LAW AND INDUSTRIAL RELATIONS: THE INFLUENCE OF PARLIAMENT

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Introduction

It was natural that, as New Zealand was colonised from the British Isles, British institutions, attitudes and outlooks should have transplanted readily to the new colony. It is not surprising, therefore, that from the 1860's onward the early New Zealand trade unions grew as off-shoots of their British counterparts. What is surprising and requires explanation is the sudden departure from the British trade union tradition which took place in New Zealand in the last decade of the nineteenth century.

British trade unionism continued into the present century—and into the present time—highly independent and self-reliant, averse to government intervention in industrial relations and particularly to any form of law which might restrict or govern the structure and activities of trade unions or force them into prescribed procedures. After 1890 New Zealand trade unions on the other hand sought government intervention, looked to the legislative process to establish them and give them status, to this end accepted the forms and limitations which the law prescribed, and asked for formal government-controlled procedures to govern the settlement of wages and other conditions of employment. The parting of the ways was indeed sharp.

I do not propose to devote much space here to the reasons for this sudden divergence which I discussed at some length in *Industrial Conciliation and Arbitration in New Zealand*.[1] It will be sufficient to recall here that the New Zealand trade unions, still too young to have much strength either in membership or in financial resources, inexperienced in collective bargaining and industrial conflict, and caught against a back-drop of economic depression and widespread unemployment, had their confidence in themselves deeply undermined by the severe defeat suffered by those more militant unions who took part in the Maritime Strike of 1890.

It was fortuitous that this defeat more or less coincided with an extension of the right to vote which was instrumental in passing political power into the hands of a new government with liberal-labour sympathies and a willingness to venture in the field of industrial relations. This willingness was not unrelated to the fact that the maritime strike had frightened the community at large into a strong demand that Government take the responsibility for ensuring that such disturbing threats to the community well-being should not recur—an attitude which has continued to persist ever since. The willingness of the new Government

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1 N. S. Woods, *Industrial Conciliation and Arbitration in New Zealand*, N.Z. Govt. Printer, 1963, esp. 30-39.

to embark upon very comprehensive industrial relations legislation was, however, considerably restrained by the continued presence of an opposition majority in the non-elected upper chamber. An Industrial Conciliation and Arbitration Bill therefore remained before Parliament from 1891 to 1894 when legislation was finally enacted.

The Industrial Conciliation and Arbitration Act 1894 was entitled "An Act to encourage the formation of Industrial Unions and Associations, and to facilitate the settlement of industrial disputes by conciliation and arbitration." This Act prescribed the four corners within which its industrial unions were to fit as well as the procedures to which they were to conform and we have now to examine these prescriptions.

The Size and Geographical Coverage of Industrial Unions

In what it had to say about the conditions of registration of industrial unions the Industrial Conciliation and Arbitration Act 1894 was very loosely phrased. Its restrictive influences on the structure and growth of industrial relations organisations derived not so much from any inappropriateness of the registration requirements in relation to the circumstances of 1894 as from the perpetuation of those requirements and of procedures after the circumstances had changed.

The Act provided that "a society of any number of persons not being less than seven, residing within the colony, lawfully associated for the purpose of protecting or furthering the interests of employers or workmen [changed to 'workers' in the following year] in or in connection with any industry in the colony, and whether formed before or after the passing of this Act, may be registered as an industrial union . . . " There was nothing here to restrict the geographical coverage of industrial unions. Yet in 1936—but not until then—the Act was amended specifically to enable the registration of industrial unions covering the whole of New Zealand, or covering the North Island or the South Island, or covering more than one industrial district.[2] In 1905 an amendment provided that, in the case of a trade union registered under the Trade Union Act also registering under the Industrial Conciliation and Arbitration Act, every branch of that trade union would be a distinct industrial union for the purposes of the latter Act. This 1905 amendment also provided that the registered name of an industrial union should include the name of the locality in which the majority of its members resided.[3] There was no specific prohibition on the registration of multi-district or New Zealand-wide unions, but there was a strong implication that the generality of unions registering should be local or one-district unions.

