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Industrial conflict in New Zealand, 1951-61.

INDUSTRIAL CONFLICT IN NEW ZEALAND 1951-61.

P R E F A C E

This thesis represents an attempt to examine, in a particular historical context, the relationship between the system designed to regulate industrial conflict in New Zealand and the kind of conflict which ensues as a result of the existence of that system.

The central event is the waterfront stoppage of 1951 which, over a period of five months, resulted in the loss of more than a million working days to New Zealand industry.

A period of strife of the magnitude of the 1951 crisis could have served to perpetuate traditional patterns of conflict. In the event this does not seem to have happened. By over-reaching itself in 1951 the militant section of the industrial labour movement in New Zealand confirmed the attitude of the moderates: that direct action was a dangerous method for redressing grievances and securing concessions.

In the decade after 1951 the incidence of stoppages and strikes was much lower than hitherto. The theme of this study is not that a period of conflict was followed by a decade of industrial harmony, but that the nature of industrial conflict itself underwent a

significant change. After 1951 conflict between workers and their employers was not suspended, but it took place largely at a political level, in a way which obscured most of the visible signs of discord.

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L. G. L.

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NOTE ON ABBREVIATIONS

AJHR: Appendices to the Journals of the House of Representatives.

BA: Book of Awards.

LEG: Labour and Employment Gazette.

NZLJ: New Zealand Law Journal.

NZLR: New Zealand Law Review.

NZPD: New Zealand Parliamentary Debates.

NZR: New Zealand Statutory Regulations.

NZS: New Zealand Statutes.

TABLE OF CONTENTS

CHAPTER 1

Introduction

When politicians are urged to act according to the general interests of society they usually protest that they would not think of doing anything else. But in a society which recognizes that people tend to pursue what they regard as their own interests the work of politicians is not so simple. If the activity of politics serves the interests of society it does so, not because it determines policies which are generally acceptable, but because it enables conflict between opposed power groups to be resolved by conciliation and compromise instead of by open trials of strength.

The essence of politics is compromise. Politicians are involved in the everyday activities of political groups striving to achieve whatever a notion of good government means for each of them. By the elaboration of different aims the groups provide different solutions to the practical problems of government. The task of politicians is not to select any single solution but to arrive at a level of compromise which neither completely satisfies any of the groups nor completely antagonizes all of them.

Governments may successfully dispense with politics. Policies might be formulated with the aid of the Divine Will or the material dialectic, or any other force which is held to reveal the general interests of society. Such a government usually defends the "correctness" of its actions and is intolerant towards people who deny its infallibility. For those governed in this way the knowledge that truth is on their side may be adequate compensation for this lack of tolerance. They may be quite willing to make sacrifices in order to hasten the advent of the new age prophesied by their leaders. The language of politics is more self-interested: the mundane activity of resolving the conflicts which arise between different groups in society is the proper function of politics.

That techniques exist for the peaceful resolution of conflict is the hallmark of a political society. In such a society the state ought to be viewed as a collection of institutions and rules providing an arena within which various groups can pursue diverging aims. Agreement upon the rules of the game does not prevent each group from trying to win, but the result is normally something less than complete victory. For this reason conflict itself has an important social function. The expression of conflict defines those who must be considered when any issue of

government arises. Where it becomes articulate conflict clarifies the line of disagreement between opposed groups and not only brings political problems to the attention of those concerned with government, but allows public scrutiny of the issues involved. Opportunities for the expression of conflict, no less than methods for resolving it, are essential for the health of the political community.

Industrial conflict forms part of the wider dimension of political conflict. Since workers and their employers view the process of industry from different perspectives a certain amount of conflict is a fact of life in any industrial organization. Employees tend to assess their part in the process from the standpoint of their relatively short-term needs, especially in so far as it provides their livelihood and a certain degree of personal security. For their part most employers are more concerned with long-term factors, particularly investment and other aspects of business planning. They regard the proceeds of industry not solely as the means for satisfying immediate wants but as the source of capital which, by being transmitted for the use of future generations, will ensure the continued existence of the enterprise. The difference between these attitudes, if not as irrevocable as some people believed, is likely to lead to friction between the workers and employers in any industrial undertaking.

The most public manifestation of industrial conflict is the strike, the concerted cessation of work carried out by a number of workers in an attempt to redress their grievances. While they have undoubtedly become more important with the development of modern industry, strikes are not one of the new products of the industrial era. One of the earliest recorded was that of the Hebrew brickmakers in the fifteenth century B.C.[1] In the absence of effective political channels for workers to express their attitudes and air their grievances the strike was almost the only weapon for challenging the power of employers. With the rise of trade unionism and successive extensions of the franchise, workers had the choice of other techniques in their campaign to bring before their employers and the public their claims for increased wages and better conditions of work. Today, with the growth of an institutional arena within which conflict can take place in an orderly fashion between organized groups of workers and employers, the strike is only one aspect of industrial conflict - and not always the most important.

To this extent industrial conflict in a political society may be largely sublimated. Industrial relations have been developed so that both employers and employees can pursue their own interests in a diplomatic fashion which suppresses

1 Exodus V.

most of the visible signs of discord. These are notable and spectacular exceptions when open conflict erupts in the form of a stoppage or a strike; but industrial conflict, like other forms of social conflict, typically takes place with a remarkable lack of acerbity at an institutional level.

Industrial relations are normally formed in two spheres: local relations at the place of work between the management and the trade union branch; and collective relations between unions of employers and unions of workers on a regional or national basis. The first involves personnel mnagement, foreman control, and the settlement of local disputes. The second sphere of industrial relations forms the broad context within which the groups negotiate over wage rates, general working conditions and all other matters of more than local importance.

The fact that these diplomatic contacts exist suggests that there can be more than a conflict relationship between employers and employees. In the last resort both depend on the success of their combined efforts for the successful prosecution of their own interests. There is an area of harmony within which workers and employers can work together if they recognize that unless the joint operation of industry is profitable their sectional interests cannot be served. Making an industry productive and profitable does not solve the problem of the division of the dividends of the combined activity, but it can provide a realistic basis for bargaining between the groups.

When employers and workers attempt to reach agreement upon their respective shares of the proceeds of industry, in the light of their own interests both sides usually have equally valid justifications for their own bargaining positions. It has already been suggested that unless there is to be a trial of strength between the two the only solution is negotiation to compromise, or politics. Given that both groups usually want to avoid overt conflict, they also have a mutual interest in maintaining efficient machinery for negotiation and the settlement of industrial disputes. In this way they can ensure that conflict does not degenerate into an open contest of no advantage to either side.

Industrial conflict is not always conducted in such a rational manner. Workers and employers may mistake their own long-term interests; they may even have a mistaken conception of their immediate interests. The type of conflict which ensues is likely to be characterized by a degree of animosity which exaggerates the importance of matters actually in dispute. Notions of an irreconcilable battle between workers and their employers may be the decisive factor in determining the way in which the disputants view each other. Neither group may be prepared to admit that while, because of the nature of industrial work, there is ample scope for conflict between employers and employees, there is also an area of potential harmony within which they can work together to their mutual advantage. As a rational activity politics

is liable to be inadequate for dealing with attitudes which are rather more emotional but nonetheless real.

The language of class conflict is in part the legacy of Karl Marx. When Marx uses the term "class" he refers to economic groups defined by their role in the productive process. Between different classes there is always an irrevocable clash of interests which at times develops into bloody class warfare and always ends with the annihilation of one of the contenders or with the destruction of both.

> The history of all hitherto existing society is the history of class struggles.
>
> Freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes.[1]

In Marx's view class struggles may become manifest as political struggles, but when they do the state is always ready to intervene in defence of the ascendant class, for by definition the state is the sum of the institutions which operate to preserve the ascendancy of one class. When the exploitation of workers is ended with the victory of Communism society will be classless, since all citizens will be both owners and producers. Only with the removal of a special

1 K. Marx and F. Engels: Selected Works, Vol 1, p.33.

class of owners will conflict cease.

Despite the fact that attitudes towards Marx are uncertain and as often as not openly hostile, mainly because of his gratuitous reputation as the architect of the revolutionary excesses which have been carried out in his name, Marx's thinking about class conflict has influenced many people in a way which they undoubtedly fail to recognize. Whether or not classes in Marx's sense have ever existed people have often behaved as if they did, and to the extent that they have done so because they accept the Marxist analysis of society, that analysis have become self-fulfilling.

Marx made a perceptive survey of the likely development of industrialization, but in the universal theory of class conflict which he distilled from the experience of mid-nineteenth century Europe he understandably did not evisage the peaceful reforms which were to alter the nature of capitalism and fulfil most of his ideals without the bloody revolutions he predicted.

According to the strategy unfolded in the Communist Manifesto, the proletariat was to be in the vanguard of revolution because of its strength and its important role in the economy.[1] The early Communists turned their attention chiefly towards Germany for there they thought a bourgeois revolution was imminent. In the Marxist scheme of things such a revolution was merely the prelude to the rise of the proletariat

1 Ibid, p.40.

and the overthrow of capitalism.

> The development of modern industry ... cuts from under its feet the very foundation on which the bourgeoisie produces and appropriates products. What the bourgeoisie, therefore, produces above all, are its own grave-diggers. Its fall and the victory of the proletariat are equally inevitable.[1]

But it is the most industrialized countries which have evolved furthest away from the expectations of Marx. Here the demands of the masses for political and economic equality have been contained within a reformist rather than revolutionary ethos. They have seldom been accompanied by any serious movement to "abolish" the wages system and overthrow existing political institutions, precisely because these institutions have been flexible enough to meet the demands made upon them. As a revolutionary creed Communism has been successful only in countries which lack, according to Marx's criteria, the basic conditions for revolution.

Nevertheless, in the age of the welfare state much of Marx's thought has adhered to ideas about industrial relations. Industrial workers seem to have discarded their revolutionary aspirations; but traditional ideas about the necessity for trade union "solidarity" and traditional suspicion about the motives of employers have been kept alive, largely because of the popularization of Marx's notion of class-consciousness.

Throughout the Manifesto the theme is developed that it is not enough for the proletariat to have good reasons for

1 Ibid, p.43.

waging war on the bourgeoisie. To ensure that the struggle is conducted successfully workers must have an awareness of their identity as a class. It is the task of the Party to foster this. By its leadership and inspiration the Party is to speed up the forces of history and hasten the birth of the new society; to make sure that the proletariate do not neglect to carry out their inevitable revolution.

Shorn of its apocalyptic content, trade union leaders still use class language, and for obvious tactical reasons. To many people the idea that they are striving to fulfil worthwhile social aims has a strong appeal which is not diminished when their individual interests happen to be in accord with these aims. At times union leaders make the most of this feeling by raising the political conflict between employers and employees on to a moral plane. They, themselves, may have a very clear conception of what politics means in practice, but they may also be handicapped by the tactics which they use to gather support for their policies. The idea of irreconcilable class conflict, which supposes that if one side gains any advantage it must be at the expense of the other side, explains why many industrial disputes are marked by a degree of intransigence out of all proportion to the matters being disputed. Although trade union leaders are as much aware as anyone that in most bargaining situations both sides can make mutually advantageous concessions, if they attempt to engage in such enlightened activity they are

likely to be regarded as renegades to their class.

The values behind Marx's ideas of class conflict are little removed from current western social values. He believed that in the classless society all social and political inequalities would be smoothed out, the government being charged with the responsibility for maintaining a high material standard of living. But Marx thought that these conditions could only come about in a society where there was no division of interests and hence no conflict. It is one thing to recognize that different groups have conflicting interests; it is quite another to suggest that it is impossible to have a society which accommodates all of them. In a political society conflict is accepted as a necessary social force. What is most important is not the fact that conflict exists, but the manner in which it is expressed and resolved.

Contrary to Marx's expectations the evils which he thought were an inescapable part of industrialization have not been perpetuated. Far from kindling a revolutionary spirit, by its material success industrialization has smothered the spark of revolt. This does not mean that industrial conflict presents no problems, but most of the problems are amenable to political solutions within the existing framework of society. They need not depend for their solution upon any revolutionary social reconstruction.

In a society which has survived the dislocations of incipient industrialization the operation of industry should be regarded as the association of labour, capital and management in a combined effort to satisfy the needs of society. Conflict over the spoils of the joint venture is strictly not between labour and capital at a primary level, but between all the different categories of people who contribute to production. In any industry groups of skilled workers may have just as many points of difference with groups of labourers or office workers as they have with their employers. The enlightened pursuit of group interests is the reason for the existence and the chief guarantee of the stability, of the political society.

In such a society this political activity takes place within certain clearly defined limits. The distinction is often made between two main types of collective industrial relations: compulsory conciliation and arbitration, where the emphasis is placed on third party mediation in industrial disputes, supported where necessary by arbitration; and collective bargaining, where although mediators and arbitrators might be employed voluntarily, the settlement of disputes by direct negotiation is the typical pattern.

To draw out the difference between the two, attention is usually focussed on the role of the government in each system. Collective bargaining is described as an orderly procedure where representatives of workers meet with employers

to bargain over the terms of their working relationship. The results of negotiations are contained in written agreements signed by the parties concerned. These documents specify the terms of employment and working conditions. If agreement is not forthcoming the parties may voluntarily decide to employ the techniques of conciliation or arbitration; or they may seek to support their demands with the sanction of direct action in the form of a strike or lockout. It is usually emphasized that where industrial relations are conducted according to a code of collective bargaining, except in periods of crisis, industrial conflict is the business of the disputants and government does not intervene except in so far as it may provide the machinery for voluntary mediation.

On the other hand, compulsory conciliation and arbitration is regarded as a system where government plays a predominant role in that it has the responsibility for maintaining the machinery for settling industrial disputes. The function of conciliation is to bring the parties involved in a dispute into an area of agreement which can be the basis for compromise. While the ultimate settlement at this level depends on mutual agreement, the mediator plays a large part in defining the terms of a possible solution. Arbitration depends not on internal compromises of this sort, but on decisions imposed from without. The basis of arbitration is the acceptance by each party of the authority of the arbitrator to make a

settlement. At either level the machinery for the regulation of conflict is thus provided by the state, for both conciliators and arbitrators are appointed by the government.

In practice the differences between the two systems, although very real, are not as great as they appear. Industrial relations in the United States may be regarded as a good example of collective bargaining in action, but a number of recent Federal acts, chief among them the Labour Management Relations Act 1947 and the National Labour Relations Act 1961, have extended the control of the Federal Government over industrial relations. The right of employers or workers to take direct action, long held to be a distinctive feature of collective bargaining, has been restricted by the establishment of a Federal Mediation and Conciliation Service. Either party wishing to negotiate a new wage contract is now obliged to give two months' notice of its intentions, and if no agreement is reached within the first month the mediation authority must be notified. If in the following month the authority fails to break the deadlock, only at the expiry of the full two months may a strike or lockout legally take place.[1]

The role of the President of the United States has also been enlarged. If he is of the opinion that a strike or lockout will imperil the national interest the President may

1 "Industrial Conciliation and Arbitration in the United States". LEG Vol 13, No 4, pp.50 ff.

intervene in industrial disputes by securing an injuction from the Federal District Court which has jurisdiction over the contestants. The parties are then required to attempt to settle their differences through the Mediation and Conciliation Service for a further period of two months.[1]

As it has developed in New Zealand the system of conciliation and arbitration involves the compulsory conciliation of most disputes, but while under the American legislation either side may, with the qualifications already mentioned, have recourse to direct action after the initial "cooling-off" period, the New Zealand system expressly prohibits the use of the strike or the lockout, Despite this, however, the New Zealand pattern of industrial relations allows a considerable degree of bargaining and the use of direct action in a de facto form is by no means an exceptional occurrence in this country.

In all countries where the development of industrial relations between secondary political associations is not proscribed, the state provides some part of the machinery by which industrial conflict is regulated. Workers and employers must operate within the limits of potential government intervention. What makes the regulation of industrial conflict in New Zealand unique is the stage at which the state assumes responsibility: the system of conciliation and arbitration largely determines what happens in the day to day

1 Ibid, p.51.

relations between workers and their employers.

CHAPTER 2

The Regulation of Industrial Conflict in New Zealand

The laws designed to regulate industrial conflict in New Zealand can be viewed under two aspects. There is a legislative framework within which industrial relations are obliged to develop and within which industrial conflict is normally resolved; and there are certain deterrents which seek to restrain excursions outside the limits of this framework. A description of the relevant legislative provisions will illustrate each of these aspects.

The Industrial Conciliation and Arbitration Act

First enacted in 1894 after a series of industrial crises culminating in the maritime strike of 1890, the Industrial Conciliation and Arbitration Act in its original form involved a degree of state intervention in the field of labour relations unknown in the older industrial countries. New Zealand became the first country to establish a national system for the compulsory reference of labour disputes to arbitration when the methods of conciliation devised to deal with such disputes had been exhausted.[1]

1 For an account of the origins of the I C & A Act, see N.S. Woods, Industrial Conciliation and Arbitration in New Zealand, pp.19 ff.

