The system of wages and conditions of employment bargaining, which bear heavily on the state of industrial relations and affect the standard of employer/employee relationships, are continuing to be untidy, undisciplined and in some cases even unprincipled. These systems have to date remained unmotivated by efforts made and still being made, to reshape and redirect the pressures they cause so that a degree of stability and order may be found.

Wages bargaining takes place within the framework of our industrial laws, within the political, economic and social structure of the country and within the climate or mood so established. We have in New Zealand an unsatisfactory stage setting for wages bargaining. Our economy, export markets, overseas reserves, the energy crisis, inflation, domestic and internal politics, and the stresses and strains in our society, have each and collectively developed a mood of uncertainty, and a deep concern for our future.

As a nation we have developed and are continuing that conflict of interest situation, instead of the necessary commonality of interest approach which is vital to a free enterprise democratic society, if it is to survive.

The present chaos in our wages and conditions of employment bargaining has therefore been predictable. Some of this chaos just happens as an inevitable part of direct bargaining, but a substantial portion is orchestrated.

In looking at the trends in wages and conditions of employment bargaining in New Zealand, the evaluation of where we are today can be traced over the last four decades, each of which has a clearly definable trend.

1940's:

The predominant feature in wages bargaining in the 1940's was the making of Standard Wage Pronouncements by the Court of Arbitration - 1945, 1947, 1949 (and 1952). These pronouncements set down the Court's finding on levels of skill, semi-skilled and unskilled wage levels to be incorporated into awards. This decade covered the war years and postwar period of getting the country back on to a peace-time footing. With a stable economy and low inflation, there were no ripples to speak of.
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21. Other cases involving questions of jurisdiction are:

(a) Hori v N.Z. Forest Service (supra) - Court felt it may not have jurisdiction in this case because under s.218 the Industrial Relations Act 1973 does not bind the Crown so the Forest Service may not be bound by the Agreement.

(b) Palmerston North Newspapers Ltd. v Pywell (1976) I.C. 53/76 - illustrates the case where the parties excluded from their award the Arbitration from hearing appeals on personal grievances.

(c) Parisian Coat Manufacturing Co. v Auckland Clerical I.U.N. (1976) I.C. 23/76 - unless the correct procedure is chosen under the Industrial Relations Act 1973, the Court will not hear the case.

23. Ibid.
25. (1975) 75 B.A. 5515.
30. (1975) 75 B.A. 11155.
32. (1978) A.C. 30/78.
33. (1979) A.C. 23179.
34. (1979) A.C. 35/79.
35. (1978) A.C. 21/78.
36. (1975) 75 B.A.
38. (1978) A.C. 35/78.
Footnotes


2. See D.L. Mathieson, Industrial Law in New Zealand 24 for a discussion of s.231.


7. The following table illustrates the percentage of stoppages due to dismissals:

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<td>22.5%</td>
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Source: Department of Labour Reports.


10. Ibid, s.179.

11. Department of Labour, Personal Grievance Procedures (1978)


17. Ibid, p.3.


19. Ibid, p.3.

1950's:

New Zealand was in a period of increased economic activity with the maintenance of a low inflation rate. This was the period of the Korean War, the wool boom, and the country seemed to have everything going for it. We had the development of our secondary industry and although immigration was being stepped up, an acute shortage of labour developed. The phenomena of wages drift began to occur. That is, the drift of paid wages away from the legal minimum award rates.

Workers unions wages pressure developed in the area of whether or not employers were going to "pass on" the award or general wage order movements in wage rates. The union officials activity was to seek a movement in the paid wages of companies, and did not develop any argument on the precise level of the above award wages, that had developed as wages drift in the law of supply and demand for labour. It is true that some unions developed a policy of shop rates as against individual workers holding individual wage rates in a company. Because of the "pass on" argument of unions, employers moved to a review of paid wages concurrent with the various awards to avoid making reviews immediately prior to an award renewal, and then also coming under pressure to "pass on" the award increase. The award renewals were fairly leisurely affairs at two year periods and it was not uncommon for awards to move well past their expiry dates before the union would seek its renewal. Relativity of wage rates at the award level did play a major feature in award negotiations. As often as not it was the Court of Arbitration that established a trend in minimum award wage levels through an arbitration decision.