The presumption is strengthened by the provisions of the Act for a separate permanent Board of Conciliation for each industrial district, the members to be elected "by the industrial unions of employers and of workmen in the industrial district . . . "; and by the further provision that industrial disputes could only be dealt with on a local or district basis within the jurisdiction of the Board for the district. Not until 1903[4] was the Court of Arbitration given power to extend an award to another industrial district, but only by deeming the extended area to be one district.

2 Industrial Conciliation and Arbitration Amendment Act 1936, ss.5-10.
3 Industrial Conciliation and Arbitration Amendment Act 1905, s.7.
4 Industrial Conciliation and Arbitration Amendment Act 1903, s.4.

A perusal of early lists of industrial unions confirms the district-by-distirct emphasis. In 1901[5] the lists of registered industrial unions are shown only by districts with no industrial union listed in more than one district even though by title it might call itself a New Zealand organisation. In a number of cases New Zealand organisations had their branches registered as separate industrial unions in the different districts. Each branch of the Amalgamated Society of Engineers is shown as a separate industrial union for the district in which the Branch is located. The United Boilermakers and Iron Ship-builders of New Zealand is recorded as an industrial union in the Wellington District, but there is a United Boilermakers and Iron Ship-builders of Otago recorded in the Otago District. The Federated Cooks and Stewards of New Zealand is recorded only in the Wellington District, although it would clearly have members in other districts. In the same way, although a number of industrial unions of employers have titles implying New Zealand coverage and no doubt had members in more than one district (e.g. New Zealand Clothing Manufacturers and New Zealand Textile Manufacturers) they are in each case listed under one particular industrial district and do not appear under any other. Eight companies were registered as industrial unions of employers in 1901, but here again New Zealand companies are shown under only one district, e.g. the Union Steam Ship Company of New Zealand and the New Zealand Flour Millers Co-operative are both listed under the Otago District but not under any other district. It appears that the administrators could see no useful purpose in designating a separate group of multi-district or New Zealand unions. Such a grouping would have had little meaning in the procedures of the day.

In 1901 there were 191 industrial unions of workers and 43 industrial unions of employers registered. A few of them were New Zealand organisations which would have had members in more than one industrial district. For these s.14(1) of the 1905 amending Act provided that, in addition to its registered office an industrial union could also have a branch office in any industrial district in which any of its members resided or exercised their calling, but the implications of the 1936 amendment providing for multi-district unions is that up to that time unions were not regarded as multi-district even where they had branch offices as provided for in 1905.

There were a number of industrial associations of employers and of workers respectively, with member industrial unions in various districts and these associations were able to prosecute claims throughout the districts covered by the members, but only by creating separate disputes and taking separate procedures district by district.

Considerable importance attaches to s.11 of the 1905 Amendment of the Act which provided that the Registrar of Industrial Unions, subject to a right of appeal to the Court of Arbitration, could refuse to register an industrial union if there already existed in the same locality or industrial district an industrial union to which the members might conveniently belong. This was the perpetuating clause. Around the turn of the century unions of workers were predominantly local or district unions. This was to be expected in a colony not long emerged from the stage of fairly isolated settlements, of small local workplaces servicing local communities, and of rather pronounced provincialism. As has just been noted,

5 A.J.H.R. 1901, H-11A.

moreover, the Act of 1894 and its early amendments were slanted towards encouraging the registration of local or district unions. The early registrations under the Act were thus generally small unions limited to a locality or a district and the effect of s.11 of the 1905 Amendment was to give the small unions something of a right to perpetual rival-free existence. Such a provision with some amendment has remained in the Act ever since (see s.58 of the present Act).