The aim of the Act was to regulate industrial conflict by the procedures of conciliation and arbitration. The legislation was regarded only by the most optimistic as the means whereby all strikes could be prevented, but it was expected that the existence of legitimate avenues for the regulation of conditions of employment and the settlement of industrial disputes would greatly reduce the incidence of overt conflict. The Act was the result of an attempt to substitute an orderly method of bargaining within the restraining boundaries of conciliation and arbitration for unrestrained tactics of direct negotiation supported by the sanction of direct action. At the point where negotiations between workers and their employers broke down mediators, and in the last resort arbitrators, were to assist in reaching peaceful settlements of industrial disputes.

Individual workers were given no status under the Act. It was thought that the advantages of orderly negotiation between organized groups of workers and their employers would encourage the formation of collective sets of industrial relations and deter irresponsible action. To this end the statute was entitled on Act "to encourage the formation of industrial unions and associations and to facilitate the settlement of industrial disputes by conciliation and arbitration."

After the failure of direct action during the maritime strike of 1890 the industrial labour movement in New Zealand was amenable to any legislation which promised to restore the bargaining power of the trade unions. Beginning in Australia over the dismissal of a seaman from the steamer "Corinna" for being a union delegate, the maritime strike quickly spread to New Zealand in a contest over the rejection by some employers of what workers claimed was their right to be organized in trade unions and represented by union officials. The Industrial Conciliation and Arbitration Act not only recognized this right but made it clear that trade union development must be fostered in order to ensure that as many workers as possible belonged to organized groups within the scope of the procedures of conciliation and arbitration.[1]

Many employers were not similarly inclined to favour the new system, and for a time they refused to nominate representatives to sit on the Boards of Conciliation set up under the Act.[2] Attitudes gradually changed when employers realized that their victory in 1890 was not permanent and that it was to their advantage to have a

1 Although the Trade Union Act 1878 laid down that trade unions were not illegal and recognized their right to hold funds and take part in labour negotiations, this was not yet fully accepted by all employers.
2 Woods, pp.50-54. The Boards were later Councils of Conciliation.

system for the peaceful settlement of disputes rather than to risk the dislocations to industry caused by frequent strikes.

By the turn of the century both sides seem to be agreed that the Act offered the best guarantee for the orderly pursuit of their sectional interests. Although in the years to follow one side or the other at times withheld their support for the principles of conciliation and arbitration, the system became firmly entrenched in the industrial life of New Zealand.

The System in Action

Over the seventy years since the inception of the Act the system of conciliation and arbitration has been modified in many ways and the accumulation of these changes has resulted in several recodifications of the original legislation.[1] Apart from the initial experiments in the first years of the operation of the Act, and for three years during the depression when the provision for the compulsory arbitration of unsettled disputes was temporarily removed, the basic principles and procedures of the system have nevertheless remained remarkably constant. The techniques of conciliation and arbitration have become the methods by which most industrial disputes are settled in New Zealand.

1 There have been more than forty amendments to the I C & A Act and five consolidations, the latest in 1954.

Once an industrial dispute arises the machinery of the Act enables a Council of Conciliation to be convened under the chairmanship of a Conciliation Commissioner, an official of the Crown.[1] The technique of arbitration may not be used until the channels of conciliation have been exhausted, and to this end no dispute can be referred to the Court of Arbitration, the central institution of the system, until it has first been placed before a conciliation council in accordance with the regulations.[2]

At conciliation hearings the parties are represented by an equal number of assessors, all of whom must have had experience in the industry in which the dispute has arisen.[3] The task of the Council is to assist the parties

1 The term "industrial dispute" has a specific legal connotation: where it is shown that employers or workers have rejected a log of claims for changed conditions of work an "industrial dispute" is deemed to exist. This definition was laid down in Cromwell and Bannockburn Colliery Co. v. Board of Conciliation for Industrial District of Otago and Southland. NZLR, 1906, p.986.

2 NZS 1951, No. 239, S.28 (1) altered arrangement whereby some disputes were heard in the first instance by the Court of Arbitration.

3 NZS 1925, No. 24, S.41 (6). Except that where this is impracticable one assessor on each side may be appointed who is not so qualified.

to reach agreement over the matters in dispute:

> It shall be the duty of the Council to endeavour to bring about a settlement of the dispute, and to this end the Council shall, in such a manner as it thinks fit, expeditously and carefully inquire into the dispute and all matters affecting the merits and the right settlement thereof.
>
> In the course of the inquiry the Council shall make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute.[1]

The legislation thus makes it quite clear that the task of the council in assisting the parties to reach an agreement is not to be confounded by excessive formality.

The role of the Conciliation Commissioner as chairman is limited so that he does not become merely an arbitrator at a lower level. In procedural matters if the assessors are equally divided the Commissioner has a casting vote and the decision of the council is determined accordingly.[2] This helps to ensure that proceedings do not become deadlocked over relatively minor points of difference. Where the main issues in dispute are concerned, while it is the Commissioner's duty to suggest possible compromises, if the parties remain equally divided he may not use his casting vote to determine the decision of the council. The ultimate basis of settlement at the stage of conciliation rests upon compromise between the parties concerned.

1 Ibid., S.46
2 Ibid.

If the parties arrive at a settlement during the course of a conciliation hearing the terms of the settlement may be set forth either as an industrial agreement, binding only on the immediate parties, or they may be forwarded to the Court of Arbitration to be made into an award, enforceable on every employer and employee in the area and industry to which it relates.[1] Failing settlement the dispute is then referred to the Court for arbitration.

The Act obliges the Court of Arbitration to sit in each of the four main centres at least once every three months to deal with disputes which have been referred to it, with provision made for extra sittings if the Court thinks fit. The Court is constituted by a judge who holds permanent appointment, and by one representative each of workers and employers appointed for three-yearly terms. It has wide-reaching powers to deal with the disputes within its jurisdiction. In all matters before it the Court has "full and exclusive jurisdiction" to determine them in such ways as in equity and good conscience it thinks fit.[2] The function of the Court is to arrive at a fair settlement of industrial disputes and to assist the Court in this activity it is expressly laid down that the proceedings of the Court are not to be impeached for want of form.[3]

1 See below p. 31.
2 NZS 1925, No. 24, S.80.

> The effect of this provision is to place the Court of Arbitration absolutely beyond the control of or interference by the Supreme Court, however erroneous in fact and in law its judgments may be, provided that the Court of Arbitration purports to act in pursuance of the Act and confines itself to the subject matter of the Act....[1]

The Court may thus admit any evidence which it considers relevant to the disputes within its purview. The conciliation hearings are the source of much of this information. The council may deliver to the Court a memorandum of matters settled at the hearing despite the fact that other issues are still in dispute, and the Court, if it wishes, may include such a memorandum in any award it might make without reopening enquiry into the nature of the partial agreements. In the words of a former Judge of the Court of Arbitration, "while the Court... is not bound to accept the terms of a partial settlement reached in conciliation, it is loath to interfere with the clauses framed by the representatives of the parties".[2] Prior to a dispute being referred there for arbitration the Conciliation Commissioner may also advise the Court as to the suggested basis for the settlement of a dispute, providing that this is unanimously agreed upon by the parties concerned. In these ways where complete settlement is not reached at the level of

1 A.J. Mazengarb, Industrial Laws of New Zealand, p.51.
2 A. Tyndall, The Settlement of Labour Disputes in New Zealand, p.34.

conciliation the work of the council enables the Court to have a clearer understanding of the ramifications of a dispute.

New Zealand's system of conciliation and arbitration thus combines two different techniques for the resolution of industrial conflict. The task of arbitration is to deal with intractable disputes, not by aiding the parties to reach their own level of compromise but by imposing the external decision of a third-party. The function of arbitration is essentially regulatory in that it prevents many disputes from degenerating into open contests; but while the arbitration of unsettled disputes may preserve industrial peace it does not provide the basis for enlightened industrial relations.

In theory the goals of conciliation are wider than those of arbitration. The existence of conciliation machinery gives rival groups the opportunity to discuss the fundamental issues which lie at the heart of most industrial disputes. In practice the technique of conciliation may be focussed on immediate points of difference at the expense of this wider view; but relying as it does on a certain spirit of compromise, the principle of conciliation at least offers the chance that workers and employers will develop closer contacts, to their mutual advantage.

Although the compulsory reference of disputes, in the first instance to conciliation councils, and where unsettled to the Court of Arbitration would seem to imply as a corollary the prohibition of strikes and lockouts, since these institutions are alternative and legitimate channels for the expression and resolution of industrial conflict, this was not emphasized in the original legislation. Under the 1894 Act either of the opposing sides could resort to the use of direct action after the advent of a dispute, providing that neither formally objected to such an action. If either side employed the machinery of the Act strikes and lockouts then became illegal, but only until the Board of Conciliation or the Court of Arbitration gave its decision.

In 1908, however, strikes and lockouts were declared illegal for all industrial unions and associations of workers and employers coming within the jurisdiction of the Court.[1] While it was appreciated that the existence of alternative methods for settling industrial affairs would not prevent all strikes, the prohibition of direct action, however ineffective in practice, made the point that registration under the Industrial Conciliation and Arbitration Act conferred certain rights in exchange for certain responsibilities.

1 NZS 1908, No.239, S.5.(1)

The Labour Disputes Investigation Act

Registration under the Industrial Conciliation and Arbitration Act is voluntary and the Labour Disputes Investigation Act is an alternative set of legislation designed to regulate industrial conflict in industries outside the jurisdiction of the conciliation and arbitration system. Introduced in 1913 following a series of industrial stoppages in the mining and waterfront industries, the Act applies to all workers and associations of workers not bound by an award or agreement of the Court of Arbitration and to the employers of these workers.[1]

Under the Labour Disputes Investigation Act workers who otherwise would have no recourse to conciliation may invoke the assistance of a Conciliation Commissioner or a Labour Disputes Committee in settling disputes concerning their conditions of employment. Where this procedure is used the workers involved must give notice of the dispute to the Minister of Labour, specifying the parties concerned and setting out the nature of their claims.[2] It is the responsibility of the Minister to determine the way in which the dispute will be dealt with. He may refer it to a Conciliation Commissioner, who is then obliged to summon a conference of the parties and conduct a hearing similar to the conciliation hearings under the Industrial

1 Such unions are registered under the Trade Union Act 1908.
2 NZS 1913, No. 75, S.4 (1).

Conciliation and Arbitration Act; or he may pass the matter on to a Labour Disputes Committee, a tribunal consisting of not less than three nor more than seven members as decided by the Minister.[1] Workers and employers are represented equally on the Committee and it is provided that on their appointment they may elect an independent chairman. If the representatives fail to agree on the choice of a chairman it is the responsibility of the minister to appoint a suitable person to that office.

The task of the Committee is to investigate the nature of a dispute and endeavour to reach a settlement. Like the hearing convened by the Conciliation Commissioner its function is essentially conciliatory. But while the methods of conciliation are in these ways available to workers outside the scope of the conciliation and arbitration legislation, there is no machinery for the arbitration of disputes unsettled at the level of conciliation, workers retaining the legal right to strike.

This right is not unqualified. Before workers not bound by an award or agreement of the Court instigate strike action they must fulfil certain procedural responsibilities. If settlement of a dispute is not reached during the sitting of a Labour Disputes Committee, the Committee is directed to include in its report to the

1 Ibid., S.5 (1)

Minister of Labour such recommendations for a future settlement as it thinks fit, and if the members are equally divided in opinion, instead of making recommendations the workers and employers may submit separate proposals for settling the matters in dispute.[1] If the dispute is still unsettled within fourteen days of the final meeting of the Committee, the Registrar of Industrial Unions is obliged to conduct or supervise a secret ballot of the workers concerned to ascertain whether a strike shall take place.[2] Only if a majority of the workers approve is the use of direct action legal.

The Labour Disputes Investigation Act is thus concerned with two aspects of industrial conflict. Its positive role is to supplement the machinery of the Industrial Conciliation and Arbitration Act by enabling labour disputes outside the scope of this act to be settled by the technique of conciliation, the results of this activity being set down in industrial agreements.[3] In its negative aspect the Labour Disputes Investigation Act is an attempt to seal off an area of potential industrial turbulence by specifying the steps which must be taken between the advent of a dispute and the use of direct action. By requiring workers to notify the Minister of Labour of the existence of a dispute and to participate in a secret ballot to

1 Ibid., S.6 (3)
2 Ibid., S.7
3 These have the same force and scope as industrial agreements made under the I C & A Act.

decide whether or not they will strike, the Act reduces the likelihood that they will become involved in precipitate conflict.

The Centripetal Nature of the System

The Industrial Conciliation and Arbitration Act does not apply to government employees, but industrial relations throughout the rest of the economy are almost completely dominated by the legislation. In theory, workers in the employment of privately owned businesses have the right to choose between the procedures of the Industrial Conciliation and Arbitration Act and those of the Labour Disputes Investigation Act, but in practice the choice is largely illusory. N.S. Woods, the present Registrar of Industrial Unions, makes this point succinctly: "Registration under the Industrial Conciliation and Arbitration Act is entirely voluntary, but the advantages of registration while not coercive are strongly persuasive."[1]

Unions outside the scope of the Act retain a limited right to strike legally and it might be expected that the more militant unions would avail themselves of this advantage. At the most, however, this has proved to be little more than a residual right, restricted as it is not only by the provisions of the Labour Disputes Investigation Act but by the operation of the Police Offences Amendment Act 1951, which virtually prohibits picketing and makes

1 Woods, p.15.

effective strike action even more difficult to carry out.[1] At times the limited right to instigate direct action has been suspended altogether: for the twelve year currency of the Strike and Lockout Emergency Regulations, first introduced in 1939 as a war measure, all strikes and lockouts were placed under a legal ban.

The doubtful advantages arising from the legality of limited strike action are outweighed by several organizational disadvantages. Under the Labour Disputes Investigation Act industrial agreements, enforceable only on the immediate parties, are the sole form of documentation for setting out wages and conditions of employment. As a consequence the scope of negotiations under this Act tends to be limited, the advantages gained by either side being restricted to the immediate parties in a dispute. Awards made under the Industrial Conciliation and Arbitration Act have a far wider application and thus serve to produce a large measure of uniformity in the minimum wages and conditions of an industry without an excessive duplication of negotiations between workers and their employers. The so-called "blanket clause" of the Act gives awards the effect of binding every employer and employee in the area and industry to which the document relates, irrespective of whether or not they take part in the hearings which produce the award.[2]

1 See below, p.82 ff.
2 NZS 1925, No. 24, S.89 (3)

As few as five people may form themselves into an industrial union of workers registered under the Industrial Conciliation and Arbitration Act, but by virtue of the "blanket clause" further organizational disadvantages face workers who seek to organize outside the confines of the Act.[1] If a group of workers not belonging to a union registered under the Act seek to strike in accordance with the regulations of the Labour Disputes Investigation Act the legality of their action may be nullified by the actions of a dissident group of workers in the same industry in forming themselves into an industrial union and obtaining an award which binds the remaining workers in the industry. Such a manoevre, known to staunch unionists as "scab unionism", is a potent threat to any union which operates outside the boundaries of the conciliation and arbitration system.

Between 1936 and 1961 this threat was reinforced by a statutory direction which required the Court of Arbitration to include in every new award a clause stating that it was unlawful for any employer to continue to employ any adult who was not a member of the industrial union or association of workers to which the award related.[2] This provision was the legal basis of the unique New Zealand system of compulsory unionism.

1 To be eligible for registration a society of employers must have not less than three members and a society of workers either not less than fifteen or not less than a quarter of the total number of workers engaged in the industry in the area concerned, with an absolute minimum of five.

2 NZS 1936, No. 6, S. 18.

Before the 1936 amendment to the Act brought compulsory unionism into being the Court of Arbitration had made a practice of including in many awards clauses giving preferential status to union members, thus fulfilling one of the aims of the Act by encouraging the development of industrial unions. Once employed, however, non-unionists were treated on the same basis as unionists because of the operation of the "blanket clause", and this caused grievances among union members who felt that as the benefits gained by union negotiation were enjoyed by all workers, every person should be compelled to belong to the union which negotiated the terms of his employment. This was accomplished after the election victory of the Labour Party in 1935, the new statutory direction amplifying the compulsory character of New Zealand's system for regulating industrial conflict. Prior to 1936 the system had combined three kinds of compulsion: the compulsory reference of labour disputes, the compulsory application of awards, and the compulsory prohibition of work stoppages. To these was now added a fourth, compulsory union membership for all workers covered by an award of the Court.

Despite the fact that the system was becoming more rigid, compulsory unionism tended to pull unions still outside the jurisdiction of the Industrial Conciliation and Arbitration Act within the orbit of the system. If a

union remained registered under the Trade Union Act and hence within the scope of the Labour Disputes Investigation Act, it had to rely on voluntary membership and it was always faced with the threat of replacement by an industrial union covered by an award. After 1936 this was perhaps the most compelling reason why unions sought the refuge of the system. Unless they refused to accept the degree of regulation inherent in a system which sought to rationalize industrial relations unions were assured of a large membership and a stable existence within the confines of the system.

