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# **EMPLOYMENT RELATIONS IN A CHANGING WORLD:**

**a comparison of outcomes for New Zealand workers  
under neoliberalist and third way regimes**

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## ABSTRACT

This research is an examination of the effect of recent world changes on political-economic strategies in industrialised countries, and the subsequent developments in employment relations. The three major strategies included are neoliberalism, the third way, and social partnership. The trends covered under employment relations focus on decentralisation, labour market flexibility, workforce skill and education, and union decline. Overall the thesis is aimed at describing and analysing the changes to employment relations under these three strategies, then at assessing and comparing the related outcomes for workers in New Zealand under the neoliberalist and third way approaches.

A qualitative approach was used in the thesis through informal conversations with key New Zealanders to determine worker goals. Supporting this was a literature search on worker goals worldwide which relied on comparative policy research methods. Both aspects then provided the basis for selection of the relevant measures of outcomes for local workers. A quantitative approach was necessary in gathering and analysing the data required to actually measure outcomes for workers under the neoliberalist and third way strategies. This enabled assessment and analysis of the results of the policy-making linked to these political-economic strategies in this country. A comparison of the outcomes for New Zealand workers under neoliberalism and the third way was then feasible, providing some indication as to which approach has been most beneficial for workers in this country.

The main findings of the study focus on the outcomes for workers in New Zealand, which are seen as resulting largely from neoliberalist and third way policy-making (or the lack of same), and the related trends in employment relations. The more negative trends in line with international patterns in employment relations occurred under neoliberalism, while the more positive trend of workforce skill and development was more prevalent under the third way. In terms of actual results, the third way in comparison to neoliberalism has not delivered significantly better outcomes to New Zealanders. While the neoliberalist regime certainly instigated the changes that caused such dramatic declines for workers during the 1990s, most of the recent improvements under the third way seem to be a diluted continuation of earlier positive trends, although this is also the case where negative trends have persisted. Generally the third way approach has acted to halt earlier declines rather than reversing negative outcomes in any substantial way. Where the neoliberalist approach was fairly indiscriminate in disadvantaging workers, the third way appears to have mostly been of benefit to the average working New Zealander, rather than assisting the more marginalised groups.

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## **INTRODUCTION**

The world of work has changed dramatically in the past 25 years. The shift in bargaining from national level to the individual enterprise has been widespread in OECD countries (Locke et al., 1995: 144-147). This decentralisation of employment relations has led to increased managerial prerogative and greater labour market flexibility, along with a decline in union strength and membership (*ibid.*). Another trend is the added focus on workforce skill development and training (*ibid.*). The widespread growth of individualisation in employment relations across much of the industrialised world (Deery and Mitchell, 1999: 1) has replaced the previous collective approach to employment relationships.

These international trends are also evident in New Zealand. As a common law country, New Zealand underwent one of the more extreme and activist experiments aimed at individualising the employment relationship (Anderson, 1999: 204). Linked to this was the policy of minimising union participation in the negotiation or administration of employment contracts (*ibid.*). This radical move away from collectivism within employment relations resulted in an emphasis on individual employment contracts (Deery and Mitchell, 1999: 1). The common law contract of employment was the central concept used to implement the radical deregulation of the labour market (Anderson, *ibid.*). Major changes subsequently occurred in New Zealand's employment relations framework, workforce and industry composition, and managerial approaches (Rasmussen and Lamm, 1999: vi). This led to a shift towards a more self-regulatory approach in New Zealand's employment relations, with the allied responsibility resting firmly on employers and employees (*ibid.*). New Zealanders are now expected to manage their workplaces, installing systems that ensure compliance with the numerous employment regulations introduced over the past two decades (*ibid.*).

The wider risks and responsibilities imposed on workers have therefore broadened in tandem with reduced state intervention and provision. Where the state originally ensured a basic standard of living through the provision of social rights (such as access to education, healthcare and social welfare), there is now a greater reliance on individual self-sufficiency. So at a time when worker resources are fewer and social and economic responsibilities are greater, positive outcomes for workers now depend even more heavily on effective forms of worker representation. Linked to these changes is the expectation that worker organisations address the necessarily broader goals of their members. As well as focusing on employment policy, workers

are now increasingly concerned the economic and social policies that also shape worker goals and outcomes.

## FOCUS AND AIMS OF THE STUDY

The political-economic approaches behind government policy-making have also been driven by international developments, especially over the past two decades or so. In response to worldwide changes, and despite other alternatives, three major political-economic approaches in particular have been adopted within industrialised western countries: neoliberalism, the third way, and social partnership. Government policies developed under these three approaches have caused changes in employment relations and beyond, in turn affecting the outcomes for workers. This study focuses on the employment policy framework under each of these three political-economic approaches, their effect on employment relations, and the outcomes for workers.