New Zealand seemed to have the answer to stable industrial relations and bargaining systems, such that other countries with less had practitioners and theorists visit New Zealand to see how our system operated. No one was "rocking the boat", nor did they seek to.
Again a decade of general wage orders - 1962, 1964, 1966, 1968, 1970. With the acute shortage of workers especially skilled tradesmen continuing to plague an expanding secondary industry sector, wages drift was accelerating.

Workers' Unions began to opt out of the sanctity of the averaging Award system into paid wage rate bargaining over and above the minimum Award rate. That is, a move away from conciliation and arbitration, into confrontation. No longer were Awards to be negotiated prescribing their lawfully enforceable provisions, with the paid wage rate and actual conditions of employment to be left to the law of supply and demand. Key Unions such as the Engineering, Boilermaking, Electrical, Carpenters, Labourers and Drivers, changed the system and placed strain upon the continued viability of national industry Awards. These Awards and the legal framework under which they were made (the Industrial Conciliation and Arbitration Act) were propped up by the negotiation of ruling rate agreements, house agreements and other forms of paid wage agreements for industries or individual companies.

The first such agreements were negotiated in the Building and Contracting Industries for Auckland and did stabilise the wages pressures which the various Workers' Unions had brought to bear. The purport of the agreements being to achieve "stability of wage rates and general harmony" in the various industries.

This was also the decade for "margins for skill" cases which were argued before the Court in 1965/66. In 1967 New Zealand moved into a recession, devaluation, and a period of uncertainty that left wages bargaining in limbo for upwards of nine months (August 1967 to June 1968). It was the Court of Arbitration itself that started a 2c per hour movement in award wage rates in a decision in early 1968 that helped to get wages bargaining under way again. 1968 was of course the year of the nil General Wage Order with its aftermath of a return to the Court with the Judge of the Court being outvoted by the workers and employers nominees as a majority. Actually the employers of New Zealand were in no mood to sustain the nil, General Wage Order decision, such that although the then Minister of Finances allegation of unholy alliance may have had a ring of truth, it was an alliance required in practical terms.

1969 was the year of a severe strike action in the electrical contracting industry in Auckland over the renewal of a ruling rate agreement. This dispute highlighted union involvement in paid wages setting. The decision of the
dissented from the decision on the facts. This is a good case to illustrate the type of matter for which the section was designed to protect.

Although s.150 may appear an attractive remedy, it is submitted that if there is a choice of remedy between s.117 and s.150 the former is preferable. It not only enables the dispute to be settled in the disputes committee, the union member on the Court in the Smith & Smith case noted that s.117 should be used in the majority of cases. Presumably this advice also seeks to preserve s.150 for clear cases of victimisation.

REDUNDANCY

Although security of employment is often thought of in terms of security from dismissal, a greater threat in the future to security of employment will be redundancies. Not only the economy, but the introduction of the new technology or the "chip" revolution as it is now called, will radically alter the nature of employment. It is probably already too late to warn the decision-makers that new policies and strategies are needed to cope with this new challenge. If the energy crisis is any indicator of the ability to plan, there is much trouble ahead for us in New Zealand.

It would be tempting to devote a great deal of time to the general question of the future of employment. This paper is concerned with the law however so it shall concentrate upon what legal response if any has been made to prevent, or regulate redundancies. Answer to this question is short - very little. Mathieson has argued that the inclusion of a term in a contract providing for redundancy payments, may not be valid because the obligation to perform arises after the contract has been terminated. While this may be legally correct, the market place has not been concerned with such niceties and has embarked upon the process of negotiating redundancy agreements. These redundancy agreements have resulted in many industrial stoppages including the longest stoppage in New Zealand - Mangere Bridge. Some agreements have been negotiated separate from the award or collective agreement, while many documents now include a clause relating to redundancies. The legality of these agreements and clauses has yet to be challenged. There would seem to be little doubt the redundancy clauses in registered documents would not be enforceable. The unregistered agreements however, rely more upon industrial might than legal right for their enforceability.

Committee of Inquiry established a rate for registered electricians of $1.26 per hour as against the award rate of $1 per hour. With the statement by the then Minister of Labour that New Zealand did indeed have three tiers of wages setting - minimum award rates, general wage orders and paid wages, an assault on paid wages in their industries was mounted by workers unions, generally seeking 28% above award.