The removal of state-enforced compulsory unionism in 1961 has not yet materially altered this situation. Since 1962 the compulsory membership clause has not been automatically included in awards, but the Court still has power to specify preference clauses. These are of two kinds, unqualified preference clauses which make membership of a union a condition of employment and thus preserve the compulsory character of the defunct legislation; and qualified preference clauses which require employers to give preference of employment to union members.[1] The advantages for unions in having either of these clauses included in their awards, if not as great as those arising from the old compulsory unionism provision, still outweigh the disadvantages facing unions which rely on voluntary membership because they are not registered under the

1 See Woods, pp.193 ff.

Act.

Over the years the Court of Arbitration has been given special legislative authorization to alter industrial awards and agreements during their currency to give effect to general wage increases or decreases. Since 1950 this power has been conferred by the Economic Stabilization Regulations.[1] The Industrial Conciliation and Arbitration Act itself specifies that rates of wages can be altered only at the expiry of each award and agreement, and the special powers given to the Court to alter wage-rates simultaneously have fostered the growth of an ancillary system of wage regulation. The amount of the general wage orders granted by the Court is often considerable, the wages laid down in awards and agreements having been increased by as much as fifteen per cent in a single wage order.[2]

Except where it is specifically stated in industrial agreements made under the Labour Disputes Investigation Act, general wage increases granted by the Court in this capacity have no application to the members of unions in the private sector of the economy not registered under the main Act. The role of the Court in regulating wages is thus another powerful inducement for unions to organize within the system.

1 First enacted in 1950. There have been a number of subsequent amendments to the regulations, the latest in 1959.
2 See below, p.48.

The advantages of registration under the Trade Union Act involve little more than the limited right to strike in accordance with the procedures of the Labour Disputes Investigation Act. The disadvantages are almost prohibitive. That the choice between the two sets of legislation for regulating conflict is largely illusory is borne out by the number of separate negotiations conducted under each act. Between 1950 and 1962 there were an average of 600 awards and agreements in existence each year. Over the period less than three per cent of the total number of documents regulating wages and conditions of employment in New Zealand were the result of negotiations conducted under the Labour Disputes Investigation Act.[1]

Penalties and Deterrents

At times the system for regulating industrial conflict has itself been a primary cause of conflict because of the comparatively inflexible nature of wage regulation in New Zealand. The Court of Arbitration has no option but to view economic changes in retrospect and the fact that there is usually an interval of some months between the time when significant changes become apparent and the announcement of the decision of the Court in an award or a general wage order tends to preserve a belated degree of stability in the wages of those workers within the ambit

1 AJHR, passim.

of the system. When prices are falling this delay works to the advantages of employees, but when prices and the incomes of other groups are rising rapidly, the trade union movement in New Zealand has often been divided by the different policies of the "arbitration" unions and those unions which advocate the use of direct action to gain wage demands.

Controversy over the principles of conciliation and arbitration has at times led to the formation of rival national trade union organizations within the industrial labour movement. Trades Councils, based on their counterparts in Great Britain, were one of the earliest forms of trade union expression in New Zealand. In many respects the early Councils were intensely conservative, following the British tradition of guarding the privileges of craftsmen who had passed through apprenticeships. After the collapse of the maritime strike in 1890 union activity within the industries of shipping, cargo-working, timber, mining and within other industries employing large numbers of unskilled labourers was at a low ebb, but the legislation of 1894 enabled workers in these industries to organize themselves in industrial unions and by the turn of the century these unions developed a strong militant wing in opposition to the Trades Councils.

The first serious clash between the conservative and militant traditions occurred during the Waihi goldmine

strike of 1912, when the "Red" Federation of Labour set itself up as a rival to the Trades Councils for the allegiance of trade unionists throughout New Zealand. When the Federation collapsed the following year after a strike on the Wellington waterfront, a new militant body, the Alliance of Labour was formed combining watersiders, drivers, timber workers, miners, seamen and general labourers as the main affiliations. At the same time the Councils broadened their activities and became known as Trade and Labour Councils.

The onset of the depression weakened both types of organization and after the Labour Party came to power in 1935 an industrial unity conference was convened under the presidency of the Minister of Mines, the Hon. P. Webb. The outcome of the conference was the formation in 1937 of the New Zealand Federation of Labour, from the beginning a compromise body uniting the conservative and militant wings of the industrial labour movement.

Each attempt to form a militant trade union organization rested on the assumption shared by many workers that at certain times they stood to gain more through the tactics of collective bargaining, accompanied where necessary by strike action, than through the operation of the conciliation and arbitration system. This feeling was mainly confined to a few industries and the general explanation appears to lie in the nature of the

work performed in these industries and the extent of trade union support.

Workers engaged in skilled activities have more reason to feel secure in their employment than unskilled workers. In times of unemployment their services are usually the last to be terminated and they are not likely to exhibit the defensive militancy common amongst unskilled workers who are aware of the precarious nature of their employment. When skilled labour is in short supply and wages are competitive skilled workers are likely to regard the wages they receive not as a measure of the success of trade union activity but of their own abilities. As a consequence the modern spirit of unionism among skilled workers is not particularly strong, and it is further weakened by the tendency for these workers to form small groups within any industry, "craft" unions rather than "industrial" unions.

In industries which depend on large forces of skilled workers and employ a comparatively small number of labourers attitudes towards industrial relations are likely to be less than militant. Workers engaged in printing, clerical work, the provision of domestic services, maintenance work and in many of the manufacturing industries, coming into contact as they do with groups having different working experiences than their own and organized in different occupational unions are not likely to be imbued

with militant class attitudes.

In industries which are characterized by large and relatively undifferentiated occupational groups attitudes towards industrial affairs are likely to be more positive, particularly where the work performed depends on large forces of unskilled workers. Lacking the personal bargaining power that the skilled worker possesses, the unskilled worker depends more on the success of the collective negotiations conducted by the union to which he belongs for the standard of his wages and conditions of employment.

The drive for collective security, arising from an appreciation of the uncertain nature of unskilled employment, is fostered by the manner in which working operations in certain industries are carried out. Workers in the industries of shipping and cargo-working, coal mining and meat-freezing may perform specialized tasks, but the techniques involved in most working industries are acquired comparatively easily. Working together in large groups they tend to form close ties with their fellows and they are often paid piece-rates as members of gangs rather than hourly rates as individuals. Workers are closely concentrated at the place of work and the ship, the wharf, the mine and the freezing works becomes the unit of trade union organization and the focus of union loyalties. Much of the work undertaken is of a dangerous and

obnoxious nature and in the ordinary course of work this results in many stoppages.

Union strength appears to flourish where large numbers of workers share similar working experiences, have similar grievances and feel themselves to be part of a cohesive body. Small matters of complaint are more likely to result in stoppages of work in these industries than in undertakings with a more heterogeneous labour force for union loyalties are strong enough for speedy and effective local action to be taken.

The unions which benefit from these organizational advantages are inclined towards militancy and because of the economic importance of the industries in which they operate they often possess bargaining power denied to unions which rely for their membership on widely scattered groups of workers. Tested by participation in local stoppages, union strength may be projected on to a regional or national level in attempts to secure concessions through the use of direct action. To this extent overt conflict in some industries is accumulative, the tactics of militancy becoming the typical response in situations where negotiations at the level of conciliation reach an impasse.

By 1951 the pressures acting to draw unions within the conciliation and arbitration system were strengthened by the development of penalties and deterrents designed

to prevent unions registered under the Act from exercising whatever collective bargaining power they might have. Recourse to the techniques of conciliation and arbitration for the settlement of industrial disputes was already almost obligatory, and the use of direct action was made correspondingly more difficult and dangerous.

The prohibition of strikes placed upon unions registered under the Act was perhaps the least important of these deterrents. Any person who incited, aided or abetted an unlawful strike was liable to a penalty not exceeding £10, while any industrial union or association of workers similarly involved was liable to a maximum penalty of £200.[1] These penalties were not particularly high and in any case there was always a great deal of difficulty in imposing them. It was politically impracticable to make unions responsible for every strike since stoppages might be caused just as much by intransigence on the part of employers as by union belligerency. It was even more difficult to exact penalties from individuals.

The inadequacy of this method for controlling strikes was underlined by the 1947 Amendment to the Act which required any union registered under the Act to hold a secret ballot when it contemplated strike action.[2]

1 NZS 1925, No. 24, S.124 (1).
2 NZS 1947, No. 15, S.8.

Failure to conform to this direction rendered a union liable to additional penalties in the event of an unlawful strike. All strikes were illegal but some were more illegal than others.

Other methods for sealing off areas of industrial turbulence were potentially more powerful. The power given to the Minister of Labour to deregister unions for participating in unlawful strikes was probably the ultimate deterrent. This power had broadened in successive amendments of the conciliation and arbitration legislation. The Industrial Conciliation and Arbitration Act 1925 made provision for the suspension of unions for periods not exceeding two years for offences pertaining to unlawful strikes. At this stage the period of suspension was determined by the Court not the Minister, a union dealt with in this way being barred from taking part in conciliation or arbitration proceedings or from making any application for the voluntary cancellation of its registration for the duration of the suspension.[1]

Later amendments gave important powers to the Minister of Labour. In 1939 the Minister was empowered to cancel the registration of any industrial union

> ... if in respect of any discontinuance of employment the Minister is satisfied that it has caused or is likely to cause serious loss or inconvenience ... brought about wholly or partly by any industrial union of employers or workers.[2]

1 NZS 1925, No. 24, S.12. Such a union was also denied recourse to negotiations under the L D I Act.
2 NZS 1939, No. 2, S.2 (1).

By virtue of the Strike and Lockout Emergency Regulations, introduced the same year, the "discontinuance of employment" included any refusal on the part of workers to accept engagement for any work in which they were normally employed and any act which had the effect of impeding the normal work in any industry. This made the potential scope of deregistration extremely wide and emphasized that if a union sought the privileges and protection of the Court of Arbitration it must reciprocate by fulfilling its responsibilities under the Act.

The two statutory directions relating to compulsory unionism and the compulsory application of awards were the basis for the effectiveness of the threat of deregistration. Deregistration by the Minister of Labour left a union open for replacement by an "arbitration" union and to all the other disadvantages facing unions organizing outside the system. Trade union leaders who felt they had more to gain by collective bargaining and direct action used these tactics at their peril.

In times of industrial crisis the government could also invoke the emergency powers contained in the Public Safety Conservation Act 1932. This act, introduced as an emergency measure during the depression, enabled the government to take upon itself wide-reaching powers to

deal with serious strikes if the supply of essential commodities was threatened with interference or the public safety likely to be imperilled.[1] These powers were put to the test in 1951 when the most prolonged industrial crisis in New Zealand's history erupted on waterfronts throughout the country.

1 NZS 1932, No. 3, S.2 (1).

CHAPTER 3

The Origins of the 1951 Waterfront Crisis

On 9 February 1951 waterfront workers at Wellington and New Plymouth refused to work overtime, in protest against the outcome of wage negotiations which for several months the New Zealand Waterside Workers Union had been conducting with the Port Employers Association. The workers involved were suspended by the employers and placed on a two-day penalty, rendering them ineligible for employment for the duration of the suspension. Waterside workers throughout New Zealand followed the lead of the New Plymouth and Wellington workers and incurred the same penalties, and by 19 February all ports were idle except Greymouth and Westport, where work ceased a week later. Normal work was not resumed until 15 July and in the intervening 151 days more than a million man-days were lost to New Zealand industry.[1]

The Wage Dispute

Although the New Zealand Waterside Workers Union was registered under the Industrial Conciliation and Arbitration

1. LEG Vol. 2, No. 2, p.35. In the twelve-months period beginning 1 Jan 1951, 1,157,390 man-days were lost as a result of industrial stoppages. Apart from the main waterfront stoppage and allied strikes all other stoppages throughout the year caused the loss of only 47,778 man-days.

Act, through special legislative authorization waterfront workers came within the purview of the Waterfront Industry Authority, a statutory wage-fixing body in a direct line of descent from the Waterfront Control Commission. The Commission was established in 1940 under the Waterfront Control Commission Emergency Regulations in an effort to utilize effectively a limited shipping force in a time of national emergency. It was continued in a modified form after 1945 as a means of overcoming the difficulties inherent in the intermittent nature of waterfront work.

The Waterfront Industry Authority, the institutional successor of the Commission, dealt with the wages and conditions of employment of waterside workers and with any disputes which arose in the industry. In these capacities the Authority exercised in a limited field the same type of jurisdiction as the Court of Arbitration, and together with the Government Railways Tribunal, the Post and Telegraph Staff Tribunal and the Coal Mines Council, other statutory wage-fixing authorities, formed an integral part of the system for regulating wages in New Zealand.

In May 1950 the Waterside Workers Union submitted a claim to the Port Employers Association for an increase in wages calculated to raise the basic hourly rate from 4s. to 6s. The claim was rejected and the matter placed before the Authority for arbitration. A decision which increased the hourly rate by 3d. was issued in July by Deputy Judge Dalglish.

This sum was not a permanent settlement, for in the interval between the hearing of the dispute and the announcement

of the decision of the Authority matters were complicated by a general wage order of the Court of Arbitration which increased the rates of remuneration payable to workers covered by awards and agreements by five per cent. This amount was an interim decision and a subsequent general order made in January of the following year fixed the general increase at fifteen per cent, including the five per cent of the interim judgment. Coming within the ambit of the Waterfront Industry Authority, the watersiders did not benefit automatically from general wage orders and on 8 February 1951 representatives of the union and the employers met to discuss the implications of the latest judgment of the Court.

The discussions took the form of direct negotiations between the two parties. The final offer of the employers was a proposed increase in the basic hourly rate to 4.7½d., with proportionate increases in special cargo rates and meal money payments.[1] This figure, the employers held, represented an increase of fifteen per cent on the hourly rate of 4s., an amount equivalent to the general increase prescribed by the Court. The representatives of the watersiders disagreed with this arithmetic: in their view the basic rate was 4.3d. not 4s. and the final offer of the employers amounted to 4½d., nine per cent not fifteen per cent.[2]

The discrepancies arose from conflicting interpretations of the 1950 decision of the Waterfront Industry Authority.

1. AJHR 1952, H 11, p.21.
2. See D. Scott 151 Days, p.33.

The employers argued that the 3d. per hour awarded by Judge Dalglish was computed on a similar basis to the interim general order of the Court of Arbitration. The union declared that the settlement was at that time a final one and that the basic rate to which the fifteen per cent increase should be applied was therefore 4.3d. Both sides remained adamant.

In the absence of effective third party mediation the stalemate developed into an open conflict. Waterfront stop-work meetings were held on 9 February, the day after negotiations finally collapsed and telegrams from the local branches of the Waterside Workers Union poured into the office of the national executive in support of a proposed ban on overtime.

> Wellington immediately institutes a forty-hour week... Napier utterly dissatisfied urge action... Auckland stopwork meeting unanimous in rejecting employers' offer... Bluff gives full support for any course of action taken by executive... Dunedin suggests all-in conference fair-dinkum industrial unions... Lyttelton endorses rejection...[1]

Wellington and New Plymouth led the way. Wherever overtime was offered it was declined and the men involved suspended. In a final attempt to secure a negotiated agreement the Minister of Labour, the Hon. W. Sullivan and fellow cabinet ministers met representatives of the parties on 16 February. At this meeting the employers reaffirmed that they would not depart from their previous offer, although they expressed their willingness to allow the dispute to be settled by arbitration through the medium of the Waterfront Industry Authority or the Royal Commission recently established

1. Quoted by Scott p.31.

to enquire into waterfront conditions.[1] H. Barnes, the national president of the Watersiders' Union rejected the sum offered by the employers and expressed his union's lack of confidence in the institutions named as possible avenues for arbitration.[2] Work on the waterfronts throughout New Zealand slowed to a halt and all ports were idle by 26 February.

The battle was joined irrevocably. The Minister of Labour suspended the powers of the Waterfront Industry Authority and under the authority of the Public Safety Conservation Act a proclamation was issued declaring a State of Emergency, enabling the National Government to bring into operation extraordinary measures to deal with the crisis in the form of the Waterfront Strike Emergency Regulations. The original wage dispute was transformed into a trial of strength between waterfront workers and their employers, and the weight of the Government was placed firmly behind the shipowners and the principles of conciliation and arbitration.

The Nature of the Conflict

By refusing to work overtime the watersiders were applying the pressure of a partial strike to support their demand for the right to negotiate directly with their employers without the intervention of a third party, whether the channel of mediation was the Waterfront Industry Authority, the Royal

1. AJHR 1952, H 11, p.21. The Commission was convened on 21 Sep 1950.
2. Scott pp.35 ff.

Commission or the Minister of Labour.[1] In this way the dispute overflowed the legislative boundaries drawn to contain industrial conflict on the waterfront, and in the eyes of the Government represented a challenge to the principles of conciliation and arbitration.