The study's initial emphasis on international trends in political-economic approaches and employment relations moves to analysis of related developments in New Zealand. Although less so for the third way, New Zealand provided a particularly clear model of neoliberalism in action between 1984 and 1999. By using New Zealand post-1984 as a case study, a more in-depth examination of policy frameworks under neoliberalism and the third way is possible. Local developments in employment relations and worker representation under each approach are also compared, with an assessment of the outcomes resulting for New Zealand workers during both regimes. A comparison of outcomes to worker goals then indicates which of these two approaches has been most beneficial for New Zealanders.

The resulting areas of focus in this thesis are:

1. The three main political-economic responses of industrialised countries to global changes.
2. The economic and social policies related to each response, including employment policy.
3. The subsequent international trends in employment relations.
4. Neoliberal and third way policy-making in New Zealand.
5. Employment relations in New Zealand under neoliberalism and the third way.
6. Outcomes for New Zealand workers under the neoliberalist and third way approaches.

The study therefore centres on the outcomes delivered to New Zealand workers through the neoliberal and third way policy models, in particular determining which policy model has been most beneficial for workers in terms of outcomes which fulfil worker goals.

## SOCIAL AND EMPLOYMENT POLICY

The research focus of the thesis means that the discipline of social policy is central to this study. The policy frameworks under neoliberalist and third way governments are assessed in the thesis in terms of the outcomes delivered and benefits gained by workers under each regime. Social policy refers to the actions that affect the well-being of members of society through shaping the distribution of, and access to, goods and resources in that society (Cheyne et al., 1997: 15). As well as state activity, actions include those occurring in the market-place and in voluntary associations (*ibid.*: 3). Actions also include both specific decisions and inaction, that is failure to act (*ibid.*: 15). This study focuses largely on state action, by highlighting government policies that have emerged in New Zealand through state action or inaction over the past two decades. The study links the well-being or otherwise of New Zealand citizens during this period to government policies that have shaped distribution and access.

The employment policy adopted by governments has a major impact on workers in that country. Even apart from the inherent benefits of work, the income generated from employment is increasingly linked to well-being in more-market societies where welfare state reform is common. Contemporary policy advice occurs in an environment which takes the market for granted, where social policy goals are subordinated or flow from economic goals, and where the political aspects of welfare are denied (Cheyne et al., 1997: 144). Work is generally seen as something provided within a market context, even if the provider of work is the state (Hill, 1996: 174). The focus for analysis of employment policy as 'social policy' is thus upon 'interference' with the normal working of the labour market (*ibid.*). The desirability of market methods in regulating social life is then a central issue (*ibid.*: 175). Views on this subject may range from the pure market perspective which sees labour market interference as causing inefficiencies that result in diswelfare (as a whole), to the pure 'socialist' perspective which sees the market as something to be swept away in the name of both efficiency and welfare (*ibid.*). Policy directions are therefore inevitably based on a series of assumptions about the relationships between the state, individuals, and various groups within society (Cheyne et al., 1997: 67). These assumptions are often tied explicitly or implicitly to one or other of a number of theoretical perspectives (*ibid.*). A critical approach to social policy therefore goes beyond technical issues and confronts the underlying values and interests (Cheyne et al., 1997: 145). An examination of political-economic regimes and allied employment policies must by necessity then include the underlying ideologies, as these also shape the trends in employment relations and outcomes for workers.

## DEFINING EMPLOYMENT RELATIONS

Also a focal point of this study, employment relations is drawn from a variety of disciplines. The subject of employment relations relies on concepts and ideas derived from sociology, economics, psychology, history and political science (Rasmussen and Lamm, 1999: 1). As a hybrid of industrial relations and human resource management, employment relations takes a macro/micro approach by involving the international, national, corporate and workplace levels (ibid.: 5). Although primarily involving employees, employers, and the government (ibid.: 18), employment relations can also be affected by external factors such as technological change, market conditions, and societal and political power shifts (Geare, 1994: 248). It is obvious that the nature of employment relations can only be fully understood in the context of, and in relation to, the wider socio-economic, political and legal structures (Rasmussen and Lamm, 1999: 5).

*Direct links*

Employment relations focuses on the employment relationship, its general context, and the factors and processes that determine changes in the relationship (Deeks et al., 1994).<sup>6</sup> A more comprehensive explanation defines employment relations as the relative powers and interests of the key parties (employees, employers, government) in regulating employment conditions and establishing workplace rights; the strategies adopted by the key parties and their agents to influence, regulate or control the employment relationship; the formal and informal rules and processes established to regulate the employment relationship; the cultural, social, economic, political, legal and institutional contexts within which the powers and interests of the key parties are established and exercised, and within which the rules and processes that regulate employment relationships are formulated and implemented<sup>7</sup> (Deeks and Rasmussen, 2002: 8). This definition emphasises the powers and interests of parties to the employment relationship, the strategies they use, the rules and processes of regulating the relationship, and the wider contexts in which the key parties, rules and processes operate. Another useful definition is provided by Boxall (1995: 28).

