teachers. This was because primary and kindergarten teachers had gained their Bachelor of Education degrees at teachers colleges and polytechs rather than universities.

According to the *Dominion*, the Government announced plans to turn primary teachers into secondary teachers by putting them through a ten-week "fast track" secondary teacher-training course. The plan was designed to pre-empt a predicted shortage of secondary school teachers by spending \$2.7 million on retraining 135 primary teachers over the next three years. The outgoing director of the Teachers Council criticised the idea which he described as "typical short term expedience".

The tragic death on a Lyttleton picket line in 1999 was revisited when the jury at the Christchurch High Court found a man not guilty of the manslaughter. The man had killed a woman on the picket line when his car hit her.

A survey of Auckland businesses conducted by the *NZ Herald* found that over 50 percent of the 700 companies surveyed reported that they had refrained from taking on extra staff because of employment relations legislation. Over 80 percent said that they would be more likely to expand staff numbers if trial periods were allowed (that is, new staff could be laid off without the risk of a personal grievance case).

Occupational health and safety continued to be debated in the media as part of the Health and Safety in Employment Amendment Bill and the recently announced increase in workplace fatality (see June *Chronicle*). The Manager of Advisory Services of the Employers and Manufacturers' Association (Northern), Peter Tritt, criticised the OSH statistics in the *National Business Review* under the headline: "OSH fiddles its figures to push the case for more workplace meddling". Mr Tritt argued that the fatality figures had been boosted for political reasons by incorporating self-employed, employees on their way to work and all bystanders who died in a workplace. However, the General Manager of the OSH Service, Bob Hill, denied in a subsequent article in the *National Business Review* that there had been any changes to the way OSH reported workplace accident figures over the last 10 years.

The Labour Department revealed that it was considering the possibility of imposing a penalty ACC levy on unsafe employers as a way of improving workplace health and safety. The levy was part of a wider plan designed to encourage better workplace health and safety.

Up to 200 workers at nine Metlifecare retirement villages announced strike action in support of a new collective employment agreement and their six percent pay claim. The Service and Food Workers Union said that the strike was called after Metlifecare offered

a two percent pay rise. Caregivers at three Ryman Healthcare retirement villages in Wellington went on strike and threatened more strike action if their employer continued to resist their wish to be governed by a collective agreement. Negotiations covering more than 4,000 nurses in the upper North Island broke down and they would be balloted about whether to take industrial action.

Carter Holt Harvey's plans to restructure its Kinleith pulp and paper mill came to a halt when the Employment Court ordered a temporary stop to any large-scale staff lay offs (see July *Chronicle*). The Court instructed the company to spend the next 28 days consulting employees and their unions over its plans.

The dispute over a profit-sharing scheme at the Kawerau pulp and paper mill was settled through mediation, according to the *Independent*. The profit-sharing scheme was originally introduced by Fletcher Challenge Paper in 1996 (the current owners were Norske Skog and Carter Holt Harvey) and the Engineering, Printing and Manufacturing Union had argued that employees had not received their entitled pay-outs (see May *Chronicle*). It was estimated that the settlement would involve payments of around \$15,000-\$20,000 to each union member.

The *NZ Herald* reported that Air New Zealand would be giving a one-off bonus payment of up to \$500 to nearly 8,000 of its staff. The bonus was described as a "thank you" for staff support during the restructuring of the company (labelled "its toughest year" in the firm's announcement).

The Employment Court made a significant judgement between being an employee or a contractor. The case concerned a personal grievance claim for unjustified dismissal. The man had signed a contract which described him as a consulting contractor and one of the retail store's proprietors. Under the contract, the man was paid a retainer, a percentage of the profits and he exercised control over many aspects of the business. The Court ruled that, despite the relationship between the worker and the retail store having some hallmarks of an employment relationship, he was not an employee in terms of the Employment Relations Act because the retail store did not exercise a sufficient degree of control over his activities.

Following an accident in which a 16-year old worker had been crushed to death, an Occupational Safety and Health (OSH) prosecution commenced in the Auckland District Court against a rubbish disposal company. The Court heard that the company had operated a rubbish truck which had a non-functioning safety bar, four worn tyres and its operating instructions were in Japanese. The company had already pleaded guilty to a charge of failing to take all practicable steps to provide an employee with a safe workplace and the Counsel for the OSH Service argued that the company should be stiffly penalised for the alleged offence, which carried a fine of up to \$50,000.

The Employment Tribunal ordered an Information Technology Company to pay \$113,000 for unjustifiably removing an employee from a project and under-employing

her for 10 months before she resigned. The Tribunal found that she had been constructively dismissed because the employer's actions amounted to a breach of duty which made it likely that she would resign.

The *Dominion* reported on the basis of Employment Court figures that the number of dismissals for the misuse of e-mail had risen sharply in the last five-six years. In the three years to July 1999, the Court had dealt with five dismissal cases involving the misuse of e-mail but it had heard 15 such cases in the 21 months to the end of March 2002.

The Employment Court awarded \$400,000 in damages to an employer where a manager left and took a lucrative agency contract with him. The employer had sued the former manager for breaching a duty of trust by setting up his own business on the basis of his collaboration with the employer's client.

The Minister of Trade, Jim Sutton, announced that around 100 jobs would be cut at the Glenbrook steel mill. He attributed the cuts to trade tariffs against steel erected by the United States Government.