This aspect of the dispute was partly obscured by the way in which the union's original wage claim became linked with the question of the applicability of the general wage order of the Court. As far as the union was concerned even the full incorporation of the fifteen per cent increase in the rate prescribed by Judge Dalglish would produce an inadequate basic wage. The fashion in which the employers' offer of 4.7½d. was computed was only seized upon to demonstrate what the union considered was a lack of good faith on the part of its adversaries.

> Maintaining [the watersiders'] penny differential over the freezing workers, the rate would be 5/2 an hour; maintaining the share of national income going to the workers before the war fought to bring a "new order", the rate would be 6/-; maintaining parity with Australian watersiders, 6/3... This was just <u>maintaining</u> waterfront wages and yet the full 15% would mean only 4/10½ an hour - and the shipowners offered 4/7½.[2]

At the heart of the dispute there was a clash not only over the amount of the proposed wage increase but over the manner in which the increase was to be determined. Two opposed attitudes to the fundamental problem of industrial relations were involved: were the wages of waterfront workers

1. Refusals to work "normal" amounts of overtime were a breach of the Main Order of the Waterfront Industry Authority.
2. Scott p.32. Original emphasis.

to be decided by the application of wage-fixing principles by an external authority, or were they to be determined by the comparative strength of the contenders.

It has already been suggested that the efficacy of conciliation as a method for regulating industrial conflict depends on a certain spirit of compromise; while effective arbitration requires the mutual acceptance by disputants of the authority of the arbitrator to make a settlement.[1] The New Zealand Waterside Workers Union withheld support for both principles in the light of what it considered to be the best interests of its members. As far as the union was concerned the controversy over the interpretation of the 1950 decision showed that the employers were not prepared to make a realistic compromise and in any case the increase granted by the Authority, however interpreted, offered little hope that future resort to arbitration would result in any substantial further increase. Negotiations had reached an impasse and the watersiders were willing to employ different tactics.

Over the years the union had built up a strong corporate identity and it was quite prepared to fall back on its own resources. The waterfront industry occupied a highly strategic position in the New Zealand economy. The imperative need to keep imports and exports flowing smoothly gave the watersiders considerable bargaining power in a country uniquely dependent on the success of its overseas trade. The natural strength of unionist feeling on the waterfront had been institutionalized nationally by the Industrial Conciliation and Arbitration

1. See above, p. 13 ff.

Amendment Act 1936, which for the first time contained a provision for the registration of national unions to cover the whole of any industry throughout New Zealand.[1]

Before this the New Zealand Waterside Workers Federation, the national body formerly representing waterfront workers, was hampered by the strong spirit of autonomy in the local port unions. With the registration of the new national union the port unions became local branches and surrendered the control of national affairs into the hands of the national executive.

After the formation of the Waterfront Control Commission the union took part in the negotiation of national wage agreements, and the national body became firmly entrenched as the channel for the activities and aspirations of watersiders throughout the country.

Through the union journal The New Zealand Transport Worker the executive were able to keep in close contact with the "rank and file". With the emergence of Barnes as national president and T. Hill as national secretary the New Zealand Waterside Workers Union became the most powerful workers' union in the country, although at the height of its power it had a membership of no more than seven thousand.

1. This was at the pleasure of the Minister of Labour, and subject to the proviso that such unions operated in at least four industrial districts and that all registered local unions in the same industry, or alternatively a majority of their members, agreed to the formation of the national union.

The Clash with the Federation of Labour

The growing strength of the union had repercussions within the ranks of the Federation of Labour, the national organization of workers' unions to which the watersiders were affiliated. The Federation was an institutional compromise uniting the militant and conservative wings of the industrial labour movement. As set out in the original constitution the aim of the Federation of Labour was to "promote the complete organization of all workers by grouping them on the lines of class and industry to enable them to secure the full value of their labour". This is the language of Karl Marx and illustrates the spirit of compromise which prevailed when the Federation was formed in 1937, the second year in office of the new Labour Government. While the constitution of the Federation gave a large measure of autonomy to local and regional organizations, thus satisfying the representatives of the Trades and Labour Councils, the reference to "class and industry" perpetuated the tradition of militant unionism.

The initial drive for unity was stimulated by the election victory of the Labour Party, for there was a general feeling that dissension within the ranks of the trade union movement would jeopardise the political achievements of organized labour. Within a decade, however, real divisions were once more apparent behind the facade of unity. F. P. Walsh, the foremost advocate of a moderate policy and the author of the 1946 report of the Federation of Labour which endorsed the Labour Government's policy of wage stabilization

was unseated from his vice-presidency at the 1947 annual conference of the Federation.[1] Although he regained his position the following year the incident was not without significance for the future.

Walsh's moderate policy was of comparatively recent origin. Early in 1928, at an open trade union conference jointly convened by the Alliance of Labour and the Trades and Labour Councils Federation Walsh, then president of the Federated Seamens Union, together with A. McLagan, president of the United Mine Workers put forward proposals for the abolition of the Industrial Conciliation and Arbitration Act and the adoption of collective bargaining in its place.[2]

As vice-president of the Federation of Labour his attitude was somewhat different. The voting arrangements at the annual conferences of the Federation gave the smaller unions a predominant voice if they acted in concert. Conference delegates were determined according to the membership of financial affiliations on the basis of one delegate for unions with less than 250 members, two for unions having between 250 and 500 members, three for unions with a membership of between 500 and 1,000, and thereafter one additional delegate per thousand members.[3] On any important matter the militant unions were likely to be outvoted by unions which, deriving the bulk of their members from the compulsory unionism

1. M. E. R. Bassett The 1951 Waterfront Dispute, p.51.
2. R. C. J. Stone A History of Trade Unionism in New Zealand 1913-37, pp.100-1.
3. Rules and Constitution of NZFOL 1951, p.6.

clause of the Act, lacked bargaining strength of their own and depended almost entirely on the techniques of conciliation and arbitration for the standard of their wages and conditions of employment. The policies which issued forth from the national conferences were as a result essentially moderate, based as they were on support for the Labour Government's programme of stabilization and strict adherence to the principles of conciliation and arbitration.

During the First World War the government of the day had introduced measures for regulating prices through the agency of the Board of Trade set up under the Cost of Living Act 1915. The intention was to protect consumers from abnormal price rises caused by shortages in essential commodities, and to enable the government to purchase at reasonable prices the goods required for the country's war effort.[1]

Before the outbreak of the Second World War the Labour Government began to promote stability in incomes and prices by introducing import controls designed to conserve overseas funds and insulate New Zealand against overseas price fluctuations. With the commencement of hostilities the need to produce a maximum war effort and at the same time to distribute the burden equitably made a national policy of stabilization necessary. In September 1940 an Economic Stabilization Conference was convened and the following year the Economic Stabilization Committee, later to become the Economic Stabilization Commission, was brought into being. Under the Economic Stabilization Emergency Regulations 1942,

1. NZOYB 1950. p.691.

the Minister of Industries and Commerce was charged with the general administration of the system of control:

> ...the Minister shall be charged with the general function of doing all things that he deems necessary or expedient for the general purpose of these regulations, and in particular for the stabilization, control, and adjustment of prices of goods and services, rents, other costs, and rates of wages, salaries, and other incomes, and for the direction and co-ordination... of the activities of all other persons or authorities having any functions in relation to any of those matters.[1]

The main problem was to prevent excessive price inflation and fluctuations of the incomes of groups other than wage earners, since the techniques for controlling wages were already at hand in the Court of Arbitration. In the light of this the Federation of Labour supported the policy of stabilization, but with the provisos that the prices of essential goods, including foodstuffs, clothing and household necessities be stabilized adequately, or failing this, that the Court be empowered to increase wage rates simultaneously to offset increases in the cost of living.[2]

It was already an established custom that parties to a wage dispute might make reference to changes in the cost of living as revealed in the retail price index compiled by the Government Statistician. By the Rates of Wages Emergency Regulations 1940, an official link was established between wage rates and the price index, the Court being empowered to issue general wage orders increasing or decreasing all wage rates laid down in awards, industrial agreements and

1. NZR 1942/335, S.4(2).
2. H. Belshaw "Stabilization Policy in New Zealand", in T.T.R. Vol. 49. pp.298 ff.

apprenticeship orders in order to give recognition to changes in the cost of living. This was qualified by the inclusion of certain other criteria which had to be taken into account by the Court before it issued such a wage order, but it was enough to satisfy the Federation of Labour that the interests of its members would not be neglected.[1]

After the war the policy of stabilization was continued in a modified form, and in the "Walsh Report" of 1946 the Federation of Labour lent its continuing support to the policy. Most of the unions affiliated to the Federation lacked the bargaining power to negotiate wage rates above prevailing standards and the policy was a guarantee that they would receive equitable rates of wages through the application of established wage-fixing principles. A handful of strong unions withheld support for this moderate policy, and by 1950 the clash between the rival attitudes towards wage regulation led to disruption within the ranks of the Federation.

The ostensible cause of open dissension was a strike by the Auckland Carpenters Union in 1949 which led to the deregistration of the union by the Minister of Labour and the formation by some of the carpenters involved in the dispute of a new union registered under the Industrial Conciliation and Arbitration Act. The new "arbitration" union was immediately accorded recognition by the Federation of Labour, a gesture which led the Waterside Workers Union to brand the

1. The Court also had to take into account economic and financial conditions affecting New Zealand trade and industry.

leaders of the Federation as "agents of the employing class".[1] The national executive of the Federation called upon the union to withdraw allegations made about the role of the executive during the carpenters' strike, but the Waterside Workers Union remained firm in its criticism.

In the meantime relations between the union and the Federation were exacerbated by the question of the international allegiance of the trade union movement in New Zealand. Until recently the Federation of Labour had been affiliated to the World Federation of Trade Unions, an organization formed largely on the initiative of the British Trades Union Congress in 1945 as an international experiment in uniting the organized workers of all countries in a world trade union movement.

In the period of post-war disillusionment the organization was bedevilled by diplomatic considerations, and in January 1949 the Trades Union Congress, the American Congress of Industrial Organizations and the Dutch Confederation of Free Trade Unions, all members of the Executive Bureau, withdrew from the Federation alleging that it was "completely dominated by communist organizations which are themselves controlled by the Kremlin and the Cominform".[2] The

1. In a letter from the NZWWU to the FOL dated 17 Mar 1949. Quoted by Scott, p.19.
2. From a statement signed by James Carey, CIO, Arthur Deakin, TUC, Evert Kuypers, NVU and Victor Tewson, TUC; reproduced in Free Trade Unions leave the W.F.T.U., p.2.

International Confederation of Free Trade Unions was established as a rival international organization and early in 1949 the Federation of Labour changed its affiliation and joined the new body. The Waterside Workers Union refused to follow suit and at the annual conference of the union in December resolved to affiliate the watersiders to the maritime section of the World Federation of Trade Unions.

The annual conference of the Federation of Labour was scheduled for April 1950. It became increasingly apparent that the points of difference between the union and the national body would be the main topics on the agenda.

On 19 January the executive of the union received two letters from the Federation. The first required the watersiders to retract their "agents of the employing class" statement made twelve months earlier; the second requested a clear indication of the union's policy towards the World Federation.[1] No apology was forthcoming; instead the union reiterated its international policy. The following week the national executive of the Federation of Labour resolved that the union would be expelled from the national body as from 1 February 1950 unless the letter of March 1949 was withdrawn, a "suitable" apology given, and it changed its international allegiance.[2]

Despite this ultimatum, when the annual conference met in April the expulsion issue was still not settled, but when opinion at the conference appeared to turn against the

1. Scott p.19.
2. Ibid.

watersiders, they, together with delegates from the drivers, freezing workers, paper-mill workers, painters, rubber-workers and general labourers staged a mass walkout.[1] Other delegates joined the group the following day and a rival national trade union body, the Trades Union Congress was formed on 10 April.

The year 1950 was the vintage year of McCarthyism and at the time of its formation the Trades Union Congress was commonly reputed to be a Communist "front" organization. While the New Zealand Communist Party no doubt tried to exploit the existence of two rival trade union bodies, it did so without conspicuous success. Five of the forty-seven delegates and observers at the inaugural meeting of the Congress were, in fact, members of the Communist Party, but no Party member was elected to any of the eight executive offices of the new body.[2] The Trades Union Congress drew its support from a body of independent trade unionists united in their distrust of the wage-fixing policy shared by the Government and the Federation of Labour. It was not the outcome of the Marxist predilections of a subversive political group.

The Congress was formed at a time when prices were rising more steeply than in recent years and the incomes of some groups within the economy were reaching record proportions. The index for food prices, which between January 1939 and December 1947 showed an average annual increase of 8.625 points, in the period January 1948 to December 1950 reflected

1. Minutes and Reports of Proceedings of 13th Annual Conferenc of FOL, p.21.
2. R. M. Martin Compulsory Unionism in New Zealand, p.170.

an average increase of 37.25 points for each of the three years.[1] After 1946 export prices for butter, cheese, meat and wool also began to rise significantly. In 1950 the value of both exports and imports was the highest on record, the total trade per head of mean population being valued at £177 17s. 7d., a figure much higher than any recorded previously.[2] The increase in the value of New Zealand's export trade after 1949 was largely accounted for by higher returns for wool (£28.1 increase in twelve months); hides, pelts and skins (£3.3 million); cheese (£1.6 million); and frozen meat (£1.3 million); the 1950 returns representing an increase in the value of exports of 203 per cent over the average for the pre-war years 1936-1938.[3]

Because of these economic advances those unions possessing effective bargaining power came to regard the statutory wage-fixing authorities as being too slow and unsympathetic to respond to their demands for substantial wage increases. They were prepared to attempt to secure their share of the increased prosperity of the country by the methods of direct negotiation and the tactics of militancy.

The Rising Tide of Militancy

The record of industrial stoppages in 1950 illustrates the way in which tension was mounting: throughout the year a total of 271,475 man-days were lost, at the time the largest annual loss recorded since statistics were first

1. PWLS 1963, p.14. Base year 1955 (= 1,000).
2. NZOYB 1951, XXIV.
3. Ibid.

compiled in 1921.[1]

In January four hundred miners at Stockton were involved in a three-week stoppage after a prolonged dispute over the number of men allocated to work on the mine face.[2] Between 26 May and 1 June fifteen hundred miners at Huntly ceased work after they alleged that they had been given short pay at the Allison mine. In June a serious stoppage occurred on the Wellington waterfront when watersiders ceased work for almost two weeks to support their demands for increased rates of pay for handling lampblack on the "Myrtlebank".[3] In a demonstration against the removal of certain food subsidies by the newly elected National Government workers from twelve coal mines, three freezing works, three hydro-electric works and fourteen ports took part in a general strike lasting two days at the end of June.[4] The following month more than a thousand Huntly miners were involved in a further stoppage after a dispute concerning the alleged wrongful dismissal of a trucker. Five thousand waterfront workers at sixteen ports throughout the country refused to work for ten days after 25 July over a dispute concerning the provision of reliefs for men going on tea-breaks.

The waterfront industry figured in a further stoppage two months later, again over the rates paid for handling lampblack. As a portent of things the Government declared a State of Emergency in pursuance of the Public Safety Conservation Act, but before extraordinary measures were

1. See below, p. 88.
2. LEG Vol. 1, No. 1, p.19.
3. Ibid.
4. Ibid.

employed to deal with the stoppage the watersiders and their employers agreed to conduct further negotiations in an effort to settle the dispute amicably.

By December 1950 the line of demarcation between the conservative unions remaining in the Federation of Labour and the militants of the Trades Union Congress was clearly defined, and a railway strike which occurred just before Christmas gave the two groups the opportunity to test their respective positions. Four unions were involved in the strike, the Amalgamated Society of Railway Servants, the Railway Tradesmens Association, the Engine Drivers, Firemen and Cleaners Association and the Railway Officers Institute. The previous April the four unions applied to the Railways Tribunal for increases in wages amounting to an average of £2 15s. Od. per week upon the basic rates for all railway workers. Many delays in the hearing of the dispute embittered the proceedings and by the time the Tribunal eventually announced its decision in December there were already calls for direct action from the ranks of the railway unions. When it was at last forthcoming, the decision of the Railways Tribunal to increase the basic hourly rates of pay by one penny was regarded not only as inadequate but as insulting, and pressures for direct action grew.[1]

The strike began in Auckland after a local secret ballot conducted in accordance with the Industrial Conciliation and Arbitration Amendment Act 1947 resulted in "overwhelming"

1. G. Broad "The Railway Strike: Sleepers Awake" in Here and Now 1951, No. 5, p.13.

support for strike action.[1] The two most powerful railway unions, the Amalgamated Society of Railway Servants and the Railway Tradesmens Association immediately instigated direct action on a national scale. The Railway Officers Institute did not play any direct role in the strike, although it assisted by directing its members not to do any work normally carried out by the strikers. With the exception of the Auckland branch the Engine Drivers, Firemens and Cleaners Association also declined to participate directly in the stoppage.