1970's:

This is the decade of change and instability in New Zealand systems of wages and conditions of employment bargaining.

With the pressures on paid wages bargaining, major companies in Auckland established house agreements which were introduced to bring about some logic and stability to a constant parade of union(s) claims. Wages drift continued to accelerate until a drift of 20%-40% above award became common. By mid-1970 the New Zealand Employers' Federation had completed sufficient research ranging over the previous six years to enable an effort to be made to restore the authority of awards of the Court of Arbitration which had been effectively destroyed by wages drift.

"Wage-drift" is a well-known phenomenon in all times of inflation and was during the thirties a nuisance to the planning authorities in the suppressed-inflation, full-employment economies of Germany and the U.S.S.R. It might be maintained, too, that the wage-drift is the normal form of wage development in economic systems characterised by absence or small importance of collective bargaining.

It is, however, only when wage-drift crops up as a disturbance in a system where wages in general are regulated through agreements, each agreement having a vast coverage, that the phenomenon can be conceived of and studied specifically as a statistically and logically definable part of the total wage development.

"Wage-drift" becomes meaningful to speak about wage-drift as a specific part of the total wage development only when the authority of the agreements is shaken but not completely broken down. This has been the case in Sweden during the full employment period since World War II. Needless to say, even in Swedish post-war experience cases are to be found where earnings are effectively regulated through the agreements, the forces tending to break the authority of the agreements being too weak. On the other hand even earlier cases have existed where the market forces have been strong enough for destroying the authority of the agreements. Once this has happened, in a severe depression or an inflationary
boom, the wage development may begin to take its own course, and the eventual recurrence of more 'normal' market conditions will not in itself be sufficient for the re-establishment of the total dominance of the agreements. The process may be non-reversible; the experience of a period of dominance of other forces may have lasting consequences and - at least for some time - create supplementary determinants of the developments of earnings."


The updating of the many and various awards to a "more realistic and meaningful level" in 1970 was a chancy and costly exercise and did not fail in the manner of the 1967 attempt in the engineering industry in Australia where the above-award wages element written into their Metal Trades Award was not held as an offset against existing levels of paid wages but quickly swept over the industry, and the country, like a general wage increase. Updating did generally succeed in reshaping the attitudes of the unions and the employers toward the authority and sanctity of the awards and industrial agreements made in the terms of the Act, and it is true to say that the union movement did honour the essential features of the exercise which are recorded in the Memorandums to each of the updated 1970 documents. Wages drift was reduced to 0-7%. Where the exercise did flounder, and finally required the intervention of Government by way of the wages and salary restraint measures of March 1971, was in the leapfrogging relativity carousel that developed, fed by an unfortunately timed wages arbitration in the freezing industry and by the emergence of State Rates as leaders in the wages field.

In the years of wage restraint between 1971 and 1977, New Zealand tried most known forms of wage and salary control. We tried guideline, freezing, cost of living indexation, jawboning, social contract, self-discipline, serious anomaly, exceptional circumstances, and so on, and so on. None of these approaches of course achieved stability. In 1977 the Government decided to allow "free bargaining" again, the sole restraint being the "12 month rule" that the F.O.L. was prepared to accept, that is that once having achieved the wage rates and code of employment to apply in any award or collective agreement, there would be sanctity of that award or collective agreement for 12 months.

Since 1977 we have of course seen the evolution of Government involvement in collective bargaining. The electrical supply authorities electrical workers...
lost wages from the time of dismissal until the date of judgment - a period of seven months. Often a sum is awarded which takes into account wages earned in other employment as in the McHardy Case. 47 There is of course a duty upon the dismissed worker to mitigate any loss. This was clear from General Motors Ltd v Lilomaiava 48 where the worker did not find new employment but reported to his old job each morning and the court reduced the claim for lost wages from $2242 to $1500.

The remedy under s.117(4) which causes most difficulty is that relating to the right of the Court to award compensation. It is very difficult to discern what criteria if any the Court applies when making such awards. There is authority to suggest that distress caused by the dismissal may justify compensation - McDonald v Hubber. 49 Often however the Court gives no indication for the amount of damages awarded. In the Vial Case, 50 the Court merely stated: "We also award the sum of $1000 compensation". In the New Zealand Insurance Guild I.U.W. v Guardian Royal Exchange Assurance Co., Ltd. 51 where the company's lack of planning caused the worker's redundancy, the Court awarded ". . . $1000 for loss of employment and expenses".

