

TOWARDS AN EFFECTIVE INDUSTRIAL RELATIONS SYSTEM

Industrial relations - at least at a public level - has occupied a fair deal of news media attention over the past months. Some commentators would have us believe the country is on the point of anarchy or as was recently said, (1) 'to hear some people tell it, the poor state of industrial relations in New Zealand is the principal cause, indeed perhaps the only cause of our current economic problems'. As the commentator correctly concluded 'such a view is clearly nonsense'. Nevertheless the confusing series of events over the past few months make it an appropriate time to look at the system that we have. (I am not certain whether 'system' is the appropriate word for it implies at least some order and definable rules but rather than use the term 'industrial relations chaos' I will be charitable and use 'system'.)

For amongst all the clamour, the charge and counter-charge over the past months there has been little attempt to examine the system of industrial relations in New Zealand and the extent to which it helps or hinders the settlements of industrial disputes. This paper is an attempt to do that: it attempts to examine the role of the key actor in the system (Government); the ingredients of an effective industrial relations system; and the direction that we might move to try and effect change. In the time permitted it does not endeavour to do more than raise a number of the issues and suggest a line of thought for future consideration.

THE ROLE OF GOVERNMENT

I make no apology for starting with an examination of the role of Government. Government after all sets the rules within which the two sides of industry must operate. The apparently 'nonsensical' view quoted above i.e. that unions are the principal cause of our economic problems is one which for various reasons is pushed by Government. These reasons include: the need to direct attention away in a time of severe dislocation in the economy from failed or non-existent policies in other areas, the desire to fulfil policies on which it considered it was elected in 1975, the belief that 'the public' want a 'hard' line adopted towards 'militant' unions, the general immaturity and authoritarian nature of our political and economic system. These factors and others - combined with a traditionally central and interventionist role by successive Governments in industrial relations - are all the ingredients necessary for an unworkable system: Until Government is genuinely prepared to work towards an effective system I see little possibility of change - simply because (unlike some countries)

the State has always been the key actor in our industrial relations system.

THE OPTIONS

It is impossible to look at an effective industrial relations system without considering the nature of the broader economic system of which the relationship between employers and workers is a part. In other words the role of the State, employers and unions in the industrial relations system are influenced to a large degree by their overall role in the economy and the nature of that economy. There are, I would suggest, three broad options open to society - (a) a controlled economy (b) a 'free' enterprise system (c) a combination of both. Clearly New Zealand has always fitted somewhat uneasily into the third category.

What do these different models imply for an industrial relations system? Firstly in a wholly controlled economy limits on the incomes of workers are more or less accepted because they are one aspect of that controlled economy. There is therefore little or no scope for collective bargaining. A large degree of Government intervention is applied to control the incomes of all wage and salary earners, prices, profits, self employed and so on. In other words, the controls are perceived to apply to all groups. This is why the present clumsy attempts to introduce a wage control mechanism cannot work through the Remuneration Act. It is I think, necessary to point out that the NZ Federation of Labour represents about one third of the work force through its affiliated unions. These workers are to a large degree, those at the bottom of the earnings heap - to expect the FOL or its affiliates to sit back while the Government applies controls to their earnings and not to other interest groups in the economy is to fly in the face of reality. The evidence of the last seven years is that direct Government intervention on one aspect of the inflationary spiral - wages - has been ineffective.

The second choice confronting society is the notion of a 'free' enterprise system of which free collective bargaining is an essential part. With a Government supposedly committed to an unfettered free enterprise system, one would have thought they would be fully committed to such a notion. Unfortunately such a commitment ends if the parties are not bargaining 'responsibly' and the arbitrator, on what constitutes 'responsibility' appears to be the Prime Minister. From the evidence of the recent proposed intervention in the Drivers' Award settlement by use of the Remuneration Act, the criteria for assessing this responsibility appears to be not economic i.e. the level of settlement) but industrial relations (i.e. the fact that strikes and lockouts were resorted to or the politics of a few of the union officials or both).