The strike was ended after the Minister of Labour intervened with a promise that the Railways Tribunal would be reconvened at the earliest possible date to deal with the wage dispute, but not before the two rival national workers' organizations had made their attitudes explicit. The Trades Union Congress offered to assist the railway workers in their strike, as did individual unions belonging to the Congress. The Waterside Workers Union went so far as to threaten national strike action, and unions of drivers, miners and freezing workers were among those who profferred their assistance. The Federation of Labour spurned the use of direct action and refused to support the railway unions unless it was given full control of the wage dispute.

The lines of battle were clearly drawn when the water-front stoppage began two months later.

1. Ibid.

CHAPTER 4

Defence and Retrenchment

As it developed the waterfront crisis assumed the form of a contest between the tactics of collective bargaining and the principles of conciliation and arbitration. In 1932, when prices were falling rapidly, employers and farmers had combined to force the Government to remove the provision requiring the compulsory reference of unsettled disputes to arbitration in order to impose wage decreases at a time when the three-yearly system of awards protected wage earners against the full impact of economic depression.[1] The situation was reversed in 1951. The watersiders attempted to withdraw from the jurisdiction of the wage-fixing system in an effort to gain through direct tactics the wage increases which they regarded as their due in a period when prices and the incomes of other groups were rising in an unprecedented fashion. Faced with a stoppage which imperilled New Zealand's trade balance, the National Government proceeded to put into effect emergency powers aimed at forcing the militants to conform to the principles of conciliation and arbitration.

1 At this time there was no provision made for awards to be amended during their currency. They remained in force until the expiry of their full three year term.

The Waterfront Strike Emergency Regulations

The definitions of "strike" and "lockout" had been widened in the Strike and Lockout Emergency Regulations 1939 to include any concerted action to reduce the normal output in any industry. These regulations were repealed in 1949, but the definitions of direct action which they contained were incorporated in the Waterfront Strike Emergency Regulations issued on 22 February 1951. Under the new regulations a strike was deemed to be

A. The act of any number of workers who are or have been in the employment of the same employer or of different employers -

(i) In discontinuing that employment, whether wholly or partially, and whether by refusing or failing to work overtime or otherwise; or

(ii) In breaking their contracts of service; or

(iii) In refusing or failing after any such discontinuance to resume or return to their employment; or

(iv) In refusing or failing to accept engagement for any work in which they are usually employed.

B. Any reduction in the normal output of workers in their employment.

C. Any other transaction in the nature of a strike or combination, agreement, common understanding, or concerted action on the part of any workers, the said act, reduction, or any other transaction being intended or having the tendency... to interfere with the effective conduct of any industry or undertaking.[1]

If a strike was not ended within a period of time specified by the Minister of Labour it became a strike to which the regulations applied, or a "declared" strike. Every

1 NZ Regs, 1951/24, S.2(1).

person committed an offence who was a party to a declared strike, who encouraged the continuance of such a strike, or who printed or published any statement which was likely to "encourage, procure, incite, aid or abet" a declared strike.[1]

If any member of a union was involved in a strike to which the regulations applied all officers of the particular union could be held responsible for the strike, unless they proved that they had counselled the members of the union to refrain from strike action.[2] Union officials were liable to penalties not for doing something but for not doing anything, and under the authority of the Public Safety Conservation Act these were set at a maximum term of imprisonment of three months or a maximum fine of £100.[3]

Wide powers for enforcing the regulations were conferred upon the police force. Anyone deemed to be committing an offence under the regulations could be arrested without a warrant by any constable. The activities of members of the force were not confined to offences actually committed. Police officers were given power to arrest persons for offences they had not yet committed. Where picketing was concerned, for example, a constable was required merely to "form an opinion" as to whether a person was likely to break the regulations by influencing the actions of other people. It was immaterial whether or not the evidence produced at a later date proved that any person was likely to have been

1 Ibid, S.4.
2 Ibid, S.5.
3 NZS 1932, No. 3, S.3(4).

influenced to participate in an unlawful strike by the actions of the defendant.[1] A similar provision applied to processions and meetings, whether they were held in a public place or elsewhere. If a member of the police force of or above the rank of sergeant was satisfied that the holding of any procession or meeting was likely to be "injurious to the public safety or to the public interest" he could prohibit it immediately.[2]

By issuing the Waterfront Strike Emergency Regulations, the National Government sought to deal with the waterfront stoppage and any sympathy strikes which might eventuate by placing a ban on the tactics which made direct action effective. The restrictions on processions and meetings, together with the virtual prohibition of picketing, curtailed the public activities of the workers involved in the stoppage, while the additional penalties provided under the regulations increased the threat of legal retribution.

In this way the emergency regulations supplemented the powers for dealing with industrial strife conferred upon the Minister of Labour by the Industrial Conciliation and Arbitration Act, and enlarged the penalties and deterrents to be taken into account by unions contemplating prolonged strike action.

Although at the time of the waterfront stoppage many people were disturbed to discover how wide were the powers of the Government to suspend certain legal rights and processes

1 NZ Regs, 1951/24, S.14(3).
2 Ibid, S.16(1).

following the declaration of a State of Emergency, the principle of "regulated freedom" is deeply embedded in English constitutional law. The decision of Judge Smith in Herbert v. Allsop (1941) was one of several judgments which incorporated this principle: "The Legislature can, and in an emergency does, modify and suspend what are sometimes called the fundamental rights of mankind."[1]

It is assumed, then, that the liberty of the individual is not an abstract entity. Parliament is supreme and can enact extraordinary measures which interfere with personal liberties, the good sense of the executive being the only safeguard of the rights of the individual.

Even in normal times the law is by no means settled in regard to civil liberties. While citizens may suppose themselves to enjoy the right of meeting in public in a lawful manner for a lawful purpose this is not firmly established in law, although such meetings are normally held without question. The cases of Duncan v. Jones (1936)[2] and Burton v. Power (1940)[3] illustrate this. In each instance the decision was that, as the police had a "reasonable apprehension" that breaches of the peace might occur, both defendants were guilty of obstructing the police by holding meetings after being forbidden to do so, despite the fact that no breach of the peace actually occurred in either case.

The Waterfront Strike Emergency Regulations contained

1 NZLR, 1941, pp.370-4.
2 KB, 1936, p.218.
3 NZLR, 1940, p.305.

a number of analagous provisions by which power was given to the police to ban certain activities without specific authority so long as they acted in good faith and had a "reasonable apprehension" that an offence might have taken place if they had not intervened. Under the regulations a police officer was, in fact, in the unassailable position of Lewis Carroll's Humpty Dumpty: "When I use a word it means just what I choose it to mean - neither more nor less."

The Course of the Waterfront Stoppage

Following the publication of the Waterfront Strike Emergency Regulations the Government issued the Waterfront Strike Notice 1951, calling upon the watersiders to resume work by 26 February. Failing this the stoppage was to be declared a strike within the meaning of the regulations. This ultimatum was rejected by the New Zealand Waterside Workers Union and the union was accordingly deregistered. Three days later, on 1 March, the Public Trustee was appointed receiver of the funds of the union.

The Waterside Workers Union managed for some months to maintain a de facto existence, but the way now lay open for the Minister of Labour to register new unions in place of the defunct national body.

The implementation of the waterfront regulations involved several unions in sympathy strikes in support of the watersiders. Under the authority of the regulations servicemen were employed at the ports of Wellington and Auckland in the discharge of perishable goods. By the end of March more than

three thousand service personnel were employed throughout the country in waterfront work and related duties.[1] The Wellington, Nelson, Marlborough and Taranaki Freezing Workers Union had already become involved in the waterfront dispute when some union members ceased work in protest against the introduction of the emergency regulations. The employment of servicemen produced a further hostile reaction and by the middle of March killing stopped at twelve of the thirteen freezing works covered by the union.[2] As a result the registration of the union was cancelled on 27 March and a receiver appointed.[3]

In a similar protest seamen walked off their ships at Wellington and Auckland after service personnel were employed there in unloading goods, despite the fact that F. P. Walsh in his capacity as president of the New Zealand Seamens Federation had previously instructed union members to remain at work.

The stoppage continued to spread. Members of the Golden Bay Cement Company's Employees Union and the Portland Cement Workers Union demonstrated their support for the Waterside Workers Union, to which both unions were affiliated, by taking part in sympathy strikes at the beginning of April.[4] Both unions were accordingly deregistered on 3 April. The members of the Wellington Drivers Union decided by a series of ballots not to handle goods worked by servicemen and the

1 AJHR, 1952, H 11, p.22.
2 The freezing works at Waitara was the sole exception.
3 AJHR, 1952, H 11, p.23.
4 LEG, Vol. 2, No. 1, p.35.

registration of the union was also cancelled. Work also ceased at coalmines at Huntly, on the West Coast and in the King Country.[1] For a time it appeared that the waterfront dispute would develop into a national stoppage of similar proportions to the British General Strike of 1926.

What determined the actions of many unionists was not the merits of the watersiders' stand, but those provisions of the emergency regulations which were regarded as obnoxious. The Government was in the embarrassing situation that the emergency powers introduced to deal with the waterfront crisis had the temporary effect of extending rather than confining the scope of the original stoppage. However, when it became increasingly apparent that the Minister of Labour was not loath to use the power he possessed to deregister intransigent unions, direct participation in the stoppage, either in support of the watersiders or in protest against the emergency regulations, was limited to those unions who had already become involved in the dispute by the beginning of April.

The ultimate penalty for a union taking part in the stoppage was legal proscription. Under the Industrial Conciliation and Arbitration Act the Minister of Labour was given sole discretion to register new industrial unions of workers in place of those which he deregistered. At the beginning of 1951 the New Zealand Waterside Workers Union had nearly seven thousand members. Now the Minister proceeded to register local port unions in place of the national

1 The various miners unions were not registered under the I C and A Act.

organization. The policy of the Government was stated quite clearly: "Separate port unions, secret ballots, and open membership of unions are planks in the Government's policy from which there can be no departure or variation."[1]

The first of a proliferation of port unions came into being on 14 March. By the end of August a total of twenty-six new waterfront unions had been registered, some with as few as a dozen members.[2] A similar policy was directed towards other unions involved in the stoppage, especially in the meat-freezing industry where new unions covering separate freezing works were registered in the districts previously covered by the Wellington, Nelson, Marlborough and Taranaki Freezing Workers Award. The official functions of the defunct unions were taken over by the new "arbitration" unions.

As the stoppage progressed continued efforts to reach a negotiated settlement failed, largely because of the refusal of the watersiders to accept unconditionally the principles of conciliation and arbitration. The Federation of Labour was only prepared to intervene if this acceptance was forthcoming. At a special conference of the Federation held in March it was resolved that

> ...in negotiations there shall be no departure from the policy of the Federation of Labour, namely conciliation and arbitration, and that representatives of the watersiders, miners, and freezing workers, or any other unions not affiliated to the Federation

1 Press, 21 Apr 1951, p.7.
2 The Opotiki W.W.U. had 12 members; the Tokamaru Bay W.W.U. 11. On the other hand the Auckland Maritime Cargo-Workers Union had more than 1,700, and the Wellington W.W.U. more than 1,300.

> of Labour taking part [in the stoppage], shall first state in writing that they accept this condition. Failing such assurance by the watersiders, this conference has no option but to inform our affiliations that we cannot and will not lend any further support to this dispute.[1]

As the original dispute was largely a reflection of the distrust of the watersiders in the system of conciliation and arbitration, it was perhaps not to be expected that they would be amenable to attempts to settle the issue by the use of the procedures which were the cause of the controversy. It became increasingly clear that the matters in dispute were not likely to be settled by negotiation and that the stoppage would be ended only with the complete victory of one side over the other.

In a trial of strength all the advantages lay on the side of the employers, the Government and the Federation of Labour; the champions of conciliation and arbitration.

Under the emergency regulations the funds of a deregistered union had to be surrendered into the hands of a receiver appointed by the Crown and it was an offence to contribute money or goods to persons who were parties to a declared strike.[2]

Union funds and sympathy contributions were virtually the only source of livelihood for the men on strike, and although unsuccessful at times the attempt to stem the flow of illicit funds increased the hardships facing the workers involved in the stoppage. Unofficial relief organizations

1 Quoted in F.O.L. pamphlet Survey of the Development of the Trade Union movement in New Zealand, p.17.
2 NZ Regs, 1951/24, S.8.

strived to provide vegetables, meat and other necessities for the families of the men on strike, but it became only a matter of time before many workers were compelled for financial reasons to seek alternative employment, or where that was impossible, to resume their old jobs and join the new unions.[1]

After the beginning of July there was a gradual resumption of work. The miners were the first group to return to work en masse, and less than a week later, on 6 July, the New Zealand Seamens Federation voted to return to normal duties. Aware that many workers had reached the point of exhaustion through their participation in the stoppage, the National Strike Committee of unions involved in the crisis recommended three days later that unions still on strike should direct their members to return to work.

> Supremely confident of the conscious discipline of our ranks we call upon every individual member to return to work and hold up the banner of his union on the job. We call upon watersiders, seamen, miners, freezing workers, drivers and all other unionists to stand by their fellow workers in a positive fighting programme to overcome screening, hold conditions, and clean out scabbery root and branch.
>
> To this end the organizations in the combined unions resolve to join in a mutual assistance pact and pledge financial and moral support to any of the unions requiring it to re-establish themselves. In unity we have fought, and in unity we return to our industries to fight again. In twelve months it will be time to say whose is the victory! We are confident in our strength![2]

In the meantime the only tangible reward for those who

1 This was not always possible as a certain amount of discrimination was practised against workers who had been involved in the stoppage. See Scott, pp.182-183.
2 Quoted in Scott, p.198.

took part in the stoppage was a passport-sized "loyalty card" issued by the New Zealand Waterside Workers Union (De-registered), declaring that the bearer had "STOOD LOYAL RIGHT THROUGH - One Hundred and Fifty-one Days - February 15 to July 15, 1951".

The Industrial Conciliation and Arbitration Amendment Act 1951

After 1936, when the Act first made provision for the registration of national unions, some workers' unions had grown in strength until they reached the stage of development where they were regarded as a threat to the principles of orderly settlement. The waterfront crisis gave the Government the opportunity to destroy the concentrations of power held by these unions.

The attempt of the militants to break out of the confines of the conciliation and arbitration system failed in the face of concerted action on the part of most employers and many trade union leaders. Both groups had a vested interest in protecting the principles of orderly negotiation, the employers because the system seemed to offer the best guarantee for industrial peace; the leaders of unions remaining within the Federation of Labour because they depended upon the techniques of conciliation and arbitration for securing minimum wage rates. Reinforcing this temporary alliance between the two groups the weight of the Government was brought down upon the dissenting unions by the introduction of the Waterfront Strike Emergency Regulations.

With the passage through Parliament in 1951 of a new

amendment to the Industrial Conciliation and Arbitration Act the National Government sought to consolidate the victory of the principles of orderly settlement over the tactics of collective bargaining.

Introduced on 12 October, the amending bill in its original form was similar to a bill drawn up in 1950 with the aim of implementing the 1949 election pledge of the National Party to "abolish" compulsory unionism. In the interval between the first and second readings of the new bill the clause relating to the removal of State-imposed compulsory unionism was discarded and the proposed legislation was converted into an attempt to tighten the machinery of the conciliation and arbitration system.

The Minister of Labour stated that the purpose of the proposed legislation was to bring New Zealand's industrial laws up to date and to "ensure that unions had a full voice in the management of their own affairs".[1] The bill was to strengthen what the Minister termed "the sound trade union movement" by preventing union leaders from instigating strike action without the full support of union members.

When contemplating strike action unions registered under the Act were already required to conduct secret ballots to ascertain whether union members supported the proposed action.[2] The Government aimed to make the secret ballot provisions work by increasing the penalties for non-compliance from a maximum fine of £20, and in the case of a continuing

1 NZPD 1951, Vol. 295, p.184.
2 NZS 1947, No. 15, S.8.

offence an additional fine of £5 per day; to a term of imprisonment not exceeding twelve months, or a maximum fine of £100, as determined by a magistrate.[1]

These penalties were additional to those which could be exacted under other sections of the Act. Obligatory secret ballots, in the view of the Government, would restrain hasty decisions, while the manner in which the ballots were to be taken, by postal votes not by the public decisions of union meetings, would restrict the actions of militant minorities.

In its final form the 1951 Amendment Act generally tightened up other penal provisions. The limited definitions of "strike" and "lockout" were removed and in their place were inserted virtually the same definitions which had been incorporated in the Waterfront Strike Emergency Regulations. Individuals who were parties to strikes were now liable to a maximum penalty of £50, instead of the previous penalty of £10, while unions and employers who were involved in strikes and lockouts were now liable to a maximum fine of £500.[2]

A new category was included whereby the members of the executive of any industrial union or association became liable to a fine of £250 if they took part in an unlawful strike.[3] This, together with the increased penalties for non-compliance with the secret ballot requirements, demonstrates the way in which union officials were being

1 NZS 1951, No. 72, S.22(5).
2 Ibid, S.124(1).
3 Ibid.

made more open to prosecution under the Act.