Although the more highly skilled the employment the more likely a worker appears to be to receive compensation, an exception to what may be a rule is Auckland Clerical etc I.U.W. v Universal Business Directories, 52 where a receptionist was awarded $2000 to compensate for loss of wages and $1000 for loss of employment. The totally unreasonable attitude of the employer seems to have contributed to the amount of compensation awarded. Perhaps the closest one can get to discerning the principles that guide the Court in this matter is contained in the McHardy Case 53 where the Court after being referred to English authority on the subject commented:

"Section 117(7) contains no such express provision, but it does entrust a wide discretion to the Grievance Committee and the Court to decide whether, even if unjustifiable dismissal be found, any order should be made in respect of lost wages and compensation, and as to the quantum of both if an order is made. We conclude that the Court when exercising that discretion should take into account along with the other facts, the conduct of the worker." 54

The Court refused however to accord priority to any one factor.

negotiations in 1977, the freezing industry intervention in 1978, the Cook Strait ferries, freight forwarders and general drivers interventions in 1979 are each illustrative of the different forms of Government intervention.

In looking back over the last ten years, having tried most known forms of wage and salary restraint; having tried to restore the authority awards and collective agreements; having experienced an emergence of political strikes; having noted the regular orchestrated pattern of pre-F.O.L. Conference activity by the S.U.P. led unions and having experienced the results of the take-over of the Auckland Trades Council by that group; having had guerilla strike 'activities' become the norm; having automatic deductions of union fees now common place in awards - pouring an estimated $15-$16 million per annum into union fees; having the resurgence of wages drift again beginning to destroy the authority of the awards and collective agreements upon which it occurs; having a country caught in a rampant inflation situation; having an unemployment situation and yet an extreme shortage of skilled labour continuing; and having the economic, energy and social problems vitally affecting our free enterprise democracy, is it little wonder that we have become a society questioning our future.

1980's:
In this decade New Zealand must overcome all these ills that have been identified in this paper. An acceptable system of wages bargaining will not alone achieve a recovery but will obviously make a substantial contribution to recovery.

In the last few years there has been developed by the Organisation for Economic Cooperation and Development (comprising 24 western industrialised countries), the concept of "social responsibility in collective bargaining". Emphasis has also been given in papers the New Zealand Employers Federation has presented on the need for a 'balance in bargaining' and on 'a need for commonality of interest' and not conflict of interest. It is true that the balance of power in industrial relations in New Zealand today appears to be held by the union movement. Certainly strike actions have become more sophisticated whereby union members no longer act with their feet before adopting strategies from the head, and that in their wages bargaining employers are still motivated by expediency and relativity when the pressure is on.

It has been said that employers have no preparedness for pain, that their bargaining is not based on ability to pay but on preparedness to pay.
Many ideas to improve industrial relations have been put forward by interested or affected parties. A short list of aspects that require investigation would be:

- Attitudes
- Sanctity and authority of agreement when made
- Improved balance of power
- Social responsibility in collective bargaining
- Communications
- Commonality of interest and not conflict of interest
- Amalgamation of Unions, particularly into industry
- Indexation of wages; especially as part of an economic package
- Income policies
- Tri-partite or even bi-partite / Centralized Bargaining

Each of these aspects of industrial relations is under review because in no way can New Zealand continue with its current system of wages bargaining where a dozen or so key award negotiations trigger off the relativity flow-on into all industry awards, into second-tier paid wage bargaining, and ultimately through survey/pay research into the wages and salaries of State servants - with each of these procedures for creation of Union and workers expectations leading to final settlement of wages, involving no criteria whatever for the state of the economy, the ability of the country or the industry or the individual employer to pay with resultant feeding of domestic inflation, or causation of retrenchment, redundancies, loss of overtime.

The New Zealand employers' Federation Inc. through its 1979 discussion paper "Balance in Bargaining" and through the exhaustive research undertaken prior to the commencement of 1979 collective bargaining round of just what the export sector of New Zealand could absorb by way of labour cost increases for the year without losing markets, is illustrative of the motivation that is required of and by employers if New Zealand is to survive as a free enterprise democratic society.