In 1894 an Act to encourage the formation of industrial unions was inescapably an Act to encourage mainly the formation of small localised unions. The broad effect of the 1905 Amendment was to make it also an Act to preserve small unions and it is more than coincidence that New Zealand had 362 industrial unions of workers registered under the Industrial Conciliation and Arbitration Act at the end of 1968 and that 87 of these had fifty or less members. Sweden, with a population of over eight million, had some 37 trade unions in 1970.

The original Act of 1894 required an industrial union, whether of workmen or of employers, to have a minimum of seven members upon registration. The minimum number of employer members for registration was reduced to five in 1895 and three in 1908, although for a brief period from 1905 to 1908 this minimum stood at two. In 1895 provision was made for any incorporated or registered company to register as an industrial union of employers. The minimum number of workers was raised to fifteen in 1908 and there it still stands although a later amendment permitted the Registrar to register an industrial union of less than fifteen members provided its membership covered not less than 25 per cent of the total number of workers engaged in the industry in the industrial district or locality concerned.[6]

Until 1936, when amending legislation introduced specific provisions for the registration of multi-district and New Zealand unions,[7] the legislation provided no stimulation to the development of such unions, and even the 1936 amendments had to operate against the situation which had been created over the years and which continued to be fortified by the protection of unions already registered.

The 1894 Act provided that "any council or other body, however designated, representing any number of industrial unions established within the colony may be registered as an industrial association pursuant to this Act." The liberality of this provision, which would have allowed unions to group themselves into any kind of grouping irrespective of trade or industry—and might even have resulted in some such groupings if they could have had any meaningful purpose in relation to procedures under the Act—was corrected by a 1905 amendment whereby not less than two industrial unions of workers or of employers *in the one industry* could be registered as an industrial association. In 1920 this was expanded a little to allow an industrial association to comprise industrial unions "connected with one industry or related industries".

By 1894 employers already had developed trade associations which were concerned with such matters as tariffs and import policy, taxation, conditions of trade, and the more technical matters concerning the industry. These were well-defined, positive and growing organisations but,

6 There has never been any requirement regarding minimum membership *after* registration and Appendix III of the Report of the Department of Labour in 1970 records two industrial unions of workers with eight members and one with six members amongst thirteen with less than fifteen members.

7 Industrial Conciliation and Arbitration Amendment Act 1936, ss.5-10.

because of the scope of their activities and the requirements of the Industrial Conciliation and Arbitration Act 1894 (which was restricted not only to societies of persons "associated for the purpose of protecting or furthering the interests of employers or workmen" but also to the over-all objective of facilitating the settlement of industrial disputes—the purpose stated in the title of the Act) the trade associations were too wide to be registered as industrial unions.

Employers in 1894 were largely hostile to the new Act and the registration of industrial unions of employers built up slowly. Where employers found the formality of registration of an industrial union to be desirable or necessary they tended to create a shadow organisation co-terminous in membership with the trade association and limited geographically and otherwise to the minimum of what was needed to stand inside the scope of the Act. As the main need seen by employers was to present a legally recognised opposition to the worker organisations with which they had to deal, industrial unions of employers tended to follow the same locality and industry pattern as industrial unions of workers and to be negative organisations.

The original Act of 1894 contained no provision for the amalgamation of unions and not until the amending Act of 1905 was such a possibility envisaged. The 1905 amendment provided for the amalgamation of industrial unions in the same industrial district and connected with the same industry, a provision which can be read as a further affirmation that the legislation was addressed to local and district unions and nothing of wider range. Not until the Industrial Conciliation and Arbitration Amendment Act 1937 did amalgamation beyond the confines of a single district become possible.