This was also apparent in another part of the new legislation, where it was provided that, if any members of an industrial union or association were parties to a strike, the union would be deemed to have instigated it unless the union executive could furnish proof that a prior secret ballot was taken or that every officer of the union had no knowledge of the imminence of the strike.[1] Each officer of the union was liable to a penalty of £500 unless he could prove compliance with this section.

The new legislation was not concerned solely with punitive measures. Special attention was paid to the constitutions, procedures and rules of unions registered under the Act. Restrictions were placed on levies and subscriptions payable by union members, increases in dues being prohibited except in accordance with a resolution passed by a majority of the financial members of a union at a secret ballot.[2] Since the majority was deemed to be that of all members eligible to vote, not of the participants in the actual voting, abstainers were in effect to be counted as negative voters, and this made it difficult for a union to bolster its funds by increasing the levies on union members.

As an additional financial precaution all industrial unions and associations were now also obliged to furnish to their members on demand audited copies of current income and expenditure in order that members might be informed of

1 Ibid, S.23(1).
2 Ibid, S.24.

the allocation of their subscriptions and other union monies.[1]

In the view of the Minister of Labour the innovations of the new amendment act were to provide "the full machinery for the democratic control of unions".[2] Increased penalties for participation in unlawful strikes, the obligatory secret ballot provisions, and the controls placed upon union finances were introduced to prevent individuals in the trade union movement from gaining what the Government considered to be extraordinary personal influence and power, the argument being that if the Government compelled people to join a trade union, as it did through the operation of compulsory unionism, it was responsible for limiting the powers that a trade union had over its members.

> I do not think that whatever legislation we may put upon the statute-book we will do away with strikes completely. I do not believe that for one minute, but we have made an attempt to give those who are inside the trade union movement the right to make a decision for themselves as to what steps they should take.[3]

The new legislation emphasized that the rights enjoyed by unions registered under the Industrial Conciliation and Arbitration Act were granted only in exchange for the assumption by unions of certain responsibilities. The Government was in the fortunate position of being able to determine both.

1 In keeping with proposals made by A.E.C. Hare in 1946. "In view of the fact that unionism is compulsory, the existing law in regard to financial control is almost totally unsatisfactory." Hare, Report on Industrial Relations in New Zealand, p.201.
2 NZPD 1951, Vol. 295, p.840.
3 Ibid, p.841.

The Police Offences Amendment Act 1951

The revocation of the Strike and Lockout Emergency Regulations in 1949 allowed unions remaining outside the jurisdiction of the Industrial Conciliation and Arbitration Act to instigate lawful strikes providing that they fulfilled the requirements of the Labour Disputes Investigation Act. Passed in December 1951 the Police Offences Amendment Act was formulated to seal off this area of potential turbulence by restricting the tactics which made direct action effective.

This was the year of the Korean war and the McCarthy investigations in the United States and since, in the eyes of the Attorney-General, "the sinister hand of communism was all too apparent in connection with the recent strike", in the face of this imminent peril a special definition of sedition was invoked in the new amendment.

> We are seeking to cope with a milder form of activity. In the popular sense, sedition connotes some form of mob action...against established order...but the sort of activity we have in mind is something of a less concerted nature, not so much of a demonstration - although that is included - but more of an underground movement; a plot to overthrow established order while working ostensibly for some legitimate cause.[1]

In view of this the amending act was drawn up to arm the Government with additional powers to restore law and order in times of industrial crisis, a comprehensive ban being placed on most of the tactics which might be employed by strikers.

The picket line was one of the earliest techniques used by workers to ensure that a strike was effective. A

1 Ibid. Vol. 296. pp.1213-4.

line of pickets around the scene of a dispute was a tangible sign that a strike was in progress and a warning to any worker tempted to break the commandment "Thou shalt not scab".

While picketing as such was not banned under the Police Offences Amendment Act where, in the opinion of a police officer of or above the rank of sergeant, the presence of any person was "intended or likely to influence a person to cease work or to be, or continue to be, a party to a strike" the officer was empowered to direct the person to move away, failure to comply with such instructions constituting an offence under the Act.[1] In effect, although the act of forming a picket line was not declared illegal, once it was formed it could be dispersed by the police.

Where strikes were concerned it was also an offence for anyone to print, publish or distribute any matter that was likely to expose any persons to "hatred and contempt amongst the public".[2] Any constable was empowered to seize any document, statement or any other written or printed matter in respect of which an offence under this heading was committed or was "reasonably suspected" by the constable to have been committed.[3] Banners, placards, signs, badges and other insignia which contained words likely to facilitate the victimization of any persons or to cause any substantial interference with the normal work conducted in any trade or industry were also declared unlawful.

In the case of a demonstration or procession which

1 NZS 1951, No. 67, S.17.
2 Ibid, S.15(2).
3 Ibid, S.6

might influence other persons to take part in a strike or to continue being parties to a strike, any constable might arrest without warrant any person found committing an offence against this part of the legislation or who was "reasonably suspected by the constable of having committed, or having attempted to commit, or of being about to commit" such an offence.[1]

The onus of proof in several parts of the Police Offences Amendment Act was thus shifted on to the person accused of commiting an offence. Although it is one of the fundamental maxims of British justice that the onus of proof in criminal cases rests with the Crown there are, in fact, several exceptions, which really involve the "onus of explanation". Certain cases of negligent driving, for example, involve the principle res ipsa loquitur: "the thing speaks for itself". The Crown establishes certain facts from which guilty intention on the part of the accused is inferred, and it is the responsibility of the defendant to furnish an explanation which establishes his innocence or at least raises a doubt as to whether he is guilty.

Commenting on the relevance of this procedure to charges of sedition Lord-Justice Denning has said that

> ...the line where criticism ends and sedition begins is capable of infinite variations. This is where the practical genius of the common law shows itself. The line between criticism and sedition is drawn by a Jury who are independent of the party in power in the state.[2]

1 Ibid, S.19.
2 Quoted by the Hon. W. Nash. NZPD 1951, Vol.296, p.1220.

Under the new amendment act offences were to be dealt with not by the legal process of trial by jury but by summary trial under a magistrate who could enforce a penalty of three months imprisonment. Torn between what it regarded as the imperative need to rebuild effective defences for the principles of conciliation and arbitration and the demands of the practical genius of the common law, the National Government preferred the speedier procedure of the summary trial.

CHAPTER 5

Industrial Stoppages 1952-61

The degeneration of the waterfront dispute into open industrial warfare allowed the National Government to decapitate the militant section of the trade union movement and secure the defences of the conciliation and arbitration system. After 1951 those union leaders who were disposed to question the efficiency of the wage-fixing machinery were seldom in a position to fall back on their own bargaining resources. Over the following decade the expression and resolution of industrial conflict in New Zealand took place within boundaries clearly defined by the actions of the Government during the 1951 crisis.

This does not mean that there were no signs of overt conflict over the period. Despite successive amendments of industrial legislation, the illicit stoppage has always played an important role in the industrial affairs of this country. However, the typical stoppage in New Zealand, although legally a strike, has little of the character of the classic strike weapon. Most industrial stoppages are demonstrations rather than declarations of war, the parties

involved usually being more concerned with solving the problems of which these episodes are a manifestation than with legal technicalities.

Most industrial stoppages do not constitute a real threat to the principles of orderly settlement, and are indeed little more than preliminary skirmishes which serve to clear the ground for conciliation or arbitration. The attitude of the National Government towards such occurrences was expressed by the Minister of Labour during the debate on the 1951 Industrial Conciliation and Arbitration Amendment Bill. The power of deregistration, he said

> ... would only be used where members of a union committed a continuing offence; it would only be used in extreme cases ...
>
> In practice the position would likely be ... that if a union voted the strike or stop work it would be the duty of the minister and the department to explore every avenue of conciliation and then for those points that could not be determined by conciliation to be referred to arbitration for settlement. That would be what would happen in practice.[1]

Stoppages were condoned in so far as the grievances to which they drew attention were settled in an orderly fashion through the channels of conciliation and arbitration. Acceptance stopped short of the recognition of the tactics of collective bargaining as in themselves legitimate methods for redressing grievances and securing concessions.

1 NZPD 1951, Vol. 295, p.839.

After a period of industrial strife of the magnitude of the 1951 crisis, however, it is to be expected that the number of stoppages would show a marked decline. A survey of the nature and incidence of industrial stoppages in the decade after 1951 indicates that militancy was at a low ebb, and that stoppages seldom exceeded the bounds of tolerance defined by the Minister of Labour.

Working Days Lost

The total number of working days lost annually through industrial stoppages, that is the duration in days of all stoppages multiplied by the number of workers involved, is one measure of the importance of overt conflict.[1] Statistics for this series have been compiled in New Zealand since 1921 and are represented in the following table.

Table 1. Industrial Stoppages in New Zealand: Working Days Lost 1921-

Year	Days Lost	Year	Days Lost	Year	Days Lost	Year	Days Lost
1921	119,208	1932	108,605	1943	114,687	1954	20,474
1922	93,456	1933	65,099	1944	52,602	1955	52,043
1923	201,812	1934	10,393	1945	66,629	1956	23,870
1924	89,105	1935	18,563	1946	30,393	1957	28,186
1925	74,552	1936	16,980	1947	102,725	1958	18,788
1926	47,811	1937	29,916	1948	93,464	1959	29,651
1927	12,485	1938	35,456	1949	218,172	1960	35,683
1928	21,997	1939	53,801	1950	271,475	1961	38,185
1929	25,889	1940	28,097	1951	1,157,390	1962	93,157
1930	31,669	1941	26,237	1952	28,123	1963	54,490
1931	48,486	1942	51,189	1953	19,291		

Source: PWLS 1963, p.64.

1 In calculating the number of days lost it is assumed that work would have been continuous if no stoppages had taken place.

Like other forms of social conflict, industrial conflict tends to become manifest in cycles, an accumulation of crises resulting in peak years of strike activity. This is evident between 1947 and 1951 where the figures for working days lost reach record proportions, then show an abrupt decline over the next decade. Not until the end of 1951 was there a stoppage of any real consequence in the months following the end of the waterfront dispute. Beginning on 30 October 1952, this stoppage affected maintenance tradesmen in the meat freezing industry and resulted in the loss of 13, 936 working days, a figure which exceeded the loss due to all other stoppages in the previous twelve months.[1]

New Zealand's record in the decade following the end of the waterfront stoppage compares most favourably with the experience of other countries over the period.

Table 2. Working Days Lost Per 1,000 Wage and Salary Earners: International Examples 1952-61[2]

Year	Aust.	U.K.	U.S.A.	Canada	N.Z.
1952	450	88	1,223	759	48
1953	410	107	569	345	32
1954	339	119	466	386	33
1955	369	181	563	472	82
1956	403	98	639	295	37
1957	226	395	316	367	42
1958	152	162	473	639	27
1959	124	246	1,293	486	43
1960	238	140	351	153	50
1961	200	140	301	274	52

Source: LEG Vol 13, No. 2, p.27

1 LEG, Vol. 3, No. 1, p.31.

2 Because "wage and salary earners" are defined according to various national criteria the table is the basis for no more than broad comparisons.

Table 2 demonstrates that after 1951 New Zealand's record of days lost to industry through stoppages is easily the best of the five countries depicted in the survey. This is largely a reflection of the weakened state of militant unionism in New Zealand and the unwillingness of union leaders to precipitate large-scale stoppages which might become subject to the full powers of the Minister of Labour.

Number and Duration

The statistics for total working days lost imply that some years are marked by endemic restlessness throughout all industries when, in fact, the bulk of the aggregate figure for days lost is accounted for by relatively few protracted disputes in a handful of industries. In 1951, for example, there were 109 individual stoppages, by no means a remarkable number when compared with the figures for previous years, yet more than a million working days were lost as a result of the waterfront stoppage and allied strikes. Table 3 indicates the prevalence of separate stoppages and the number of days elapsing between the advent of stoppages and the resumption of normal work, and reveals that the relative length of stoppages, rather than the total number, is the most important of the two variables for determining the total number of days lost.

Table 3. Industrial Stoppages: Number and Duration 1945-63

Year	Total Stoppages	Total Duration(1)	Average Duration(2)
1947	134	834	6.22
1948	101	608	6.02
1949	123	672	5.46
1950	129	567	4.40
1951	109	3,464	31.78
1952	50	108	2.16
1953	73	145	1.99
1954	61	136	2.23
1955	65	211	3.25
1956	50	390	7.80
1957	51	165	3.24
1958	49	152	3.10
1959	73	229	3.14
1960	60	344	5.73
1961	71	353	4.96
1962	96	498	5.18
1963	60	366	6.09

Source: PWLS 1963, p.64.

(1) To nearest full day

(2) In days

It will be seen that while the total number of stoppages is subject to cyclical fluctuations, there being substantially fewer stoppages in the years immediately after 1951, the downward trend is more marked in the figures for both the total and average duration of stoppages. Except for 1956 stoppages in the period 1952 to 1959 were significantly shorter than for the five years after 1947, an average of 3.36 days against an average of 10.77 days. Both the number and length of stoppages show a tendency to increase after 1959, but the pattern for the years following the waterfront crisis is quite clear: stoppages were typically short-term affairs of no more than a few days duration and for that reason subject to the normal machinery of the Industrial Conciliation and Arbitration Act rather than to the powers conferred upon the Minister of Labour.

An analysis of the relative longevity of stoppages between 1952 and 1959 confirms this pattern. Over the period stoppages lasting less than one day accounted for sixty per cent of the total number, those lasting between one and three days, twenty-four per cent, and the remainder only fifteen per cent.[1]

Workers Involved

A survey of the number of workers involved annually in stoppages reveals the extent of support for such stoppages,

1 PWLS 1963, p.66.

and by indicating the number of actual participants further clarifies the figures for total working days lost. In Table 4 the number of workers involved annually in stoppages is compared with the annual totals of all wage and salary earners.

Table 4. Industrial Stoppages: Workers Involved 1947-63[1]

Year	Workers Involved	Average Days lost per Worker	Total Wage and salary earners (000)	Workers Involved as Percentage of Total Labour Force
1947	26,970	3.81	545.5	4.94
1948	28,494	3.28	556.3	5.12
1949	61,536	3.55	568.1	10.83
1950	91,492	2.97	574.9	15.91
1951	36,878	31.38	583.2	6.33
1952	16,297	1.73	592.2	2.76
1953	22,175	0.87	609.4	3.64
1954	16,153	1.27	623.6	2.59
1955	20,224	2.57	639.6	3.16
1956	13,579	1.76	652.9	2.08
1957	15,545	1.81	670.2	2.33
1958	13,709	1.37	693.0	1.99
1959	18,762	1.58	699.4	2.70
1960	14,305	2.49	725.9	2.00
1961	16,626	2.30	753.0	2.27
1962	39,921	2.33	766.7	5.35
1963	14,911	3.65	793.9	1.88

Sources: NZOYB, passim.
PWLS 1963, p.64.

1 These are aggregate figures, since it is often impossible to ascertain exactly how many separate individuals were involved in stoppages, especially when several stoppages occurred in the same industry.

In this series the year 1951 again appears as a dividing line, considerably fewer workers being involved in industrial stoppages after 1951 than in the preceding years. As might be expected the average number of days lost per worker also shows an appreciable declime after 1951. Only in 1963 did it exceed three days.

The percentages of the total numbers of wage and salary earners involved annually in stoppages seems to indicate that over the period militancy was a relatively restricted phenomenon. In 1951 less than seven per cent of the labour force took part in the waterfront stoppage and all other strikes throughout the year, and only in two years, 1949 and 1950 did stoppages involve more than this percentage.

This is even more revealing when it is realised that the figures for these two years are somewhat misleading, for in the months before the outbreak of the waterfront crisis there were several stoppages in the same undertakings. Since the method of computation takes account only of the aggregate numbers of workers involved in all stoppages, the actual proportion of the labour force taking part was probably much lower. This inflation enters into the figures for most years, but it appears to be more pronounced in the two years mentioned. Taking this into account, it seems that overt industrial conflict in New Zealand is limited to a comparatively small proportion of the labour force.

Stoppages in Different Industries

The general series of statistics relating to industrial stoppages suggest that militancy is a restricted phenomenon, even in "bad" years when large numbers of working days are lost through stoppages. In 1951 approximately six per cent of the total labour force accounted for the loss of more than a million man-days and the great majority of the workers taking part in stoppages throughout the year were employed in the three industries of waterfront work, coal mining and meat-freezing, stoppages in all other industries resulting in the loss of fewer than 60,000 working days.[1] The records of these three industries in the years before 1951, recorded in Table 5, illustrate clearly the limited nature of militancy over the period.

1 Apart from the waterfront stoppage and allied strikes, all other stoppages during the year caused the loss of only 47,778 man-days.