The reality of course is that this 'free enterprise' model does not exist in New Zealand nor is it likely to. A large degree of State intervention in all aspects of the economy has always been the norm and will continue to be so in the foreseeable future. Free collective bargaining entails that the parties are able to resort to strikes and lockouts with presumably a power reserved to Government to intervene if the public order is threatened or if the safety, health or welfare of the public is threatened. Clearly this was not the case with the drivers, with the employers actually claiming on one occasion that the stoppages has not been effectual. Such a free collective bargaining system also has no place for general wage orders as wages are purely determined by the bargaining strength of the parties. It presumably also has no place for the compulsory arbitration; a blanket coverage clause, fees and allowances for conciliation or enforceability of awards through the Inspectors of Awards. (2)

The system implies trial by strength with the devil taking the hindmost. Government's role is confined to watching anxiously on and using other devices open to it to control the economy. This type of system has not existed in New Zealand for the past ninety years - it is questionable to what degree there is support for it amongst trade unionists - particularly as the strength of capital is increasing as it continues to aggregate. If, as I consider, there is less than overwhelming support for the second option, then the same probably also applies to the first option, in other sections of society. A planned and controlled economy with all sectors participating in the decision-making and sharing the wealth created in an equitable manner does not seem to be attracting great political support from either of the two main parties so we can probably assume that it is unlikely to eventuate in the immediate future. It is probable in my view, that this may be the only viable long term option.

The third model is the New Zealand version of 'State capitalism' where a large degree of state intervention in all aspects of the economy is accepted. This particularly applies in the industrial relations system and this seems likely to continue. Can our traditional industrial conciliation and arbitration system (3) be adapted so that it has some chance of functioning effectively or should we look for more radical change. An adaption of the existing system is an approach favoured by the Employers' Federation (4) which believes we should build on the existing institutions in our system. Given the inherent conservatism in our society and the apparent lack of enthusiasm for the first two options this is the most realistic option for change. Therefore in the interests of considering change that is possible I now turn to this option, examine its essential characteristics and what is needed to give it a chance of functioning. Whether an 1894 model can still be relevant remains to be seen.

Nearly 90 years ago the State recognised that workers have legitimate interests in 'industrial matters' that is 'the rights, duties and privileges of employers and workers'. (5) Predictably this has been interpreted in at least two ways. Employers usually supported by Government (and therefore usually the central institution in the system - the Court of Arbitration) (6) considered that this restricted unions to those matters that were their 'legitimate interests' (that is wages and conditions with the latter narrowly defined). To trade unions the words of this section permit unions to raise any matter which may affect workers.

Perhaps this difference is the reflexion of the difference between the capitalist and the socialist. Industrial matters are, always have been, and as far as I can see, always will be the cutting edge between capitalism and socialism. It is impossible to avoid this conflict and it is foolish to try because the results are always disastrous. This is what is being attempted at the moment and it is the road to totalitarianism.

What our system has traditionally tried to do is to channel that conflict into an arena where there is a referee who will endeavour to prevent each contest becoming a trial by battle or ordeal. The I.C. and A. Act was an attempt to do just that but it has now largely failed because neither the lawyers who staffed the Arbitration Court nor Government, who makes the rules, have ever been prepared to accept that significant social change should be initiated in the workplace. In a time of significant and rapidly changing social attitudes in the sixties and seventies, the Court has by and large adopted a narrow and static view of relationships in the workplace.

If union claims are good within the narrow parameters of a legally static system, then generally unions will find the Arbitration Court sympathetic. Outside those parameters, the Court is of little use and unions believe they can get nothing from the Court - the only alternative is industrial action. The most obvious example of this would be the ANZ Bank case (7) in 1977 where the Court held the matter of interest rates that the Bank charged to its employees was a matter between the employer and the employee and the union had no legitimate interest.

Other examples could be cited but the narrow view the Court has adopted in its role coupled with a traditional reluctance of unions to resort to the Court means that a vacuum has been created. The development of this vacuum is normally traced back to the nil order of the Court in 1968.