The Activities of Industrial Unions

Broadly speaking trade unions in the 1890's were preoccupied with gaining recognition of their place in determining wages and other conditions of employment. Apart from the battle to secure recognition, their main (and almost sole) preoccupation in these years was the establishment of minimum wages and other conditions of employment. Their financial resources were slender and few of them could contemplate the establishment of welfare activities at that time. Thus such activities, other than the prosecution of disputes with employers over wages and other conditions of employment, as were undertaken by trade unions were of no great significance and their presence or absence attracted no attention. Most trade unions had neither the time nor the resources to undertake any welfare activity beyond the occasional informality of "taking the hat round" for some deserving case. There was nothing to bring under examination the relationship of welfare activities to the conditions of registration under the Industrial Conciliation and Arbitration Act. The question was even less likely to arise with the shadow organisations which employers were registering as individual unions to meet no more than the formal requirements of the Act.

Not until 1913 did a question on this matter of scope of activities come before the Courts and result in a decision[8] that an industrial union of workers could not provide in its rules for aid to families of men who were not co-workers in the same industry.

8 *McDougall* v. *Wellington Typographical Union* (1913) 16 G.L.R. 309.

The matter was more fully tested at law in 1917 when the Ohinemuri Mines and Batteries Employees' Industrial Union of Workers applied to the Registrar to record a rule which would make the union's funds available to be used for the purpose of providing benefits for members in case of disability or death from accident. The Registrar refused to record such a rule. His decision was contested and went to appeal.[9] It was held that the Registrar was right in refusing to record the rules as dealing with matters beyond the scope of an industrial union. The title of the Act referred to the settlement of industrial disputes and the Act defined industrial disputes and industrial matters. It was not possible for a union to extend the scope of its operations any wider: "Wages, conditions, and hours really embrace the whole objects of the existence of industrial unions."[10]

Industrial unions in New Zealand were thus precluded from any activity other than industrial disputation. The decision was of no practical significance to employers who had their wide-ranging and unfettered trade organisations operating outside the Act. Workers, however, had only the industrial union registered under the Act. In a very few cases workers registered a co-terminous body under the Incorporated Societies Act to operate and administer welfare activities —an awkward arrangement—but the great majority of workers' organisations accepted the fetters. They became nothing more than organisations for pursuing industrial disputation with employers and policing with varying effectiveness the resulting industrial agreements and awards.

In 1964 the Act was belatedly amended to provide specifically that industrial unions could operate welfare schemes and could provide educational and training facilities, and scholarships, bursaries and travel grants for the purpose of furthering knowledge of trade unionism. But by this time New Zealand unionism had become firmly formed in the absence of such stabilising and broadening activities. It had developed to the narrowness of its statutory confines.

But even the limited activities of industrial unions permissible under the Industrial Conciliation and Arbitration Act have been hampered by poverty. The 1894 Act had nothing to say about the subscription rates which industrial unions might charge their members. In fact nothing on this matter appears in the legislation until 1922 when a clause was inserted which stated " . . . and no subscription exceeding one shilling per week and no levy or other charge shall be or become payable by any member until the expiration of at least one month after he has become a member."[11] (During the Committee stages of the Bill the Minister explained to the House that the purpose of this provision was to prevent a union from making too heavy a demand upon a new member.) According to the letter of this amendment the limitation of 1/- per week applied only for the first month of membership, after which the union could charge what it liked. Those familiar with trade union administration will know, however, that to charge a new member 1/- per week for the first four weeks and then step-up the charge does not win friendly new members; nor do members as a general rule take kindly to a charge that is higher than the amount mentioned in the

9 *Ohinemuri Mines and Batteries Employees' Union* v. *Registrar of Industrial Unions* [1917] N.Z.L.R. 829.
10 *Ibid.*, 836.
11 Industrial Conciliation and Arbitration Amendment Act 1922, s.10(1).

legislation even though that amount is mentioned with qualifications. The rank-and-file member is inclined to take the view that, if the law specifies an amount, it must be because that amount is regarded as enough. The figure in the Act becomes something of a psychological barrier which only some unions are successful in breaking through.