Labour market figures released by Statistics NZ revealed an upward trend in the number of jobs but earnings figures showed no signs of wage inflation. There was a 1.7 percent rise in the number of full time equivalent employees, compared with three months before. The number of filled jobs had increased by 4.4 percent over the year. However, average ordinary time earnings fell in the June quarter, 0.1 per cent in the private sector and 1.4 per cent in the public sector.

The *Jobs Letter* reported that research by recruitment consultancy Robert Walters had found that only 10 percent of people who changed jobs did so to obtain an increase in pay. It was found that most employees left because they were either seeking new challenges or they saw another firm as offering better career prospects.

The *Dominion* reported that specialist surgeons at Wellington Hospital expressed fear that patients could die from mistakes as they tried to cope with pressures brought on by onerous on-call rosters. The Association of Salaried Medical Specialists said that not only were the 15 vascular, paediatric, neuro and cardio-thoracic surgeons on-call 24 hours a day, seven days a week, every second or third week, they were also being called upon more frequently.

September 2002

More than 4,000 nurses from Northland, Waikato, Bay of Plenty and Gisborne announced plans to hold rolling stoppages in October 2002 when their negotiations failed to progress (see August *Chronicle*).

A survey by Otago University and Massey University found that 34 percent of nurses intended to quit their job within one year, according to the *Jobs Letter*.

The TAB's office was picketed by betting agency employees who protested over the lack of progress of their negotiations for a new employment agreement and their claim for a pay rise of \$1.41 an hour.

Following several instances of low level industrial action, the University of Otago agreed to go to mediation over its stalled negotiations which covered more than 600 of its staff.

Secondary school teachers threatened to take strike action over the fact that teachers with qualifications equivalent to a three-year university degree would not be able to receive the same pay increases as their university educated colleagues (see August *Chronicle*). The Post Primary Teachers Association said that its members were considering a return to the picket line over the issue.

The Accident Compensation Corporation (ACC) announced a \$243 million surplus for the year. The *NZ Herald* reported that the President of the Council of Trade Unions (CTU), Ross Wilson, wanted the ACC to use the surplus to comply with International Labour Convention 17. That Convention required that injured workers were provided with all necessary treatment at no cost to themselves. While the Minister of the ACC, Ruth Dyson, stressed that the Government was determined to make progress towards compliance with Convention 17, it intended to do so as part of its broader ACC strategy.

The issue of pay equity continued to rear its head (see June *Chronicle*). The *NZ Herald* reported that post election briefing papers from the Women's Affairs department to its incoming minister, Ruth Dyson, stressed that woman's income had gained little ground against men over the past 17 years, with the gap between the genders closing by only five percent. The papers also underlined that the income of lower paid women had not improved over the last 20 years. It was also reported that the Department of Labour was considering various proposals to introduce pay equity as part of a review of the Equal Pay Act. However, Business NZ expressed concerns about the review since it argued that the introduction of pay equity would create distortions in the market, fuel pay rises and reduce job availability.

A Labour Department report on skill shortages showed that, for the three months to the end of June 2002, 12 percent of businesses reported growth problems because they had difficulty in finding suitable staff. The report also found that the demand for unskilled labour was growing and finding unskilled labour was harder than it had been at any time since 1985.

The WestpacTrust's quarterly rural economic review revealed that a shortage of skilled rural workers was harming the rural economy. The review stressed that overall unemployment was at a 14 year low but the resulting skill shortages had a particular impact on rural areas. The long term drift of labour away for the rural areas was

attributable to three causes: a rural-urban wage gap, social reasons and more opportunities in larger centres, and the fact that most of the rewards were going to the owners of land and stock.

The *NZ Herald* reported that Air NZ paid \$28.6 million to 60 employees that it had laid off in the past year. Most of the 60 people had been paid when they lost their jobs as part of Ansett's separation from Air NZ in late 2001.

The Engineers Union expressed anger over an announcement that around 100 Australians would be employed to crew a rig that would soon begin drilling for oil and gas in NZ waters. The union said that it planned industrial action to prevent drilling from starting in a bid to fight for NZ jobs.

Carter Holt Harvey announced that it planned to make 120 workers redundant at its Kinleith Mill. Meanwhile the Employment Court ruled that Carter Holt Harvey had been guilty of misleading or deceiving trade unions while they were in the process of preparing a defence against large scale layoffs at the Kinleith pulp and paper mill (see August *Chronicle*). The Court stated that the firm had placed too much emphasis on its right to manage its business but had paid insufficient regard to its contractual obligation to consult while it was formulating restructuring plans.

The Court of Appeal endorsed an Employment Court ruling that Carter Holt Harvey had breached access and good faith provisions in the Employment Relations Act when, in 2001, it had two union leaders arrested for entering a workplace at Manurewa to ascertain whether new employees were doing the work of striking employees. The decision could have important implications for unions' access rights.

Affco announced that it had decided to retain its Imlay meat plant at Wanganui after its employees had agreed to accept pay cuts.

The Employment Relations Authority ordered Kohimarama Primary School to pay a teacher over \$41,000 as it had unfairly dismissed the teacher while she was overseas on sick leave. In a letter, the teacher was informed that she had been dismissed as three teachers at her school and the Associate Principal had threatened to leave if she was permitted to return from sick leave.

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