The net result of this has been that rather than trying to reform the existing institutions in our industrial relations system Government has intervened much more directly in the system. This had reached the ludicrous stage where Government is now seen to be going through tortuous steps in trying to decide whether to regulate the drivers' wages or 'permit them' to go to arbitration. Nothing could be more calculated to destroy any confidence left in the system.

If it was possible to 'solve' industrial relations issues, then perhaps the increasing Government forays into the arena may have succeeded. It is necessary for all to realise that there are no 'solutions' but only the possibility of reducing the conflict to less than nuclear proportions. To do this trade unions must be induced to repose confidence in the system. What would be the framework of that system?

THE LEGAL FRAMEWORK OF AN EFFECTIVE SYSTEM

Effective industrial laws in the industrial relations arena (as in any other relationship) must be based on certainty, fairness and enforceability. None of these elements will be fulfilled absolutely but they must be a constant aim for policy makers. How then does our system measure up:

Certainty: Probably the key element in our system is uncertainty. It is becoming almost an annual ritual to witness politicians thrashing around in Parliament trying to come up with 'the answer' to our industrial relations 'problems'. In 1976 the answers were to be found in penalties (amendments to the Industrial Relations and Commerce Acts) and in state run ballots. Predictably both failed. In 1977 the answer was to go back to basics and re-establish the powers of the old Arbitration Court to hear dispute of interest, thereby doing away with the Industrial Commission. In 1978 new legislation was introduced to replace the unworkable state run ballot provisions which were introduced in 1976. In 1979 we have so far had the Remuneration Act which revoked the General Wage Orders Act which had been reintroduced by Government in 1977 - to the surprise of many - and also gives extremely wide powers to intervene in the wage fixing process on a completely ad hoc basis should it be deemed 'expedient' so to do by Executive. As if all this wasn't enough there are still the remnants of the Wage Adjustment Regulations 1974 hanging around just to totally confuse anybody who isn't confused enough.

The end result of course is a total and complete shambles where nobody

knows where they are from one day to the next. You file for a General Wage Orders Act and four days before the hearing is due to commence, TV and Radio are commandeered to announce the Act is being revoked. You make a wage settlement with your employer after industrial action on both sides and it is announced that it is 'excessive'. Such a cynical approach to the rule of law by policy makers must and does breed the same cynicism in the participants in the system. Policy makers have clearly demonstrated that the rules are to be changed when they don't like the way the game is going. If an institution starts pursuing policies not to Government's liking then it is abolished - as was the case with the Industrial Commission which was in existence from 1973 to 1977.

Invariably such legislative changes are made totally without consultation. Ironically the present Minister of Labour is on record as saying that one of the key elements of good industrial relations is 'talking'. This Government has quite clearly shown that it will talk only when they want to talk. One example will suffice to illustrate this - I have mentioned the revocation of the General Wage Orders Act whilst the Federation of Labour's application for a minimum living wage was before the Arbitration Court. The Government claimed that the application was an inappropriate way to deal with the lower paid groups. If they had expressed their concern to the FOL it may have been possible to accommodate their objections by changes to the legislation - but no, instant revocation is the answer.

FAIRNESS

I will not dwell on this element. Suffice it to say that in view of the comments above on wage control the system in the seventies has been perceived by trade unions to impose restraint on one side of the inflationary equation only (wages). The employers on the other hand see the system as having 'shifted the balance of negotiating power into the hands of unions'. Be that as it may, it also follows from what is said above that the uncertainty of the system is such as to really be unable to judge the effectiveness of the changes in the system that were effected in 1973 by the Industrial Relations Act. Had that legislation been allowed to operate and the parties had had the opportunity to sit down and rationally discuss its defects and look at ways of improving the system, we might well now have a workable system. It is my view that the Employers' Federation discussion paper 'Balance in Bargaining' does provide a useful starting point for this - regrettably other events have intervened which has pushed dialogue well into the background.