That the 1922 provision had thus more strength than its words gave it is confirmed by the conversion of the 1/- a week for the first month to 1/- a week without time limit in 1936 without apparently causing difficulty to unions. The 1936 Amendment Act[12] stated "It shall not be competent for any industrial union of workers . . . to provide in its rules for the payment by its members of subscriptions exceeding one shilling a week unless the rules, in so far as they relate to the subscriptions payable by members, have been adopted at a meeting of which not less than seven days' notice in writing was sent to every member, and such notice contained an express statement to the effect that the purpose or one of the purposes for which the meeting was called was to adopt rules providing for the payment by members of subscriptions at a rate exceeding one shilling a week." In s.73 of the 1954 Act the amount was raised to two shillings and the requirement tightened to read "unless the rules . . . have been adopted by a majority of the valid votes cast at a secret ballot of financial members of the union or society, being either a postal ballot or a ballot conducted in such other manner as may be approved by the Registrar". Generally unions had stayed below the "ceiling" throughout the intervening years. The implication that is read into the law may be more important than the actual words in which the law is expressed.

But even in 1936 the amount of 1/- a week was approximately 1.3% of the minimum adult male wage rate in unskilled occupations. In 1969 the limitation was still at the 2/- or $0.20 a week to which it had been raised in 1954, and in 1969 the amount of $0.20 a week was approximately 0.6% of an unskilled adult male wage rate. In other words the "ceiling", which was still a qualified ceiling but for practical purposes an effective one for most unions, had by 1969 cut the limit of union subscriptions in real terms to less than half what it had been in 1936. The 1970 Amendment of the Industrial Conciliation and Arbitration Act moved this "ceiling" up to 1%, still appreciably below 1936.

It is not difficult to envisage the effect of the erosion of subscriptions on union activities. If, in 1936, each thousand members at 1/- per week could support one full-time organiser, in 1969 at $0.20 a week this same organiser would have to be more thinly spread over some 2000 members. This same process of spreading more thinly would apply to all aspects of union service to its members. This can hardly be endorsed as a good preparation for the greater problems and complexities of the present technological era.

Since employers operated their broader activities through their trade associations—which were not subject to limitations on scope or subscription—and not through their industrial unions, the restrictions of the legislation in both directions did not affect them; but because there were the shadowy industrial unions of employers as well as the active trade associations, the trade associations tended to leave industrial relations out of their discussions and the industrial unions, during their brief periods of emergence from hibernation, were hardly in a fit state to

12 Industrial Conciliation and Arbitration Amendment Act 1936, s.28(2).

give such matters more than the minimum of formal attention. It is interesting but unhelpful to conjecture on the different quality of attention which industrial relations might have received from employers if the legislation had recognised the trade associations as the industrial relations organisations of employers in the industrial conciliation and arbitration system.

Membership

The Industrial Conciliation and Arbitration Act 1894 was an act "to encourage the formation of industrial unions" and from the beginning the Court of Arbitration took the view that, in the light of this objective it was proper for awards and industrial agreements made pursuant to the Act to include a provision giving members of an industrial union preference of employment. In September 1896, in its first award which applied to the Denniston Coal-miners' Industrial Union of Workers and the Westport Coal Company[13] the Court included the following clause: "20. That, as regards hewing coal and trucking and tipping, so long as there are sufficient capable men at Denniston out of work, the company shall employ these either by the contract or day-labour provided they are willing to work at reasonable rates, before the company calls for tenders from outsiders or employs outsiders." As the Denniston men were all members of the union this clause in effect gave preference to union members. In its award covering Canterbury Bootmakers in December of the same year[14] the Court was much firmer in the matter of preference. The Award included the following provision: "2. Employers shall employ members of the New Zealand Federated Bootmakers' Union in preference to non-members, provided there are members of the union who are equally qualified with non-members to perform the particular work required to be done, and are ready and willing to undertake it . . . " The legality of the Court's action in awarding preference to unionists was tested in the Courts in 1900 and upheld.[15] In 1916 the Courts reached the complementary decision that the Court of Arbitration had no powers to require non-union workers to join a union.[16]

As far as industrial unions of workers were concerned the position until 1936 was that the union had to exert itself to ensure that workers became and remained members in order to give meaning to the preference clause. Unions appreciated that, at the point at which the employer had a reasonable choice between unionists and non-unionists the phrase "equally qualified to perform the particular work required" placed the choice within the discretion of the employer.