Employment relations is concerned with all aspects of the employment relationship, both individual and collective. As a field of study, it incorporates a range of contextual variables, and the philosophies, goals and behaviour of all the relevant practices. It includes the processes by which they interact, the main patterns of these interactions and the outcomes they experience. It is concerned with all sectors of employment and all types of paid employment (Boxall, 1995: 28).

Boxall's definition of employment relations highlights the breadth of the employment relationship itself. As well as the contexts and processes of interaction, the goals, patterns and outcomes are also stressed.

The meaning of employment relations intended in this thesis combines aspects of both definitions above. Employment relations involves individual and collective employment relationships, and employees in all sectors and types of employment. The study's emphasis is on the powers and goals of the key parties to the employment relationship (employers, government, and employees, often referred to as workers), the main processes and patterns of interaction, and the outcomes for workers. While acknowledging the importance of the cultural and institutional contexts, this study highlights the political-economic context of employment relations at international and national levels. The subsequent focus on government policymaking also emphasises the legal context of employment relations, through the formal rules and processes that regulate the employment relationship. Attention to the effect of government policies on workers then takes into account the broader social and economic contexts of employment relations.

## MOTIVATION FOR THE STUDY

A major motivation for this thesis is the wish to address employment-related issues of concern for New Zealand workers, and through that to assist in practical rather than theoretical terms. Issues cited as relevant by worker representatives are addressed through the thesis providing a more comprehensive overview of the links between political-economic approaches, related changes to employment relations, and the subsequent outcomes for workers. Research conclusions could be useful for unionised workers in deciding which political-economic approaches and policies best promote worker goals, as far as actually achieving these goals in practical terms, and in deciding which changes may subsequently be necessary within employment relations. The thesis effectively provides a commentary which may be helpful in providing a basis for strategic decision-making and lobbying over worker goals on a collective basis. Although interests rather than ignorance "inform" much policy, pursuit of the appropriate strategies by workers and their organisations would still be more likely to deliver worker goals.

The study's outline of employment policy under New Zealand's third way approach provides a broad overview of work-related rights and responsibilities currently relevant to workers here. While my goal is that this research is useful to all workers, I hope that it especially benefits workers who most need such information, but who seldom have access to this. These are the people most disadvantaged not only within the workplace, but also often having the most

difficulties in entering and leaving employment. They include younger workers, women, Maori, ethnic minorities, and people with disabilities. The youngest workers in New Zealand effectively represent a generation with little or no knowledge of collective representation, let alone of minimum codes of employment and how to enforce these without assistance. The distribution of such information in popular locations would be necessary.

The study also contributes to theory development in the field of employment relations. Although much information exists about the broader changes within New Zealand and international labour markets during the 1990s (especially regarding changes in unions and their membership), less information is available about the outcomes for workers under the different political-economic strategies adopted as a result of world changes. To provide useful research into such issues, theory-building must be explanatory as well as descriptive. Despite the relevance of other factors, the attempt to explain the link between specific political-economic strategies and changes in employment relations goes some way towards shedding light on the causal variables in worker outcomes. By looking at the benefits and shortfalls of policies under these political-economic approaches, the study also assesses the merit of various employment policies, and of the broader social and economic policies, in terms of meeting worker goals.

While much of the study's contribution to theory-building is based on recent changes within New Zealand, broader trends underlying world changes in employment relations and political-economic regimes are also examined. Historical comparative research into these international trends and outcomes contributes to existing knowledge and theory development, and gives some indication of areas requiring further research. The thesis also provides a critique of New Zealand's policy and subsequent recommendations. The study's conclusions enable a more comprehensive understanding of employment relations under various political-economic approaches internationally and within New Zealand, as well as the associated outcomes for workers under the different regimes. This research aims at theory-building which assists not only academics and policy analysts, but especially those active within the field of employment relations: workers, worker organisations, employers, and the government. A change in both the focus and approach to policy-making appears necessary if worker goals are to be achieved in reality.

## OUTLINE OF THE THESIS

Chapter two covers the methodology used in this study, focusing on comparative (historical and international) and documentary research, and the use of quantitative and qualitative research methods. The development of the table of worker goals and measures also presented is based on

assessment of local and international sources. The European Social Charter 1996 (revised) was used as the primary international source for tabling worker rights as goals, and also for developing indicators to measure outcomes.

The next chapter provides the background to the thesis, and the yardstick against which developments in New Zealand can be measured. An outline of recent global changes forms the basis for analysis of the resulting and more major political-economic responses. In OECD countries, these involve neoliberalism, the third way, and social partnership. Recent trends in employment relations that have subsequently occurred in these countries are also discussed.

By using New Zealand as a case study, the next four chapters provide an in-depth comparison of the local trends in policymaking and employment relations ascribed to the neoliberalist and third way political-economic regimes. Chapter four focuses on the economic, social and employment policies created during the neoliberalist era in New Zealand. Chapter five covers the effect of these policies on New Zealand's employment relations, focusing on the decentralisation of employment relations, labour market flexibility, workforce skill development, and union decline and worker representation. The same emphasis on policy-making and the subsequent developments within employment relations continues for chapters six and seven, but under the third way political-economic approach largely prevalent in New Zealand at present.