Put in another way, it is alleged that employers are not showing social responsibility so long as they are prepared for 'soft' settlements or too easily succumb to demand on the grounds they expect to be able to recover by putting on the costs of their concessions to their product and ultimately the consumer. The finger is certainly pointed to contractors in this regard.

Court upon deciding that the dismissal had been unjustifiable under s.150 of the Industrial Relations Act 1973, ordered his reinstatement. It was considered here that there had not been undue delay in bringing the proceedings, and that the parties were mature enough to accept reinstatement. These are two factors that seem of importance in any decision as to reinstatement.

In cases where close working relationships do not exist, reinstatement may seem more appropriate. An example of the Court exercising its discretion of reinstatement is Doyle v Dunlop (N.Z.) Ltd, where dismissal had arisen out of collective action and reinstatement had already taken place because of agreement with the union. Reinstatement is sometimes not appropriate or desired by the worker - see Dee v Kensington Haynes & White. The employment situation seems to have deteriorated to the point where neither party felt reinstatement was desirable. When taking an appeal to the Arbitration Court on an unjustifiable dismissal, it should not be forgotten that the Court may order reinstatement even if one of the parties does not want the remedy. For example, in Harpur v N.Z. Aluminium Smelters Ltd. reinstatement was ordered even though the company argued its trust in the worker was so affected his employment as a security officer could not be successful.

Apart from reinstatement the Court may award damages for lost wages. Often after hearing a case and deciding the worker has been unjustifiably dismissed, the Court will merely award that the wages should be reimbursed for the period during which the correct notice was not given. This is similar to the common law position. In some cases however the Court will award more than what would be considered the equivalent to the appropriate period notice to given. Although the rationale of the Court is difficult to follow, two factors seem important - the nature of the employment and the cause of the dismissal. For example, in Smith v Crown Crystal Glass, the type of employment was manual and cause of dismissal an altercation. It appears therefore that while the dismissal was found to be unjustifiable, the Court had little sympathy for the worker who was in part the author of his own misfortune. In the Dee Case however the employment was clerical, and the behaviour of the employer in the whole matter left something to be desired in the view of the Court, so $500 was awarded. This sum seems to have included some element of compensation. In the Vial Case the dismissed worker was a midwife of some experience to whom the Court awarded payment of
business and to effect this he dismissed the applicant. It was the
manner in which he did this that led the court to hold that the dismissal
was unjustifiable and award $400 for loss of wages. Also in New Zealand
Insurance Guild I.U.W. v Guardian Royal Exchange Assurance Co. Ltd 39, when
the company dismissed a worker shortly after he had joined the staff, because
it found itself over-staffed, the Court held the lack of planning by the
company did not justify the dismissal of the worker. Compensation of $3000
was awarded for loss of wages and $1000 for loss of employment and expenses.

Although it may be difficult to assert definite principles upon
which the Arbitration Court will determine what constitutes an unjustifiable
dismissal, certain guidelines for practice may be tentatively suggested. If
your client is an employer the obvious advice is to institute clear procedures
for dismissal. If a worker's performance is unsatisfactory be sure to notify
that worker, preferably in writing. When a worker is dismissed be sure it
is for a substantial reason and give the grounds for dismissal. An employer
is not required in New Zealand to give grounds for dismissal, but if they
are not given the Court may not be impressed with what sounds like an after-
thought. If you act for a worker the best advice is to ensure that evidence
of good work performance is available and that efforts are made immediately
to initiate the standard procedure if dismissal takes place. If the union
is reluctant to act then s.117(3A) should be implemented as soon as possible.
This is important because as indicated previously the remedy available may
depend upon the delay involved between the dismissal and the Court hearing.