There has always been a division of opinion in trade union ranks regarding the desirability of making membership of a trade union compulsory, but until the 1930's the weight of trade union opinion rested on preference rather than compulsion. It was section 7(6) of the Industrial Conciliation and Arbitration Act 1932 which probably did most to tip the balance of opinion the other way. Previously, if the parties failed to reach agreement in Conciliation Council the dispute automatically went forward to the Court of Arbitration for hearing and the making

13 I *Book of Awards* 175.
14 I *Book of Awards* 203.
15 *Taylor and Oakley* v. *Mr Justice Edwards* (1900) 18 N.Z.L.R. 876.
16 *Magner* v. *Gohns* [1916] N.Z.L.R. 529.

of an award. The 1932 amendment provided that with some exceptions for women workers, a dispute could not henceforth be referred from Conciliation Council to Court of Arbitration unless both sides agreed. In a situation of falling prices and massive unemployment this meant that the employers could go into conciliation proceedings armed with the ultimatum of "accept or go without any agreement or award". Between April 1932 and June 1934 ninety-six awards and industrial agreements went out of existence by this process—and with them went "preference to unionists" and union membership.[17] By the end of 1933 trade union membership had reduced by some 30% from its 1929 level. The 1932 legislation engendered great bitterness in the trade unions and a determination that the pendulum which had swung so far against them should be swung equally far in their favour. In 1936 when their opportunity came, the newly elected Labour Government acceded to their demand for compulsory unionism, a delayed effect which was certainly not in the minds of those who passed the 1932 legislation.

The Industrial Conciliation and Arbitration Amendment Act of 1936[18] provided that: "In every award made after the passing of this Act the Court shall make provision to the effect that, while the award continues in force, it shall not be lawful for any employer bound thereby to employ or to continue to employ in any position or employment subject to the award any adult person who is not for the time being a member of an industrial union of workers bound by that award . . . ". A similar provision was deemed to be included in every industrial agreement made after the passing of the amending Act and in every award and industrial agreement then in force. In *Needed Reforms in Industrial Conciliation and Arbitration*[19] I have summarised the results of this 1936 amendment as follows: "Compulsory unionism weakened the trade unions. With union dues flowing in automatically there was no necessity on trade union officials to do anything to maintain and expand membership. Their task was not to sell trade unionism to workers, not to hold on to members, not even to justify taking their contributions, for the law looked after all these things. Many trade union managements succumbed to this opiate. And, since the members similarly could do little about their membership and their contributions, it is not surprising that apathy to union matters was so often their main characteristic."

In 1961 the Act was amended[20] to remove the statutory requirements of union membership and to replace it by a provision enabling the assessors for the parties in conciliation council proceedings to agree between themselves to the inclusion in the industrial agreement or award of a clause—called an unqualified preference clause—making membership of an appropriate union a condition of employment. Because the assessors have so agreed in every case since, there has in practice been no change in the necessity for a worker in employment covered by an award or industrial agreement to join a union, but the compulsion is now self-inflicted by the parties on themselves, instead of imposed by Government. Moreover, the possibility of lack of agreement on the matter now exists and in such event the union would

17 International Labour Review, December 1936, 733.
18 Industrial Conciliation and Arbitration Amendment Act 1936, s.18 as further amended by Statutes Amendment Act 1936, s.37.
19 N. S. Woods, *Needed Reforms in Industrial Conciliation and Arbitration*, Industrial Relations Centre, Victoria University of Wellington, 1970, 5.
20 Industrial Conciliation and Arbitration Amendment Act 1961, s.2.

either have to show that not less than fifty per cent of the workers to be bound by the industrial agreement or award want union membership, or revert to the old-style preference clause. There is thus somewhat more incentive to take active steps to win workers to supporting trade unionism and to retain that support.