The outcomes that resulted for New Zealand workers under these two political-economic strategies are covered in chapter eight. The ratification of ILO Conventions is examined, then local outcomes specifically related to these Conventions. Outcomes connected to workplace goals are set out, followed by broader economic and social outcomes for workers in this country.

Chapter nine provides discussion and analysis on government policies, employment relations and outcomes for workers under neoliberalism and the third way in New Zealand. Comparisons between both strategies highlight the similarities and differences between these approaches in New Zealand, and between the local and international versions.

The final chapter of the thesis links the study's conclusions to the original research objectives, also discussing the strengths and limitations of the study, and suggesting areas for further research.



## **Chapter two**

### **METHODOLOGY**

#### **INTRODUCTION**

The central question of the thesis provided the basis for selecting the research methods and addressing the related issues discussed in this chapter. Which of the recently developed policy models has delivered the desired outcomes to New Zealand workers? Although in the New Zealand context the focus is on neoliberalism and the third way, there is also implicit comparison with another political-economic alternative, social partnership. The study attempts to answer this central question by looking at New Zealand in mostly an historical comparative way, and an international-comparative way, by looking at New Zealand in an international context, and at New Zealand as an example of global trends. The thesis is therefore also partly a policy evaluation, using international instruments (ILO conventions and ESC articles) as measures of how well one country is doing at particular times under particular political-economic regimes.

This chapter starts with a methodological overview, before outlining the advantages and limitations of comparative policy research and documentary research, both being relevant to the thesis. The data collection approach and boundaries are discussed, followed by a description of the methods used to regulate worker rights. As one of these methods, worker representation is briefly examined, prior to consideration of international and local worker goals. The search for existing rights as a means of articulating worker goals and measuring outcomes focuses on human rights, core labour standards (ILO) and their indicators (Rodrik), broader workplace-based labour rights (Portes), rights resulting from the new occupational status (Supiot), and the wider social and economic rights of the European Social Charter. The subsequent selection and tabling of worker rights, goals, and measures which are based on the ESC and interviews with key New Zealanders include core labour standards, wider workplace rights, and social and economic rights beyond the workplace. The limitations of selected measures used in the table of worker goals are set out in the leadup to the summary, and include issues surrounding the Treaty of Waitangi.

## METHODOLOGICAL OVERVIEW

The study describes and explains the changes for New Zealand workers under neoliberalism and the third way by comparing the differences and similarities in events and outcomes during two periods, with these in turn compared against international changes in industrialised countries. The field of study is multi-disciplinary, extending beyond the central disciplines of employment relations to include sociology, economics, politics and history. Subsequently the study adopts a multi-faceted approach in comparing the similarities and differences that surround the changes in employment relations. This multi-disciplinary research is reinforced by the additional emphasis on political-economic strategies and related policy-making, plus the broader social and economic outcomes for workers. The comparison of various international and local trends in these areas demands cross-national research, while the comparison of neoliberalist and third way regimes and outcomes within New Zealand requires comparative research at national level. A longitudinal approach is necessary to enable observations over an extended period (Babbie, 1998: 101), in this case approximately 20 years, from 1984 to the present. In gauging the effect of political-economic strategies on employment relations, and outcomes for workers, comparative public policy research is also useful. This focuses on larger, general trends that show how public policies are structured in common ways and varied across time and nations (Heidenheimer et al., 1983). So with its cross-disciplinary and cross-national approach, historical comparative research lends itself well to my proposed research.

### Comparative policy research

Comparative policy analysis is the research method used in this thesis. Comparative policy research involves the origins, substance and impact of public policy, and focuses on “how, why, and to what effect...governments pursue particular courses of action or inaction” (Heidenheimer et al., 1990). This requires the identification of similarities and differences (Antal, 1987:513) in policy developments between and/or within countries, usually under different political-economic regimes and perhaps under different time periods as well. Such comparison is possible only by recognising that two events belong to some sort of class (Dierks et al., 1987:1). The categorisation of similarities and differences in developments then involves a search for patterns of some sort, with the implication that comparative policy analysis encompasses both the descriptive and explanatory aspects of research (Harte, 2001: 1).

## Advantages of comparative research

The advantages of cross-national comparative research helps in achieving research goals, and as follows. This method enables the discovery of general patterns, and the identification and explanation of exceptions (Antal, 1987: 499-500). The cumulation of these different findings then increases the knowledge of overall advantages and shortfalls of theories, and enables the testing of political, sociological and economic theories over different policy areas, along with the exploration of aspects particular to specific policy areas (*ibid.*). Not only does this approach further the development of theoretical constructs, but the acquired information can be used in a practical sense, for the reasonably direct transfer of models from one situation to another, or the partial transfer of relevant processes (*ibid.*: 511). The broader perspective gained from cross-national research can also act as a corrective, or a way of gauging the relevance of factors impossible to assess in a single nation (Carrier and Kendall, 1977: 279). Comparative research thus adds to the understanding of foreign partners as well as one's own country, demonstrating the collective or social choices made by governments (Heidenheimer et al., 1983:2) and citizens, together with the underlying values which highlight the objective and subjective aspects of these decisions. So overall, the use of comparative research in this study aims at adding to an understanding of the theory and trends in employment relations under different political-economic regimes.