REMEDIES

On the question of remedies, the cases are of little guidance. As
noted under s.117(7) the worker, if found to have been unjustifiably dismissed
is entitled to reimbursement of wages, reinstatement or compensation or all
three remedies. Although reinstatement was considered impossible under
common law, the Arbitration Court has considered in certain cases it is an
appropriate remedy. Industry today does not necessarily involve close working
relationships. Quite the contrary in fact. The most notable case where
the court ordered reinstatement was The New Zealand Guild Union of Workers v
The Insurance Council of New Zealand 40. This case involved the dismissal of
a technical officer with the defendant Council. Although the nature of the
employment involved a reasonably close working relationship with others, the

We will carry into the 1980's various proposals by the F.O.L. for changes
in our systems and wages bargaining such as:

- consumer price indexation for wages movement
- minimum living wage
- restoration of general wage orders
- right to direct bargaining without interference.

Through each of these claims a common thread appears and that is that the
union movement wants to preserve the "right" to take the employer through as
many bargaining stages in the one bargaining round as it sees fit. In other
words, a company's or industry's code of employment is never in fact finally
settled. There is bargaining at the award level, bargaining at the paid
rate level, recourse to a general wage order application, claims for productivity
agreement, travel allowances, redundancy agreements, reopening of
various codes by disputes committee, indeed a constant parade of wage cost
claims which continually add to an employer's inability to get on with the job so that he
can perhaps afford to meet even the cost of the now annual bargaining round.

C.P.I. Index:

In defending it as a panacea for inflation in so far as wage rates are
concerned, the union movement expects full compensation for consumer price
index movement plus as has already been noted the "right" to continue with
whatever other forms of bargaining it wishes to demand. Indexation in this
form is not the indexation now occurring in Australia wherein the Australian
trade union movement has given undertakings to not proceed with paid wage
demands upon the employers but to handle any anxiety over wage levels through
work value cases submitted to the Conciliation and Arbitration Commission.
This centralized system of wage compensation is coming under strain and paid
wage claims are beginning to arise and some unions report $5 - $7 per week
above award wage increases are being "won".

In a recent news release from the Minister for Industrial Relations - 41/79
Government's Initiatives on Wage Indexation 17 August 1979 - the Australian
Government has "developed a package of proposals as a basis for re-establishing
consensus between the parties involved in wage fixation. Such consensus is
necessary if an orderly, centralised system of wage fixation is to be preserved.
All parties have already stated their commitment to such a system."

The main features of the Commonwealth's initiative are:
A firm and continuing commitment by all parties to refrain from pursuing wage and other labour cost increases outside the wage fixation principles, and a rejection of industrial action in support of such increases. This commitment would be a pre-condition to the other elements of the Commonwealth package.

Automatic wage indexation every six months for movements in the Consumer Price Index discounted for price increases resulting from Commonwealth Government policies, e.g. import parity petroleum pricing, indirect taxes.

Claims for wage increases based on work value to be subject to rigorous examination and testing by the Conciliation and Arbitration Commission.

The Conciliation and Arbitration Commission, when determining a wage increase based on work value, to pay particular regard to skill and responsibility.

No productivity hearing until at least October 1980; in any such hearing only the movement in productivity which had occurred over the preceding 12 months could be considered.

The proposed wage fixation system to operate for a fixed period, of say 2 years, after which it may be reviewed.

The Conciliation and Arbitration Commission's current principles of wage determination to continue to operate with the necessary amendments to reflect the Commonwealth's proposals.

The Ministers stated, "The proposal is an integrated package; the individual elements do not stand alone and part of it, of course, is an end to the current rash of disputes over wage demands."

It should also be noted that in the New Zealand context it can be shown that the national trend setting awards already settled in the 1979/80 bargaining round have been better off under the different wages systems that have applied during 1970 than if consumer price index had been followed over the same period. In other words, even at the award level let alone the paid level with its accelerating wages drift there is no case to answer on indexation.

to be sufficient to justify dismissal. In both cases there may have been some element of an example being made to deter other workers. In the former case the worker was caught smoking in a non-smoking area, while in the latter wire mesh was removed from a construction site. In another case - Wellington etc Hotel I.U.W. v Barrett's Hotel 32 - a worker dismissed for fighting was found to be unjustifiably dismissed after the full facts of the case were considered. The court's willingness to look at all the surrounding circumstances of a case is illustrated in Auckland Clerical etc. I.U.W. v Vacation Hotels Ltd., where a night telephone operator was found asleep at his job and dismissed. After a consideration of the facts, and in particular the working conditions, the Court held the dismissal was unjustified. It can be seen that much can depend on the facts.