Table 5. Working Days Lost: Comparative Contributions of the Waterfront, Coal Mining and Meat-freezing Industries 1937-51.[1]

	No. of Days Lost			% of Days Lost in all Industries			
Year	Water-front	Meat Freezing	Coal Mining	Water-front	Meat Freezing	Coal Mining	Combined %
1937	7,683	4,292	11,774	26	14	39	79
1938	12,265	4,874	13,553	35	14	39	88
1939	20,864	1,993	21,739	39	4	40	83
1940	7,489	725	11,393	27	3	40	70
1941	161	6,984	11,569	1	27	44	72
1942	929	25,420	24,630	2	50	48	100
1943	477	566	9,105	3	4	62	69
1944	24,452	5,753	18,470	47	11	35	93
1945	11,798	7,782	25,253	18	12	38	68
1946	14,483	4,719	9,826	48	15	32	95
1947	14,871	28,585	25,408	14	28	25	67
1948	29,302	5,792	33,214	31	6	36	73
1949	66,036	3,287	32,994	30	2	15	47
1950	102,224	3,947	53,351	38	1	20	59
1951	670,934	102,213	328,444	58	9	28	95

SOURCE: LEG Vol IV, No.2, p.46.
Vol V, No.2, p.29.

1 For reasons of convenience, the allied industries of shipping and cargo-working are combined under the heading "the waterfront industry".

Between 1937 and 1951 the three industries together consistently accounted for more than two thirds of the working days lost each year. In 1942 they contributed all the days lost through stoppages. Only in 1949 did the three together account for less than half the annual total.

Certain industries, then, appear to be particularly susceptible to industrial stoppages and in this New Zealand's experience appears to agree with that of other countries. In an inter-industry survey of strikes in eleven countries conducted in 1953, C. Kerr and A. Siegal found a large measure of international uniformity in strike patterns. The mining and waterfront industries were among the industries with the "highest propensity to strike", while industries processing food were ranked in the "medium propensity to strike" category.[1] The significant contribution to working days lost of the meat freezing industry in New Zealand, an exception to the international trend, is a reflection of the unique importance of the industry in this country.

Part of the explanation for the disproportionate contribution of these industries to the statistics of

1 C. Kerr and A. Siegal "The Interindustry Propensity to Strike - an International Comparison" in Industrial Conflict, p.190.

industrial stoppages lies in the nature of the work performed.[1] Waterfront work, coal mining and meat-freezing depend on large, closely concentrated forces of comparatively unskilled workers who tend to have a strong allegiance to the unions in which they are organised. The work undertaken is often of a dangerous and obnoxious character and there are frequent disputes concerning claims for special rates of pay for handling certain types of work. Small matters of complaint peculiar to each of these industries result in many local stoppages during the normal course of work, work being discontinued pending the satisfactory settlement of grievances. The unions organizing within these industries have a long militant tradition extending back to the maritime strike of 1890 and as the history of the 1951 crisis illustrates, they are not loath to attempt to secure concessions by the use of direct tactics.

The attempt of some union leaders to convert local union strength in a few strategic industries into a concerted bargaining force failed in 1951 under the combined onslought of the Government, the employers and the Federation of Labour, but local stoppages in these industries still accounted for a significant proportion of the annual totals of working days lost through industrial stoppages in the decade after 1951.

1 See above, pp.38 ff.

Table 6. Working Days Lost: An InterIndustry Comparison 1952-63[1]

Industry	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
Meat Freezing	14,739	250	2,778	1,942	9,523	6,432	4,487	12,857	18,924	20,738	39,692	31,909	164,271
Waterfront	2,585	188	522	1,450	634	2,111	2,509	4,001	1,134	729	3,210	7,104	26,177
Coal-mining	7,827	9,937	5,766	10,337	1,910	3,150	2,624	4,396	3,349	3,951	3,345	3,367	59,959
Building & Const.	617	3,252	9,974	33,102	6,226	14,285	7,719	3,952	101	7,407	1,766	5,703	94,058
Engineering	-	3,525	-	73	-	-	120	845	1,856	802	2,409	2,574	12,204
Pulp & Paper	-	-	-	-	2,514	550	1,150	2,959	6,363	-	-	-	13,536
Rubber	219	-	544	4,032	1,775	-	-	-	703	709	223	994	9,199
Railways	-	-	-	-	-	-	-	-	1,188	-	30,920	-	32,108
Logging	-	-	-	-	450	-	-	-	-	-	-	1,962	2,412
Road Transport	2,100	193	33	460	33	50	-	-	-	-	-	-	2,869
Fertiliser	-	-	-	143	-	-	-	-	249	208	9,901	-	10,501
Others	36	1,946	857	504	805	1,608	179	641	1,816	3,641	1,331	887	14,251
Total	28,123	19,291	20,474	52,043	23,870	28,186	18,788	29,651	35,683	38,185	93,157	54,490	441,941

1 PWLS p767.

The annual aggregates for working days lost through stoppages in all industries were much lower after 1951 than for the preceding period, but Table 6 shows that, as in previous years, a handful of industries were responsible for the bulk of the annual totals. The industries of building and construction, waterfront work, coal mining and meat-freezing contributed almost eighty per cent of all working days lost between 1952 and 1963 and the last three, those most involved in the waterfront crisis, still accounted for more than half the aggregate total.

This seems to indicate that while various factors influenced the level of militancy, the most obvious after 1951 being the weakened state of the militant unions, stoppages followed a predictable pattern in that they were confined mainly to a few industries, most industries remaining peaceful for long periods or experiencing only infrequent stoppages.

CHAPTER 6

The Tramways Dispute: A Case Study

After 1951, in the absence of any subsequent attacks on the system for regulating industrial conflict in New Zealand, the techniques of conciliation and arbitration proved to be highly efficient in dealing with most industrial disputes. Of all disputes referred to Councils of Conciliation in accordance with the requirements of the Industrial Conciliation and Arbitration Act, in the decade after 1951 nearly seventy per cent were entirely settled without the intervention of the Court of Arbitrartion.[1] Few disputes resulted in stoppages of work and the great bulk of those which did eventuate were confined to a handful of industries, most industries functioning for long periods without experiencing any disruption of normal work.

The incidence of industrial stoppages was remarkably low, both in comparison with the experience of previous years and with the records of other countries over the same period.[2] Industrial conflict did not cease after the end

1 AJHR passim.
2 See above pp. 89.

of the waterfront stoppage, but it was institutionalized to a greater degree than hitherto, grievances and demands being formulated and resolved in an orderly fashion which obscured most visible signs of discord.

The Tramways Dispute, really a series of related disputes occurring over a number of years, provides an insight into the day to day operation of the conciliation and arbitration system, and illustrates the extent to which the system largely determines not only the way in which conflict is resolved but also the way in which it becomes articulated.

The Rigg Decision: A New Sphere of Negotiation

Before September 1947 the wages and conditions of work for tramway employees in New Zealand were laid down in a number of separate local documents, there being no national award or agreement for the public transport industry.

In that month A.B. Rigg, the Conciliation Commissioner for Wellington, issued the decision of an Emergency Disputes Committee convened to settle the matter then in dispute between the New Zealand Tramways Authorities Employees Industrial Union of Workers and the authorities employing members of the union. For the first time wages and certain other matters were settled on a national basis, but other controversial issues relating to shift work, broken-shifts, signing on and off and "call-backs" and "call-forwards"

were left to be negotiated at a local level between the individual employers and the branches of the union concerned.[1]

This decision, henceforth known as the Rigg Decision, was registered in the Court of Arbitration as an industrial agreement with a currency of nine months. It was thus an interim arrangement enabling both sides to work out their respective bargaining positions in the light of what was a new type of negotiation.

While it was an undoubted advantage for the workers in the industry to have their wages determined through national negotiations, removing as it did the necessity for them to conduct several sets of local negotiations in order to establish a national uniformity of wage rates, the employing authorities were disturbed by a decision which they regarded as establishing an unfortunate precedent. They regarded the matters concerning the conditions of work for tramway employees as amenable to different solutions at a local level, but the Rigg Decision was accompanied by the likelihood that

1 These terms refer to working arrangements peculiar to the public transport industry. "Broken-shifts" are shifts where the ordinary hours of work, normally eight per day, are spread over a period of twelve or more hours, with an intervening interval of free time. "Signing on and off" refers to the times for the commencement and completion of duties. "Call backs" and "call forwards" are arrangements whereby overtime shifts are worked in a fixed ratio to the number of ordinary shifts.

these matters would all come within the scope of future national award negotiations. This was regarded by the employers as a threat to their best interests.

The full implications of the decision were brought out early in the new year when, following an appeal by the Tramway Employees Union, a new Emergency Disputes Committee was set up to determine the interpretation and application of the new industrial agreement. Chaired by D.J. Dalglish, Deputy-Judge of the Court of Arbitration, the Committee eventually decided that the parties be advised to institute appropriate proceedings under the Industrial Conciliation and Arbitration Act for the purpose of drawing up a national award.[1]

Henceforward the contest between the workers and their employers was focussed on the contents of the new award, each side attempting to gain concessions at subsequent conciliation hearings when the award expired.

The New Zealand Tramway Authorities Employees Award

The new award was filed on 28 October 1949. Because agreement was not forthcoming at the preliminary conciliation hearings the document represented a compromise imposed by the Court of Arbitration rather than one agreed to by the parties concerned.

By virtue of the "blanket clause" of the Act it was specified that the terms, conditions and provisions of the

1 BA, Vol. 48, p.767.

award were binding upon all members of the workers' union and upon all their employers.[1] The employing authorities concerned were the Auckland Transport Board, the New Plymouth City Corporation, the Wanganui City Corporation, the Christchurch Tramway Board, the Wellington City Corporation, the Dunedin City Corporation and the Invercargill City Corporation, all members of the New Zealand Tramways and Public Passenger Transport Authorities Industrial Union of Employers.

The new award laid down wage rates and provisions relating to overtime, hours of work and other conditions on a national basis, but as in the Rigg decision concessions were made to the local differences in public transport operation in that certain matters, particularly those concerning broken shifts, "call-backs" and "call-forwards" were dealt with under individual headings for each city.

The section on industrial disputes contained the stock clause incorporated in most awards:

> The essence of this award is that the work of the employer shall proceed in the customary manner and shall not on any account whatsoever be impeded. If any dispute or difference shall arise between the parties bound by this award and be not settled by mutual agreement, every such dispute or difference shall be referred to a committee composed of three representatives of each side, together with an independent chairman to be mutually agreed upon, or, in default of agreement, to be the Conciliation Commissioner for the district or a person appointed by him.[2]

1 BA, Vol. 49, p.3201.
2 Ibid, pp.3240-1.

No disputes of any consequence followed upon the announcement of the Tramway Employees Award, but the award became the subject of a series of judicial contests throughout 1950, the Court of Arbitration being eventually called upon to declare its interpretation of certain controversial sections.

In November 1951 a new award, substantially the same as the old was issued by the Court after the expiry of the 1949 document, and this also involved the Court of Arbitration in an interpretative role.

These judicial skirmishes were only preliminary to the real fray, since the basic problems concerning wage rates and conditions of employment had not yet been settled to the satisfaction of either of the contending parties. All that the Rigg Decision and the two national awards had established was a new arena of negotiation, where certain matters relating to tramway employment were discussed at a national level. This involved a concentration of power into the hands of the rival national unions, and both had their own ideas as to what use could be made of this new situation.

Award Negotiations in 1953

The date of expiry of the 1951 award was 30 May 1953. To allow the employers time to prepare a united front, a meeting of the Management Committee of the employers' union was held in December 1952, and it was decided that steps be

taken to file claims for a new award.[1]

On 11 February 1953, an application on behalf of the employing authorities, requesting that a Council of Conciliation be convened to hear the dispute, was accordingly lodged with the Clerk of Awards. Attached was a schedule setting out the employers claims. The following month the national employees union filed counter claims, and a conciliation hearing was arranged to discuss the opposed claims.

The employers' schedule contained proposed changes to the old award, relating to shift work, "broken-shifts", days off, "call-backs" and "call-forwards". In reply the workers claimed a wage increase of 1¾d per hour, and in addition requested that alterations in their interest be made to the clauses dealing with shift-work, broken shifts, "call-backs" and "call-forwards", holidays and uniforms.

The rival claims thus reflected the measure of disagreement which separated the contending parties. The employing authorities, unlike most businessmen, could not voluntarily increase production in order to absorb wage rises, nor were they able to increase public transport fares indefinitely and still carry out their function of providing a public service. They were, however, prepared to increase the rates of pay paid to tramway employees in response to any concessions made by the workers which would

1 A. Cooper (Secretary PPTA) to J.F. Fardell (General Manager CTB), Fardell File, 12 Dec. 1952.

increase the efficiency of bus operation. For their part the employees regarded any increase in wages not as a reward for assisting the public transport industry to become more efficient but as an overdue increment enabling their wages to keep abreast of current increases in the cost of living.

The workers agreed to proceed with the Conciliation hearing on 25 March, and in order to discuss the implications of the matters in dispute R.E. Dawson, the Secretary of the employers' union arranged a further meeting of the employers assessors for 24 March.[1] Here it was affirmed that any increase in wage rates would be granted only in return for significant concessions made by the employees' union.

Next day the hearing began at Wellington under the chairmanship of the local Conciliation Commissioner, H.M. Hooper. During the first three days of the sitting only three clauses of the proposed award, dealing with wages, "broken-shifts" and driver qualifications were discussed.[2]

The proceedings reached a stalemate on the first day and an adjournment was called by the Commissioner. On the second day little progress was made regarding wages. The employers offered an increase of 1d per hour subject to an agreement by the workers to work more broken shifts.

1 Fardell File, memorandum to members of PPTA, 12 Mar 1953.
2 CTB Works and Transport Minutes, 30 Mar 1953, p.2.

In effect this would reduce the number of hours being worked at overtime rates of pay, and the representatives of the workers rejected the offer and restated their claim for an increase of $1\frac{3}{4}$d per hour with no conditions to be attached. Later in the day this was reduced to a claim of $1\frac{1}{4}$d.

The employers' assessors adjourned to consider the matter, and on return informed the union that they could not agree to the $1\frac{1}{4}$d increase, but that they reaffirmed their previous offer of 1d an hour if the broken shift and qualifications clauses were settled in their favour.[1]

With no immediate likelihood of the stalemate being broken, the Conciliation Commissioner adjourned the hearing for one month to allow the parties to reconsider their positions. At a meeting held on 23 April both sides remained adamant, and the Commissioner subsequently gave notice that the dispute had been referred to the Court of Arbitration.

In keeping with the spirit of the Industrial Conciliation and Arbitration Act, that the technique of arbitration was not to be employed until all possible avenues of conciliation had been explored, the Court declined jurisdiction of the dispute on the grounds that insufficient progress had been made at the conciliation hearings. The dispute was accordingly referred back to the Conciliation Commissioner and the Council resumed its hearing on 25 June.

1 Ibid.

Before the new hearing began there appeared to be only two possible alternatives: that the existing Award be renewed in its entirety, without any alteration in either wages or conditions, for a further period of twelve months; or that both parties agree to a $1\frac{1}{4}$d an hour increase in the basic hourly rate subject to alterations in favour of the employers in other clauses.

The possibility of compromise being reached on the second of these alternatives diminished when a few days before the hearing was scheduled to begin it was announced that the Federation of Labour was pressing for another general wage order. Faced with the prospects of an unforseen general wage increase the employers preferred to accept the disadvantages of the old award by perpetuating the stalemate at the level of national negotiations.

The Return to Local Negotiations

The hearing was adjourned sine die on 26 June, but not before the possibility of new developments began to appear. In an attempt to obtain a partial settlement it, was, agreed that discussions take place between the local employing authorities and the local union branches. This was a return to the local bargaining situation existing before the Rigg Decision of 1947.

While local negotiations undoubtedly would have assisted the employing authorities by allowing them to take into account local problems concerning public transport

operation in each city, the workers were not similarly inclined to favour the proposed shift in the sphere of negotiations. At a meeting of the Auckland branch of the Tramway Employees Union held some weeks after the adjournment of the conciliation council it was decided that

> ... after considering the manager's letter containing the Board's assessors' proposal that a ratio of 70% broken shifts to straight shifts be agreed to in Auckland, this meeting resolves that in view of the apparent failure to reach an agreement on the award nationally in order to obtain the $1\frac{1}{4}$d per hour increase in return for an increased number of shifts, the Board's conditional offer be declined.[1]

Local negotiations in Christchurch produced the same result. The local branch of the Tramway Employees Union was offered a change in the ratio of straight shifts to broken shifts in return for an increase of $1\frac{1}{4}$d an hour for this facility. This offer was refused, the local executive reiterating that a wage increase should be granted not for the working of extra broken shifts but in order to bring the wages of tramway employees in line with award rates currently being laid down in other industries by the Court of Arbitration.