Comparative research provides a useful tool for research into the complex field of employment relations, in practical as well as theoretical terms. Comparative data allows the construction of accounts of different societies regarding past and present changes in social, economic, and political situations; and in the relationship between these societies and their welfare provision (Carrier and Kendall, 1977: 279). The multi-disciplinary nature of comparative research then provides a range of possible combinations for use in research methodology, as well as a variety of research outcomes and conclusions. Rather than comparative policy research indicating the existence of any definitive "correct" answer to research questions, each of these alternatives can be seen as each providing a part of the entire picture (Carrier and Kendall, 1977:284).

Comparative research within this thesis also allows a more comprehensive insight into international developments. Cross-national research enables this study's analysis of the recent worldwide changes referred to as globalisation, also seen as underlying subsequent developments within employment relations. The policy-making process is a practical area which benefits from cross-national policy research, as Antal describes below (1987:513-515). A clearer understanding of one's own country results from comparative research, regarding

historically evolved institutional, economic, and political-cultural characteristics. Connections made between theory and policy relevance can then provide guidelines for decision-making. Value issues are highlighted in the distinction between objective and subjective elements of decision-making, e.g., adversarial versus consensual approaches, or politics versus science. Apart from providing researchers with a better understanding of theory-building and policy-making in general, comparative policy research contributes towards the development and implementation of social policy both nationally and internationally, to the benefit of governments, policy-makers, and citizens alike. The thesis relies on historical comparative policy research to compare the policy-making processes and outcomes under both neoliberalist and third way regimes in New Zealand over the past two decades.

By using comparative research, the thesis aims at going beyond a mere description of policy-making under New Zealand's neoliberalist and third way political-economic regimes, and an outline of employment relations under both regimes. Instead the study analyses and compares the outcomes for workers under both policy-making approaches, and is then directed towards assessing these outcomes against worker goals. In comparing and assessing these outcomes, the focus is initially on employment relations, then on the broader economic and social outcomes accruing to workers under both regimes. So the wider political-economic strategies underlying the neoliberalist and third way approaches are first analysed, then the narrower trends and outcomes in employment relations, followed by the more comprehensive social and economic outcomes still very relevant to workers. This comparison of political-economic regimes aims at assessing a range of relevant outcomes that result for workers in reality rather than in theory, ultimately giving some indication of the usefulness for workers of either regime in real and practical terms.

### Comparative research: limitations

Despite the obvious advantages of comparative research, the associated shortfalls must also be acknowledged. Difficulties involving data collection and analysis can result from the variety of frameworks available for comparative policy research, and the complexity of issues within each. Omissions in data collection can involve the following problems as follows (Dierks et al., 1987:6-8). Popular views are adhered to, instead of using available empirical data. Time data is also underutilised, and studies of error frequencies overlooked. Data with middle-range theories are sectoral, with some sectors completely omitted. Dierks et al. argue for the integration of comparative research into interdisciplinary world models, which are long-range, state-centred and world-centred, and include cultural and technological factors, as well as many confirmed middle-range theories. While Antal (1987:508) also calls for more historical and longitudinal

research in all policy areas, Hill (1996:58) sees a need for micro-policy analysis assessing the way different systems approach the same issue.

Issues surrounding the choice between quantitative or qualitative methodology also involve value questions, as Carrier and Kendall (1977:282-289) note below. Reliance on quantifiable data is hindered by being more available for contemporary rather than historical situations, and for more affluent rather than poorer, less industrialized societies. The choice and significance of statistical measures involves subjective as opposed to objective evaluation, with difficulties also in constructing one's own measures. A sole focus on these quantitative measures perhaps prevents an accurate understanding of the nature and extent of societal factors, but a non-quantitative approach produces different interpretations through different evaluations. Subsequently Carrier and Kendall (*ibid.*:284) also argue that both qualitative and quantitative approaches apparently produce a range of accounts rather than any one "most accurate account", whether used individually or together. Thus comparative analysis subsequently requires the rejection of many existing accounts claiming to be definitive explanations, but often hiding value choices (*ibid.*).

Underlying theoretical issues are then also relevant. An emphasis on testing a general theory rather than the nature of the policy system overlooks policy sector-specific characteristics, with a focus on one approach to the exclusion of another generating biased perspectives. Antal (1987:499) also notes that many research projects are atheoretical in design, being descriptive rather than analytical, with subsequent cumulation of knowledge from individual projects difficult, and preventing more general understanding and prediction. To correct weaknesses and enable more systematic learning, a variety of theoretical paradigms are necessary to stimulate new perspectives, with attention to underlying assumptions, concepts and data collection in individual projects (*ibid.*:502). The thesis aims at this approach, together with a combination of theory-testing at both national and international levels.