The same situation applies where a worker is dismissed for incompetence. This must be established clearly by the employer. In the recent case of Vial v St. George Private Hospital the Court heard extensive evidence on the allegation of incompetence. It was obvious from the case, as with many personal grievance cases, a clash of personalities was a contributing factor in the situation that led to the dismissal. After considering all evidence and not only the actual incident that led to dismissal the Court found the dismissal was unjustified. It is interesting to note however that if the respondent had clearly warned the applicant that instances of incompetence would lead to dismissal, the matter may have resulted differently. In Auckland Clerical I.U.W. v Universal Business Directories Ltd, the Court commented upon the fact that if the plaintiff's conduct had been as bad as alleged then a warning to this affect may have been expected. In this case the court held the dismissal was unjustified and that the worker had been dismissed principally because her employer's pride had been hurt over an incident in the office.

There is one ground for dismissal that the Arbitration Court had seemed to accept justified dismissal and that was redundancy - Templeman v Farmers Aerial Topdressing Co. Ltd. Auckland etc Shop Assistants I.U.W. v Curtain Styles Ltd. The Arbitration Court has been reluctant to interfere with the running and organisation of a business. Yet it seems if the circumstances are obviously unjust, the Court may be prepared to find a dismissal on such grounds unjustified. In Auckland etc Shop Assistants I.U.W. v Shrimpi's Fashions Ltd, the respondent wanted to reorganise his
a Court not well versed in the determination of matters relating to white-collar employment. It is submitted that in view of the increasing unionisation of this sector of the workforce, plus the fact that this sector is more inclined to use the Court than other sectors, it may be time for the Court to broaden its horizons on what type of matters fall within the definition of a personal grievance.

UNJUSTIFIABLE DISMISSAL

The majority of cases before the Arbitration Court involved the determination of the question whether a dismissal was unjustifiable. The lack of a statutory definition of unjustifiable has the advantage of allowing each case to be decided on its own facts and merits, and the disadvantage of being unable to predict what form of conduct is likely to result in a claim for unjustifiable dismissal being upheld. The only certainty in these cases is uncertainty. Any analysis of the cases is also further hampered by the lack of detail in the judgment as to fact and law. This may be understandable because of the personal nature of much of the evidence and the fact that most appeals from the disputes committees do not involve questions of law, but merely a rehearing of the facts.

Some matters have become clear and limited guidance may be obtained from a review of the cases. The Arbitration Court established early in its jurisdiction over these matters that the onus was on the employer to prove on the balance of probability that there were adequate grounds for terminating the employment - see Scholes v AA Mutual Insurance Co. The worker then must establish that he or she has been dismissed and then it is up to the employer to show the dismissal was justified. It should be noted here that the Court has held that sometimes a resignation may in effect be a dismissal - Wellington etc. Clerical Workers I.U.W. v Barraud & Abraham; Auckland etc. Shop Employees Union v Smith & Smith Ltd. Some cases have held that under this approach, a resignation may be justified - see Cook v North Shore Ferries Ltd. Bell v Air New Zealand. In Bates v Dunlop (N.Z.) Ltd. and Wellington etc. Drivers I.U.W. v Fletcher Construction Ltd. however one act of misconduct was held

Minimum Living Wage:
The concept advanced by the Federation of Labour in its application to the Court of Arbitration for a minimum living wage of $147 a week had as many pitfalls in it for the trade union movement as it did for the employers and the economy of New Zealand as a whole. The one major deficiency was the impact of such a minimum living wage upon margins for skill and the undoubted interest of those unions with skilled tradesmen as members having to seek a restoration of margin both at the award and paid level. If the Government and the Employers' Federation is still prepared to discuss the concept of a minimum living wage within the context of wage rates - income tax rates - child benefits and other income elements, it is surely beneficial to union members for the F.O.L. to pull back from a concept that had obvious fish hooks for its own constituent unions and look again at the wider proposal.

Restoration of General Wage Orders:
There is obviously a need in New Zealand for a more orderly system of wage setting. It is a "three bites of the cherry" attitude that has obviously brought about necessity to reduce the number of bites and the general wage order system has accordingly fallen. We are now left with the minimum award negotiations and in many cases but not all, the demand and achievement by unions of paid wage and conditions of employment bargaining. Wages drift is again accelerating. In 1970 wages drift of up to 40% was destroying the authority of New Zealand awards. The action taken was to remove wages drift by absorbing it. This action was at substantial cost to New Zealand but at a time that the economy of the country was better suited to absorb such cost.