ENFORCEABILITY

Most people would agree with the notion that if you're going to have laws they should be capable of enforcement. If they are not they are at best unnecessary. At worst they tend to bring the whole system into question. In my view the whole system has been brought into question by the continuing passage of obviously unworkable legislation. The Government's legislative provisions on penalties and their state-run ballots provisions for example, seem destined to remain of merely academic interest - objects of interest to labour historians. Perhaps the extreme example was the recently reported reply by the Secretary of Labour when he was asked whether he was going to prosecute workers for taking part in what was clearly an illegal FOL national day of stoppage against the Remuneration Act - "Do you expect me to prosecute 500,000 workers?" If law is not capable of enforcement it has no place on the Statute Books and it matters not that politicians and employers wish that it was enforceable - the days of coercing the workforce by whatever means are over and unless that is accepted, industry will be a battleground in the 1980s. I would suggest that the main function of the changes in our industrial law over the past three years has been to drive the parties in industry into extreme positions where dialogue is impossible.

FIRST STEPS TOWARDS CHANGE

How do we break this apparent deadlock? How do we begin to create a system which allows the real industrial issues to be focussed upon by the parties in industry?

Firstly Government needs to sort out where it stands. Does it want a workable system or a political football. Using the football analogy it can, like a referee, adjudicate in the game so that all the participants benefit through the institutions that it has established or it can carry on changing the rules during the game, whilst trying to join in from time to time. The end result of the second approach is to have the three participants at each other's throats most of the time - with the objects of the game forgotten.

Secondly and obviously dependant on the first condition - how do we move towards a system that embodies certainty, fairness and enforceability?

Basically like the approach adopted in the NZ Employers' Federation discussion paper - 'Balance in Bargaining' and for the reasons already outlined I consider we should build on existing institutions and in particular the framework of the 1973 legislation. This legislation should

however be brought into line with the provisions of ILO Conventions 87 (relating to freedom of association) and 98 (the right to Organise and Bargain Collectively). I am aware that the trade union movement has been less than wholehearted in calling for ratification of these two conventions but I think it is high time that the principles embodied in these conventions were embodied in our legislation. This would go some way towards promoting fairness in that there would be an external international convention against which our industrial legislation could be measured. It would also, hopefully, promote certainty in that Governments would be less reluctant to intervene directly in the industrial process - legislation such as the Remuneration Act and Fishing Industry (Union Coverage) Bill would clearly contravene the principles in the Convention.

I have earlier made the point that if legislation is to be effective in this area it must be enforceable. In the two key areas wage fixing and industrial action, the last eight years should provide sufficient evidence for anyone that the use of the law has not been effective and therefore there must be a change of direction, if wages are to be held, this can only be part of a package of measures fitted into a comprehensive and broadly consensual economic plan of which an incomes policy is one factor. The role of the law in the area of industrial action, as I have indicated, is restricted to maintaining public order unless the parties to an agreement accept the use of penalties. The injunctive remedy would be removed to the Arbitration Court and restricted to non-industrial matters.

Thirdly the established institutions in the system - the conciliation and mediation service, the Court itself - must be seen to be free from direct Government interference and should be prepared to adopt a more progressive role in industrial matters. Whether Governments have the political will to allow the system to function in this way is doubtful.

EMPLOYERS' FEDERATION PROPOSALS - COMMENT

Reference has been made to the Employers' Federation proposals contained in their discussion booklet 'Balance in Bargaining'. When they were first released they were welcomed by the Federation of Labour as forming a useful basis of discussion. In particular the proposals relating to the amalgamation of Awards and Employers into industry groups, and the idea of custom built procedures for handling disputes would receive general support.

Central to their proposals is the concept of a dual system of wage fixing whereby the negotiating parties choose whether they engage in two party

collective bargaining or resort to a modified conciliation and arbitration procedure. Providing employers are prepared to accept genuine collective bargaining and not dash off to the Minister of Labour at the first hint of industrial action and providing also that the Arbitration Court is prepared to adopt a more progressive attitude towards its role, then this proposal may offer a basis for discussion.