Employers on the other hand have never had compulsory membership of industrial unions of employers, although the proposition is not entirely without its advocates. They tend to have suffered from the reverse situation of too high a proportion of employers who do not belong to the organisation; or who, though belonging, ignore it. The position of the employer has always been that he becomes bound by awards or industrial agreements whether or not he belongs to an industrial union of employers. Being a member adds to neither his bondage nor his freedom.[21]

The right to expel a member, whether exercised or not, is probably basic to internal discipline, and therefore to executive strength, in most organisations. A close examination of the Industrial Conciliation and Arbitration Act will reveal nothing that could inhibit the right of an industrial union of employers or of workers to expel a member for sufficient reason. Nor does the Act specifically express such a right. It is completely silent on the matter and this silence is of some difficulty on the workers' side where the Act specifically deals with resignation from membership and the purging from the register of persons in arrears with their subscriptions. There are three ways of removal from membership—resignation, purging the roll, and expulsion. If the legislators found it necessary to express the first two, what is the significance of their silence on the third? Are workers illogical in assuming that, in this context, the unexpressed power is a power withheld, for it has been a common belief amongst many of them that the union could not expel. But what happens if a union expels a member? The Act provides that a person does not have to be a member of a union at the point of being engaged by an employer. After being engaged, however, he must join the union within a specified time and, unless he is a person "of general bad character" the union must accept him. Thus an expelled member must be accepted back into membership as soon as he obtains a new engagement in the industry, unless the union is prepared to assert that he is a person of general bad character—and to take the legal consequences of such an assertion. The legislation virtually denies an industrial union of workers the disciplinary power of expulsion from membership.

The Influence of the Legislation on Procedures

Quantitively most of this article has been devoted to a discussion of industrial relations organisations. We have looked at the influence of legislation on the size and geographical coverage of industrial unions of employers and of workers, on the activities of such unions and on membership of them. This preponderance of attention to organisations is deliberate. The procedures established by the Industrial Conciliation and Arbitration Act 1954, the Labour Disputes Investigation Act 1913,

21 The employer becomes bound through the action of a trade union in registering as an industrial union of workers and thereafter obtaining an industrial agreement or award pursuant to the Industrial Conciliation and Arbitration Act.

and the Industrial Relations Act 1949 are no more than facilities for the use of the organisations, to enable them to express their claims on each other and to resolve their conflicts with reasonableness and fairness and without disruption and loss of earnings and production. The system is not an end in itself although it is commonly spoken of, regarded, and dealt with legislatively as if it were—so much so that in various places it attempts to shape the organisations to fit the system instead of vice versa. The system—or the procedures, which are the same thing—may hamper the organisations, but in any case the system can never be more effective than the quality of the organisations will allow it to be. If the system has bent and disarrayed the organisations, it is organisation rather than system that requires overhaul; but this does not free the system from scrutiny.

From time to time through the years the criticism has been voiced that the Industrial Conciliation and Arbitration Act and the Labour Disputes Investigation Act bring the two sides in industry around the table only on a narrow front of specific issues and only when they are in opposition to each other. The criticism has more or less implied that this legislation should have done something to bring the parties together on other occasions and other grounds. Such has never been a purpose or function of the legislation and to confuse its function would hardly be helpful. This particular gap left unbridged by the two Acts mentioned would have to be bridged somewhere else.

To provide such a bridge was a main purpose of the Industrial Relations Act 1949 which provided for an Industrial Advisory Council and Advisory Committees. The Council was set up and has achieved much useful work, but has tended to fall into disuse as the custom has developed for the New Zealand Federation of Labour and the New Zealand Employers' Federation to discuss major policy matters directly between themselves—a good custom. Advisory Committees have not operated and none of the main organisations has shown any inclination to have such committees; they prefer to retain initiatives at a national level between main organisations.