#### Documentary research: advantages

Research for the thesis relies largely on documentary research, the secondary analysis of primary material which is available through existing documents. A major advantage of documentary or unobtrusive research is that it enables the study of social behaviour "without affecting it in the process" (Babbie, 1998:33). Other advantages of documentary research are described by May (1993:133-134) below. Documentary sources contribute much information about "the way in which events were constructed at the time, the reasons employed, as well as providing materials upon which to base further research investigations". They may describe

aspirations, places and social relationships of a period or situation currently inaccessible to researchers. Together with supplying a particular reading of past social or political events, documents may inform practical and political decision-making on a daily and longer-term basis. They permit a range of research designs (Hakim, 1987, cited ibid.), with the wide variety of sources (including official statistics) also providing a richness of material. However, the increasing availability of documentary data in modern information societies nevertheless requires greater awareness by researchers of documentary sources and the ways in which they are used (Sarantakos comments, 1993:208). This quick and easy accessibility of documents further facilitates the retrospectivity enabling the study of past events and (ibid.).

Sarantakos notes additional advantages of documentary research (ibid.). Spontaneity aids researchers, through the production of documents by writers without being requested by researchers to do this. Documentary research is low cost compared to most other research methods, and often the sole source of information on a subject. This research also provides high quality information, the possibility of re-testing, and non-reactivity with the method and measurement not affecting the results.

#### Documentary research: limitations

The shortfalls of documentary research are those involved in using secondary sources for research. Criticisms of the actual method of documentary research are listed by May (ibid.:149-150) as follows. While the documents themselves may be biased, selectivity in their analysis also occurs through a researcher's selective reading of documents. Associated decisions about what to include or omit are themselves informed by decisions relating to the social, political and economic environment researchers are part of. The use of an uncritical approach which ignores such influences and regards documents as simply neutral artifacts from the past is criticized for marginalising people in terms of race, class, gender, and cultural lines. Documents may also be used without due regard for the process and social context of their construction, examining only the social "reality" of the finished document as opposed to analysing the author's intention and purposes. Documents are sometimes dismissed as "impressionistic", while the related analysis of documentary data is merely regarded as crude empiricism. May (1993:133) adds that when the method of documentary research is not outlined, the use of documents is not seen as constituting an actual research method either.

Further limitations are listed by Sarantakos (1993:209). Not always being representative of their kind, documents do not allow generalisations. Documents may be unreliable records, incomplete or outdated, with bias due to authorship views. Comparisons between documents

may be impossible, and methodological problems may include coding difficulties and the state of presentation.

Looking more specifically at the analysis of existing statistics as an unobtrusive research method, Babbie explains the limitations in terms of validity and reliability as follows (1998:322-323). Being limited to data that already exists means that the available data may not exactly cover what is required. Subsequently the researcher measurements are not totally valid representations of the variables and concepts initially targeted for drawing conclusions about. Analysis of existing statistics relies heavily on the quality of the data itself, and reliability becomes an issue when these statistics are inaccurate, sometimes a substantial problem with government statistics, where the nature of the research area and allied record keeping produces variations at local and national levels. However, awareness of and investigation into the problem of reliability enables assessment of the nature and degree of unreliability, while both validity and reliability issues can be addressed by logical reasoning and replication.

### Data collection approach

My preference for the variety of form and scope available in comparative research continues in my selection of research techniques, where I used a combination of techniques to address the shortfalls of more limited approaches. Documentary methods are used in the context of quantitative studies, qualitative methods, and case-study research (Sarantakos, 1993:206). While the thesis uses mostly quantitative empirical studies as the basis for outlining the outcomes for workers in New Zealand, qualitative material is the focus in describing the political-economic regimes and subsequent trends in employment relations. Descriptive-comparative research enables the use of documents to describe the event in question, with the available information enabling inter- or intra-cultural comparisons, plus comparisons over time (*ibid.*). Although such research is generally based on first-level factual information, without manipulating or otherwise analysing documents, the thesis goes beyond this to include an explanatory approach.

Data collection for the thesis also involved interviews with key figures using in-depth interviews. All of the interviews were based around set interview questions (see Appendix 1) to provide some direction and continuity between interviews, but the questions were minimal and open-ended to ensure free discussion as well. During the interviews, whether face-to-face or by phone, and with the interviewee's permission, I used a cassette-recorder, then transcribed the recording, also with a quick writeup at the end of each interview to record general ideas and patterns. This aimed at pinpointing relevant data sources from the outset, guiding the direction

of discussion and conclusions to include pivotal ideas, and double-checking conclusions to avoid misinterpretation of national data.

The combination of methodologies possible in comparative research provides various benefits. While quantitative research is often seen and presented as more objective, this research method (irrespective of underlying theory) still results in some subjectivity. So my inclusion of qualitative methods not only indicates my underlying values, but also addresses some of the shortfalls of quantitative methods, including its more shallow portrayal of outcomes for workers. The combination of quantitative and qualitative methods also enables an even more comprehensive picture and explanation of changes in employment relations by including both outsider and insider perspectives, in turn involving the respective top-down and bottom-up approaches to research through unobtrusive research and participant observation.