In 1980 with wages drift again beginning to destroy the authority of awards and collective agreements it would be foolhardy to remove wages drift by absorbing it. First, on the ground that the economy of the country cannot afford it, and secondly, on the ground that absorption would be inevitably followed by rebirth.

It would appear that the action necessary in 1980 is to remove wages drift by recognising it, and not endeavouring to restore the authority of those awards and collective agreements upon which it has again risen. I refer again to the extract of the paper by Bent Hansen and Gosta Rehn (1956), and quote again the analysed effect of wages drift. The stated affect of wages drift and its consequential destruction of the authority of agreements:
"Once this has happened, in a severe depression or an inflationary boom, the wage development may begin to take its own course, and the eventual recurrence of more 'normal' market conditions will not in itself be sufficient for the re-establishment of the total dominance of the agreements. The process may be non-reversible; the experience of a period of dominance of other forces may have lasting consequences and - at least for some time - create supplementary determinants of the developments of earnings."

Right to Direct Bargaining without Interference:
Unless the trade union movement and the employers party to wages bargaining can develop and sustain "social responsibility in collective bargaining" then obviously in the interests of the economy, the New Zealand Government (whether National or Labour) will have to continue to play its role as custodian of the economy of New Zealand and our free enterprise democratic society. If this is not done there is indeed no future for New Zealand but a downhill slide into social revolution such as was being predicted for the United Kingdom in 1976.

This of course is what the Socialist Unity Party is about; and this is what the recent displays of employer solidarity are all about. Individual and industry groups of employers have had enough of being kicked around and are prepared to stand up and be counted and take the pain that they have been accused in the past of not being prepared or able to sustain. It is about time New Zealand as a whole decided which way it wants to go if indeed we want to continue the downhill slide so be it. If we do not wish the slide to continue and have not got North Sea oil to prop us up, then it is an urgent requirement upon us all that a consensus be reached.

It is my view and that of my organisation that in the 1980's, out of the pain the private sector is now experiencing in wages and conditions of employment bargaining and in industrial relations generally, in which the public and legal body sectors have and are likely to become similarly more involved, well come a winning consent.

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Although this decision may seem restrictive it is consistent with the concept that the Industrial Relations Act 1973 is concerned with collective rights and obligations. If these rights and obligations are to be applied to individuals, then the law should state this specifically. It is submitted that if the law is found wanting in its ability to provide for the needs of individuals in the employment relationship, and the writer believes it is so wanting, then do not graph new individual rights and obligations onto the collective tree. If this is allowed to happen then the fruit of the tree may make painful eating for everyone. The Court of Appeal is endeavouring to maintain a separation of individual and collective rights, it is now up to the legislature to undertake positive law reform and provide individuals with legal protection in their employment relationship.

PERSONAL GRIEVANCE - DEFINITION

To return to s.117 of the Industrial Relations Act 1973, if the Arbitration Court does have jurisdiction to determine an appeal from a disputes committee on a personal grievance, the question arises whether the grievance falls within the definition of s.117(1). Although personal grievances are not confined to unjustifiable dismissals the majority of cases relate to dismissals. Very few cases of matters other than dismissals have come before the attention of the Arbitration Court. The first case came to Court shortly after the section came into force and the reluctant attitude of the Arbitration Court to consider the matter may have unfortunately deterred other cases. The case in question was Auckland Regional Authority Officers Industrial Agreement - Application for Interpretation. The question before the Court here was whether a non-promotion was a grievance within s.117. The Court did not consider such a matter fell within the definition of personal grievance and expressed their opinion in very negative terms as follows:

"It appears to us that if the legislature had intended to embrace the non-promotion complaint it would have said so in specific language. As we have endeavoured to show, the non-promotion complaint is essentially different from the ordinary sort of employer/employee dispute and we have said also that the non-promotion complaint requires special procedures. We are of the opinion that s.117 is not aimed at grievances relating to promotion appointments."

The somewhat unwise way in which the Arbitration Court handled the matter has been commented upon elsewhere. The above statement appears to be that of