The other place for constructive bridgework is the work-place. Here again, the function of the legislation is narrowly specific and leaves the more preventive and constructive measures to be promoted by other means.

The Industrial Conciliation and Arbitration Act includes disputes procedures but until last year's amendment[22] its procedures could not be applied to two most prolific causes of industrial conflict. The procedures could not apply to a dispute on any matter for which the award or industrial agreement made specific provision. If, for example, the award said that the wage rate for a category of workers was $35.00 there could be no dispute about this even though the wages of surrounding categories of workers had changed so much as to make this amount clearly unfair. Nor could the disputes procedures apply to any matter not dealt with in the award or industrial agreement. For example, if the award had no provision relating to alleged wrongful dismissal—and it would be unusual for an award to have such a provision—then an alleged wrongful dismissal could not be dealt with under the disputes procedure. The logic of this was sound enough in that an inferior body created by the award should not have power to amend the award which

22 Industrial Conciliation and Arbitration Amendment Act 1970.

created it. But for practical purposes alleged unfair wage rates and alleged wrongful dismissals between them cause the bulk of industrial conflict and the logic of the law was of no help in resolving such conflict.

Section 8 of the Industrial Relations Act 1949 made an attempt to cover this area by permitting a Conciliation Commissioner to call a compulsory conference "at any time, if he thinks fit, whenever he has reasonable grounds for believing that a strike or lockout exists or is threatened in any district in which he exercises jurisdiction, in respect of any matter which in his opinion is not specifically provided for in any award or industrial agreement . . . " The power to call such a conference was extended to the Minister of Labour in 1963[23] and in addition he was given power to set up a committee of inquiry in such circumstances.

While these provisions have been used considerably and usefully they have not been a satisfactory solution of the problem, partly because disputes over matters specifically provided for in the award or industrial agreement still remained beyond reach of disputes procedures, and partly because one Act tended to provide an escape from the other.

The Industrial Conciliation and Arbitration Amendment Act 1970 went further towards resolving this problem by providing specifically for procedures for handling personal grievances. It also improved the residual disputes procedure under the Act, but still restricted it to matters dealt with in the award or industrial agreement and not specifically and clearly disposed of by the terms of this instrument—which still leaves wage-rate disputes out of bounds.

As I have discussed more fully in my paper *Needed Reforms in Industrial Conciliation and Arbitration*[24] the procedures of the system originated at a time when conformity was usual as well as desirable and are slanted against the non-conformist. But in this era of technology the non-conformist has achieved a new significance which has to be recognised. Moreover, the impact of change is greater and sharper and when it creates conflict the disputes-settling machinery needs to be in action with the promptness of a fire-brigade rather than with the slow-moving formalities of section 176 of the Act as it stood until amended last year. The extent to which the new provisions speed up the procedure remains to be seen.

Many other aspects of procedures could be discussed and I have dealt with some of the more important in my paper referred to above and in my more recently published paper *Industrial Relations Legislation Reconstructed*.[25] The present discussion has, however, gone far enough for its main purpose which has been to look at the way in which legislation has affected the characteristics of industrial relations organisations and more briefly, the effectiveness of dispute-settling procedures.

Conclusion

I remain firmly convinced that the organisations are the most important elements in any industrial relations system. They should grow and change with the times. The legislative framework within which they

23 Industrial Relations Amendment Act 1963, s.2.
24 See n. 19 *supra*.
25 N. S. Woods, *Industrial Relations Legislation Reconstructed*, Industrial Relations Centre, Victoria University of Wellington, 1971.

operate should be shaped to them and not vice versa. Through all this there runs the thought that laws pertaining to human relationships should remain under constant revision. They should change with changes in human attitudes, aspirations, customs, ways of life, social groupings, and so on. In New Zealand we have not done this sufficiently in our industrial legislation. If you keep a growing foot for long enough in an unchanging shoe the shoe may ultimately crack, but by that time the foot will have become sore, injured, and possibly permanently deformed.