### Research focus

I chose New Zealand as the case study initially because the neoliberalist and third way strategies have been implemented here under various governments, effectively as two of the major options used to address economic globalisation within industrialised countries. While still disputed whether New Zealand's neoliberalist stance towards employment policy began during the 1980s, it is generally accepted that free market theory was dominant at least during most of the past decade. However, as the major coalition partner in government for the past three years, the Labour Party has openly marketed its policy platform as having a third way basis. Despite the involvement of other non-Labour coalition partners in policy-making, and also the short period of governance under a Labour-coalition government, policies formed post-1999 appear to reflect third way principles. Subsequently, New Zealand provides an opportunity to examine the changes caused within employment relations by the introduction of these two predominant political-economic strategies during the past twenty years. Alternatively, the use of Ireland in this thesis as a case study for social partnership has been omitted. Despite Ireland providing an excellent example of this third political-economic strategy, and also being sufficiently similar to New Zealand to enable comparison, the size of the thesis does not allow this.

### DEVELOPING A TABLE OF WORKER GOALS

#### Worker goals as rights

These political-economic strategies are one of several methods used to regulate worker rights. Worker goals are clearly enshrined within the rights, freedoms and principles accorded to

workers, which come in a variety of charters, treaties and agreements at enterprise, national, regional and international levels. The use of international instruments in comparative research provides a comprehensive summary of these agreed worker goals.

The ILO sets out the methods used to regulate worker rights as follows (2000b: 19-20). With statutory legislation providing one method of regulating worker rights, government policies are important in either supporting or eroding the exercise of worker rights in an increasingly competitive world. While governments face the task of achieving a balance between market pressures and the need for social stability, voice regulation provides a second and more dynamic approach to regulating worker rights through systems of consultation and negotiation, which supplement the minimum legal frameworks. This approach requires strong, representative and responsive labour market institutions, reliant on freedom of association and collective bargaining. The third method relies on the market to regulate employment conditions. So political-economic strategies, worker representation, and market regulation all take a central place in the thesis as ways of regulating worker rights.

### Worker representation

As one of these methods of regulation, worker representation is integral to the thesis, along with the recent developments in its various forms within New Zealand. The current tasks required of worker representatives add to this importance. A primary function of worker representation is to enable the communication of worker expectations and to provide for conflict resolution (Teague, 1999). While the power imbalance inherent in the employer-employee relationship has always favoured the former and resulted in the need for some form of worker representation, the growth in this power imbalance under globalisation has greatly increased the requirement for representation. Collective bargaining has determined the economic status of the employed, effectively reinforced by legislation, while those not in work (especially the unemployed and retired) relied mainly on the welfare state (*ibid.*: 3). The combination of reduced collective power and increased managerial prerogative, allied to shrinking state protection, means a greater onus is now on the individual to ensure satisfactory employment outcomes. Effectively workers have fewer resources to achieve this, while assuming greater risks regarding increased insecurity and responsibility, both within the workplace and the community. Recent changes to the processes, forms and roles of worker representation in New Zealand are then integral to the thesis, especially regarding the achievement or otherwise of worker goals.

## International worker goals

In more general terms, current worker goals focus on raising living standards, and the production of jobs and economic growth in an equitable way (TUAC, 1998). Worker objectives today aim towards achieving these goals by harnessing the wealth and prosperity created by economic developments, new technology, trade and investment (*ibid.*). Economic development must be reconnected with social progress, so that economic policies promoting growth also include full employment and improved welfare to safeguard worker interests. As TUAC also notes, particular areas for union focus in policy-making include core labour standards and working conditions; security and safety in employment standards; employment growth; and the continued importance of the role of national governments (*ibid.*).

The strategic objectives of the ILO are similar, focusing on fundamental principles and rights at work, greater employment and income opportunities for women and men, adequate coverage of social protection, plus social dialogue and tripartism both as ways of achieving these goals, and as guaranteeing participation and democratic process (1999). These four objectives enable promotion of the ILO's primary goal of decent work, itself meaning productive work in which rights are protected, which generates an adequate income, with adequate social protection, together with sufficient work, with everyone having full access to income-earning opportunities (*ibid.*). Security of employment and income are central to worker concerns, with inequalities and insecurities threatening to disrupt economic and social cohesiveness. As the ILO also argues, respect for workers' rights not only provides the means to address poverty and distributional challenges that threaten social stability, but can also improve a firm's productivity by facilitating organisational and production flexibility and innovation (2000b: 19). So while the focus of worker goals extends beyond the workplace to include broader social and economic issues, the achievement of these goals tend to benefit society and business as well as workers.