For some months there was no change in the stalemate, the old award remaining in force. Then on 14 March 1955 the Christurch Transport Board received a deputation of tramway employees asking that the Board consider a new claim

1 Fardell to C. Cooch (Acting Secretary of PPTA), Fardell File, 19 Aug 1953.

for increased rates of pay on the grounds that all employees of the Wellington City Corporation had recently been granted an unconditional increase of $1\frac{1}{2}$d per hour. Now the tables were turned. The Board stated that it was unwilling to consider any change in the award except on a national scale.[1]

The Exploratory Committee

Except in Wellington the change in the sphere of negotiations accomplished little for either side. Both the employers and the workers attempted to prosecute their own interest through whichever medium suited them at the time. Neither was prepared to make significant concessions in order to reach a realistic compromise between the rival claims for increased wages and increased efficiency.

It was at this point that the workers suggested the idea of an "exploratory committee", an ex officio "conciliation council" which would have the advantage of bringing both sides together informally at a national level. In the light of the further attempts at negotiation which had been made since it was last referred to the arbitration, the Court could not decline jurisdiction of the Tramways Dispute indefinitely. The aim of the workers in proposing the exploratory committee was to give the parties a last chance to settle the matters in dispute by negotiation.

1 Fardell File, extract from CTB Works and Transport minutes, 14 Mar 1955.

> ... we are convinced it is unfair to ask the Court to grasp all the intricacies of our Award in a couple of days and then give a decision that will solve problems that your union and mine have been grappling with for months.[1]

The employing authorities viewed the proposal of the ad hoc committee in a different light. The Court of Arbitration had recently increased the basic weekly wage of all workers bound by awards and agreements by thirteen per cent on the first £12. This had the effect of increasing the basic forty-hour wage, but not the rate for hours of overtime worked. The aim of the workers was to negotiate an all-inclusive increase in their wages which would raise overtime rates as well as the basic rate. For their part the employers stood to gain more at this stage from an award of the Court than from a negotiated settlement, since the award would incorporate the general order only in the first £12, and not in subsequent wage increments.

Despite their preference, after the breakdown of local negotiations, for the technique of arbitration the employers agreed to take part in the proposed meeting, appreciating that failure to do so would have made them appear wholly responsible for the protracted deadlock.

The committee eventually met on 14 June 1955, in an endeavour to find common ground which might be the basis on which a new award could be concluded. After considerable discussion the recommendation of the committee was that the

1 D. Hansen (President, Christchurch Branch of TEU) to Cooper, Fardell File, 19 Apr 1955.

basis for future negotiations be the wage rates paid in Wellington, where the full thirteen per cent of the recent Court order had been incorporated into all rates, plus an additional $1\frac{1}{2}$d per hour.

Despite this, after the conclusion of the discussions the employers made it clear that any future negotiations on wage rates would be linked with the question of the broken shift and qualifications clauses. Concerning the recommendations of the exploratory committee the Christchurch Transport Board passed the following resolutions on 20 June:

(1): That it would agree to an increase of $1\frac{1}{2}$d per hour on existing wage rate.

(2): That the 13% Court Order be applied in the manner [prescribed] by the Court.

(3): That it is understood in making the increase there would be a satisfactory settlement of the qualification and broken shift clauses, the latter on a local basis, as indicated by the union.

(4): That any further submission for an increase in wages, beyond the above $1\frac{1}{2}$d be dealt with in the normal manner of conciliation and arbitration.[1]

The Christchurch employers, at least, were making it quite clear that they did not intend to be bound by the

1 Quoted in Fardell to Cooper, Fardell File, 27 Jun 1955.

recommendations of the exploratory committee. As far as the Court's order was concerned they emphasized that the thirteen per cent was to be paid as a lump sum on the basic forty-hour wage, not incorporated as an hourly rate which would spread the increase over all rates.

In reply to the Board's offer L.C. Southon, the secretary of the Christchurch branch of the workers' union, restated the attitude of local members.

> I can scarcely anticipate that the Board's offer will be acceptable to the rank and file of my branch, as you are well aware that they rejected a similar offer approximately two years ago.[1]

The Outbreak of Militancy

The wheel had turned the full circle. Each attempt at negotiation had done little more than underline the extent of the existing stalemate. The employers showed little sign of granting an unconditional wage increase along the lines of the Wellington settlement. For their part the workers were not prepared to accept the additional sum of $1\frac{1}{2}$d per hour for what they regarded as an unfavourable alteration in their conditions of work, namely the relaxation of the "broken-shift" clause.

A veiled threat that the workers might seek to employ other methods to gain their demands was contained in a letter from the national executive of the workers'

1 Southon to Fardell, Fardell File, 30 Jun 1955.

union to the employers union in July.

> ... our assessors have faced some very hostile comment both at the annual meeting of our National Council and from the floor of Branch meetings. This hostility arises from a demand to know why we wasted so much time, effort, energy and money at futile and abortive Conciliation Council meetings for no purpose other than to endeavour to preserve our existing wages and conditions, when other unions, apparently, achieve much better results through other channels.[1]

The first official note of militancy appeared in August 1955, in what amounted to an ultimatum issued by the national executive of the workers' union. The employers were informed that five of the six branches of the union had "severely criticized" the national executive for not preserving comparative margins with other unions of workers; that the executive remained adamant that they would not go beyond the recommendations made by the exploratory committee; and that a "more definite and militant attitude" would be adopted in that, unless the employing authorities confirmed the recommendations of the committee, all tramway employees throughout the country would combine to work a forty-hour week only.[2]

In response to the threat of direct action a special meeting was held at Dunedin on 16 August in order to determine the procedure to be adopted by the Employing Authorities. A. Cooper, the secretary of the employers'

1 Hansen to Cooper, Fardell File, 23 Jul 1955.
2 Transcript of telephone communication quoted in Cooper to Fardell, Fardell File, 5 Aug 1955.

association was authorized to inform the national executive of the workers union that the employers offered a 1½d per hour increase on the existing basic award rates of wages, subject to agreement on the broken shift clause "where required", and that if this was not acceptable to the workers, it was the intention of the employers to apply for a resumption of conciliation proceedings forthwith.[1]

Faced with the prospects of another round of negotiations which promised little hope of an acceptable settlement, on 31 August the National Council of the Tramway Employees Union announced that it had decided to call stopwork meetings of the union throughout New Zealand the following week, in order to discuss proposals made by the Council that a wage claim be made for an immediate increase of 4d per hour, the rate to be incorporated in a short term award based on the working conditions set out in the then current award.[2] The National Council of the union also decided to recommend to members that the executive should refuse to meet the employers until after the national stop-work meetings, and if at that point the employers failed to concede the wage demand, that members should refuse to work voluntary overtime.[3]

The aim of the union was that during the short currency of the proposed new award discussions could be resumed with

1 Cooper to Hansen, Fardell File, 16 Aug 1955.
2 Press, 1 Sep 1955, p.10.
3 Ibid.

the object of having a long-term award made after a complete review of wage rates and working conditions.

Whatever the merits of such an award the threatened sanctions drew an immediate reply from the Minister of Labour.

> If the parties cannot settle the dispute by discussion around the table, then the proper course is for the matter to be referred to the Court of Arbitration for settlement ... I can see no reason why the normal procedure should not be followed in this case, and thus avoid an unnecessary stoppage of work and considerable inconvenience to the travelling public.[1]

The employers stepped up their efforts to force the dispute back within the mould of the conciliation and arbitration system, Cooper using "every endeavour" to arrange a conciliation hearing at the earliest date possible.[2]

Despite the numerous discussions, negotiations and hearings conducted over the previous eight years only two national awards for tramway employees had been registered during the period, and the workers viewed the proposals for a further conciliation hearing with a certain amount of scepticism. To ascertain the feeling of branch members towards the dispute the stopwork meetings were held as scheduled on 8 September. Voting throughout the country overwhelmingly endorsed the stand of the National Council, only 23 out of nearly two thousand voters rejecting the proposal that voluntary overtime end on 19 September.[3]

1 Ibid.
2 Cooper to Fardell, Fardell File, 1 Sep 1955
3 Press, 9 Sep 1955, p.14.

Equipped as they were with new bargaining strength arising from the results of the national vote, the workers now agreed to resume conciliation proceedings.

Preliminary efforts to reach agreement on wage rates failed on 13 September, the first day of the new hearing and the overtime ban was accordingly put into effect as planned a week later.

A further hearing was arranged by the Secretary of Labour (H.L. Bockett) for 22 September. At this meeting the employers raised their previous offer of a wage increase of $1\frac{1}{2}$d per hour to 2d, subject, as before, to alterations in the "broken shift" clause. In reply the workers reduced their original demand for a minimum increase of 4d per hour to 2d, conditional upon increases in shift rates. Both parties refused to bridge the gap, but as evidence of a new spirit of compromise both sides agreed to discuss other clauses still in dispute separately from the wage issue, and papers were drawn up for a new Court of Arbitration hearing.

On the last day of the conciliation hearing a basis was established for subsequent negotiations, all clauses in the award being discussed. Of the forty-one clauses sixteen remained unsettled, and of these it was agreed that eight be discussed on a local basis, the remainder being left to the discretion of the Court.

The ban on voluntary overtime lent a new urgency to attempts to reach a final settlement of the dispute, and

the return to local negotiations accomplished partial success in breaking the deadlock. Early in October the Auckland Transport Board reported that it had settled the broken shift clause locally for the extra payment of $\frac{3}{4}$d per hour on the basic rate, plus an additional sum of 3d per hour to be paid for all broken shift duties.[1]

Local negotiations also met with some success in Christchurch. Agreement was reached upon the clauses dealing with the supply of uniforms and "call-backs" and "call-forwards". It was agreed that this last clause would be continued in its entirety in the new award. This entailed no alteration in the status quo, but it marked a breakthrough in negotiations since it removed one of the obstacles in the way of closer understanding between the two parties.

The crucial clause relating to "broken shifts" remained unsettled. The employers claimed the right to the same number of broken shifts, approximately seventy, to which they had been entitled during the days of tram operation. This figure included the broken shift rosters of assistant conductors, a category which disappeared with the replacement of trams by buses in 1952, and which consequently was not calculated in the existing award provision. The workers rejected this argument on the grounds that the return to the conditions of the old award would have the effect of

1 Fardell File, extract from CTB General Manager's report, 7 Oct 1955.

altering the ratio of broken shifts to straight shifts from one in four to one in three. Further negotiations foundered on this issue.

The Arbitration Hearing: Claims and Counter-Claims

In keeping with the agreement made during the September conciliation hearing the Tramways Dispute was referred to arbitration, and the Court convened on 7 November 1955 to hear the dispute. The rival claims of the contestants were developed in accordance with the positions both had occupied at negotiations and conciliation hearings over the years, the workers' case being concerned almost entirely with wage demands, that of the employers with increasing efficiency in the public transport industry.

At the hearing the workers sought to have the basic rates of tramway employees increased by 1s per hour.

> Since it has been agreed that the Court's clause incorporating the effects of the 1954 general order should be included in the award, the counter proposal [of the workers] actually envisages increases of 1/- per hour plus 13% up to ceilings as prescribed in the order.[1]

Although the employers had eventually offered an increase of $1\frac{1}{2}$d per hour at the last conciliation hearing, in their schedule of claims presented at the Court hearing they were not willing to concede anything. Aware that in situations such as this the Court was likely to bring down a compromise decision, the workers claimed as much as they could reasonably claim and the employers conceded as little as

1 Submissions made on behalf of TEU in CofA, 7 Nov 1955, Part 1. p.1.

possible.

The workers also claimed other indirect wage increases. It was proposed that a new sub-clause be incorporated into the award allowing for the payment of a service bonus of 1½d per hour after two years continuous service, 3d per hour after five years and 6d per hour after a total of ten years service. A further claim was made for the payment of an additional 3d an hour for work done under wet conditions.[1]

Supporting their case the workers' representatives pointed to the fact that the present award governing the industry had been made four years earlier, on 30 November 1951, and that it had expired on 30 May 1953.

> We venture to say that there are very few of the major awards which have not been renewed during that period, and this, we submit, is a pertinent fact when wage claims in particular are under consideration.
>
> As the Court is aware, the majority of the awards and agreements made subsequent to the 1952 amendment of the Court giving effect to its standard wage pronouncement of that year, have incorporated wage increases. Particularly is this true of 1954 and 1955 awards and agreements. The consequence is that wages for our workers have declined relative to the majority of other groups.[2]

Concluding their submissions the workers argued that they were also justified in seeking a large wage increase because of the nature of the work involved, requiring as it did the operation of buses at night, on weekends and on public holidays. In their view increased rates of pay

1 Ibid, p.2.
2 Ibid.

would attract new employees, thereby overcoming the problem of the chronic shortage of labour in the industry, and would allow workers to receive a "reasonable standard" of wages for a forty-hour week.[1]

In their turn the employers reiterated their claim for changes in the "broken-shift" clause. They sought to have eliminated from the award the proviso which limited the number of broken shifts to be worked on trams and trolley buses in Wellington to 77. Where Christchurch, Dunedin and Invercargill were concerned the employers in each case sought to have eliminated from the award the ratio specifying the number of "broken-shifts" worked in proportion to ordinary shifts.

The workers' union regarded this as an attempt to "break down established conditions of work".

> Speaking of the Broken Shift clause generally we submit that elimination of the provisions setting down the ratio of Broken Shifts to Straight is a matter about which our union has very strong views. It is this clause, coupled [with] the employers' adamant demand that it must be altered before any consideration whatever would be given to a revision of wage rates, that has, more than any other matter, created unrest in the industry.[2]

The union therefore requested that the ratio be set at fifteen per cent and that 6d per hour be paid as a bonus for all "broken-shift" work.

1 Ibid, p.23.
2 Ibid, Part 2, p.9.

The Court was faced with the situation that, apart from mutual concessions on relatively minor points, over a period of several years the two sides had not made any significant advance towards a compromise solution which balanced the rival claims for increased efficiency and increased wages. Judge Tyndall thus proceeded to impose a decision which, if it did not have the advantage of being agreed to by the parties concerned, had the virtue of making equal if minor concessions to both claims.

The new award increased the basic hourly rate by $2\frac{1}{2}$d. for operators and $2\frac{1}{4}$d for conductors. Similar increases were applied to workers engaged in maintenance duties. The "broken-shift" rate was increased by $\frac{3}{4}$d per hour, and the ratio of such shifts was standardized at one in three.[1] All of the new rates were subject to the Court of Arbitration' recent order of thirteen per cent on the first £12.

The provisions of the new award were substantially the same as those of the old. Eight years of conciliation meetings, court hearings and informal negotiations had accomplished little for either side. Indeed, the bargaining process, far from being terminated for the two year duration of the new award, began a new phase almost immediately. By July 1956 the Wellington Branch of the Tramway Employees Union was already seeking a further increase in the basic rate for tramway workers.[2]

1 Press, 3 Dec 1955, p.10
2 Fardell File, extract from CTB General Manager's Report, 25 Jul, 1956.

What was most significant about the Tramways Dispute was not what was accomplished but the fact that although the dispute was apparently interminable, except for the stopwork meetings held in 1955 the contest between the opposed claims for increased efficiency and increased wages took place in an orderly and peaceful fashion.

By the end of 1955, although the operation of the conciliation and arbitration system had given them every opportunity to do so, the parties involved in the Tramways Dispute had not yet arrived at an acceptable formula for compromise. But in the light of the frustrating and seemingly intractable nature of the dispute the mere maintenance of industrial peace was in itself a remarkable achievement.

C O N C L U S I O N

The most public form of industrial conflict is the strike, but other aspects, which do not obtrude themselves into the public consciousness to the same extent, are no less important.

The maintenance of industrial peace is, in itself, a notable political achievement. But there is a very real danger that maintaining industrial peace, in the sense of preventing militant outbreaks, may be the only goal of those concerned with regulating industrial conflict. Such a peace may well obscure problems which lie at the heart of industrial relations.

What is needed is a more realistic appraisal of political problems on the part of those most involved in industrial affairs. There should be a growing appreciation that, while there are legitimate grounds for conflict between workers and employers, these need not prevent the two groups from making mutually advantageous concessions.

The main problem today is to build a more orderly wage structure. The annual rounds of wage claims help to maintain the momentum of inflation, with serious economic repercussions in a country uniquely dependent upon the terms of its overseas trade.

Some economists suggest that wage inflation could be dealt with along the lines of the 1946 Walsh Report: that stability could be achieved within an economy exhibiting an accelerated rate of growth, providing that measures are taken to ensure that wages and profits do not outstrip production.

A comprehensive plan for fostering productivity and rationalizing wage claims would require the mutual co-operation of employers and union leaders in the wider introduction of incentive schemes. These must have a wider justification than a simple drive towards increased productivity. They must be built into the structure of awards and take account of the claims of both employers and workers, so that they do not appear as attempts to circumvent union achievements.

Strong government action may produce industrial peace, but the real problems of industrial relations can only be resolved by closer links between the groups concerned; through the development of wider areas of understanding within which negotiators and arbitrators can operate.

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