The proposal for a tripartite consultation process between Government, the FOL and Employers' Federation prior to Award negotiations has drawn some publicity. I think two comments need to be made:

Firstly if these discussions did occur they could only be meaningful if all aspects of the economy were dealt with. That is taxation levels, benefits, subsidies, price control and so on.

Secondly the concept of agreement on a wage path in such discussions has a number of problems. It may well be that the Employers' Federation are being unrealistic in this proposal in the short term.

Eventually I think regular tripartite consultations will occur. Unions and employers are regularly engaged in such a process and it is unrealistic not to expect the central organisations and Government not to bargain over issues that can only be dealt with at a national level.

THE FUTURE - THE ISSUE

At a time when the New Zealand economy is undergoing change I consider it essential that there be open debate about the sort of system we want. Do we want

- a controlled economy of which wage control is a part?
- an unregulated economy of which genuine free collective bargaining is a part?
- a continuation of the existing system with some elements of both?

I have suggested that the prevailing view is largely for a continuation of the status quo.

To conclude let me indulge myself by giving an outline of the sort of industrial relations system that I would like to see develop in the next twenty years (as opposed to what is likely to happen!).

Unions are amalgamated and organised along industry lines: This amalgamation will be hastened by a positive role from Government and also by the bringing of our system into line with ILO Convention 87 which would allow a degree of freedom of association. The key issue will be effective use by unions of their resources in pursuing their objectives.

Bargaining at an industry level predominates: Bargaining over jobs not wages will become the critical issue that unions will have to face. The scope of bargaining will have to widen dramatically to include all aspects of the organisation and operation of the industry. To do this disclosure of information on industry plans, technological change, and future manpower needs will be vital.

Bargaining at an enterprise level will not only be about wages and conditions but will also be about ownership and control. There will be a variety of ways in which workers seek to increase the control they have in the workplace.

At a National level the Government, Employers and the central organisation of workers are responsible for ensuring that the system and rules of that system meet the criteria mentioned earlier. Since the main focus of union activity is in their industry and at enterprise level there will not be a large role for central national bargaining - it will probably be restricted to (1) the establishment of a minimum standard of living and (2) the establishment and operation of effective manpower planning although even this might be better focussed at an industry level.

Role of Government: Clearly this is vital for it is inconceivable that unions will be able to perform this enlarged role without radical change to the rules of the game:

Firstly the politicians must remove themselves from involvement in industrial relations. This is often said and I believe with the will it could be done.

Secondly institutions with a revamped role are needed: The Arbitration Court is the ultimate arbiter of the rules of the game and it is given the powers necessary to perform such a role. The Industrial Commission is revived as the Industrial Democracy Commission. This body (and the mediator who would operate under it) had the statutory function of promotion change in industry and in assisting the parties in engineering that change. Legislation on employment protection, disclosure of information and industrial democracy will be promoted and administered by the Commission. There will be lay

representation/with the Arbitration Court determining on the Commission points of law.

The exact role of employers is uncertain - one thing is clear they will have to be prepared to accept change. Undoubtedly this will apply to us all; without this acceptance the future is bleak.

NOTES:

1. Dr D.T. Brash, General Manager, Broadbank Corporation in a recent address to the Canterbury Chamber of Commerce.
2. All features of our industrial relations system embodied in the main industrial legislation - the Industrial Relations Act 1973.
3. First enacted in the Industrial Conciliation and Arbitration Act 1894. Continued with some modification in the Industrial Relations Act 1973.
4. See 'Balance in Bargaining' N.Z. Employers' Federation Discussion Paper.
5. Section 2, Industrial Relations Act 1973 essentially unchanged since 1894.
6. From 1973 - 1977 known as the Industrial Court.
7. NZ Bank Officers' Industrial Union of Workers v ANZ Bank (1977) NZICJ 219