## Worker goals in New Zealand

Although workers employment-related expectations reduced under the ECA, worker goals broadened overall in an effort to compensate for the minimal entitlements available in New Zealand's shrinking welfare state. Prior to the ECA, survey research showed worker priorities to be good pay, interesting work, people, and the opportunity to use skills (Gold and Webster, 1990, cited in Deeks et al, 1994). Post-ECA, basic worker concerns included either cuts in wages and conditions, or nil wage increases (Tennet, 1993: 5). Other worker needs to be addressed included increased sick leave, 40 hour working weeks with overtime paid above this, minimum notice periods or payment in lieu, redundancy pay, protection against excessive

workforce casualisation, compulsory EEO programmes, pay equity, and improved monitoring and enforcement of minimum code breaches (Brosnan and Rea, 1991: 156-157). Further goals surfaced in a 1993 report by Labour MPs (Kelsey, 1998: 191-192). They found that the ECA had failed to provide fair and equitable working conditions, a bargaining system that protected the choice of parties about representation and conditions, improved living standards for working people, and protections for collective bargaining (*ibid.*). More generally, it is necessary to reaffirm New Zealand's earlier commitment to a policy of full employment as a critical step in the process of rebuilding the welfare state (Boston, Dalziel and St John, 1999: 313). This commitment will entail, among other things, significant additional public investment in education and training, in research and development, and in physical infrastructure, together with the strengthening of social institutions and social capital (*ibid.*).

New Zealand's CTU has added other worker goals to the list, outlined below by NZCTU's Paul Goulter (2002). The sustainability of continued real wage increases is a basic economic goal for workers. Such increases are difficult to achieve against the constraints of a tight budget. With the emphasis on enterprise-based bargaining rather than multi-employer bargaining, variability in wage outcomes results as the ability to pay varies between enterprises.

Peter Conway of the NZCTU adds further economic goals (2000). With workers having a vital interest in economic development, the CTU has argued for many years for a high-wage, high-skill economy. This requires investment in the physical, social and skills infrastructure. Higher funding for education at all levels, appropriate qualifications, and lifelong learning complements a focus on apprenticeships and industry training. The facilitation of research and development is necessary, with partnerships between central, local government and other stakeholders also important. Industry New Zealand needs to facilitate industry initiatives without being confined to regional development initiatives. Investment in infrastructure includes roads, hospitals, and broadband internet access (NZCTU, 2002a). State employees must receive better pay rates and have workload concerns addressed (*ibid.*). Quality public services are also essential in health, education, social services and many other areas (*ibid.*).

The NZCTU outlined additional and more specific social goals (2002b). The relationship between paid and unpaid work must be addressed. There is a crucial need to develop a benefit system that supports parents to care for their children, encourages people to take up training and further education, and assists them to move into sustainable paid work. There must be a greater focus on the investment needed to up-skill workers to take on high-quality sustainable work, rather than a short-term emphasis on getting people off the benefit. Greater investment in public education is necessary for access to lifelong learning, and high quality, accessible public health

care is vital. Access to state housing requires an increase in state housing stock coupled with low-interest 'rent-to-buy' policies including broader options for Maori and community non-profit groups to provide accessible rental accommodation.

Apart from the goals raised above, workplace issues also need addressing. As at July 2002, the NZCTU was calling for a new Holidays Act, protection for workers when their firm is sold, merged, or work contracted out (2002c). Other areas include a review of the Employment Relations Act, in particular to address issues of free-riding and non-inclusive bargaining. Apart from concerns over the pay and conditions of workers in general, improvements for State Sector workers and those funded by the Government (teachers, nurses, etc.) are necessary (*ibid.*). The work-life balance issue affects all workers. Many families are coming under severe pressure, with strong public support for regulation against excessive working hours as well as the introduction of family-friendly workplace policies (Dearnaley, 2002). Many employees are unable to take regular breaks at work, are required to do unpaid work at the beginning or end of their shifts, and are expected to cope with deliberate understaffing (*ibid.*). New technology (cellphones and emails) is also blurring the division between work and home (*ibid.*).

### ILO vs. ESC worker rights

This expansion in worker goals evident within New Zealand as well as internationally is also highlighted by comparison of the narrower ILO conventions and the more recent European Social Charter 1996 (ESC). The aims of both are similar, and both charters involved the input of worker organisations. However, the former aims to achieve its goals by focusing solely on workplace issues, while the latter includes broader social and economic rights. This more comprehensive approach to labour, social and economic rights provided within the ESC was initially outlined by the European Union in 1989, then revised in 1996 (see Appendix one, European Parliament: 2000). The ESC rights are wider than the ILO conventions in several ways. They are broader horizontally through coverage of more extensive rights under Part I, by including rights which are worker-related but also social. The ESC rights are more comprehensive in the qualification of these rights under Part II. This section sets out the obligations involved for signatories to fulfil each right, with fairly specific criteria in most cases. Part III also reinforces the vertical aspect by quantifying the number of rights or obligations to be met by signatories bound by the ESC.

## New Zealand's current obligations

However, despite the extensive range of rights and principles contained for workers within the ESC, there is probably nothing new there for New Zealand and Ireland in terms of existing obligations. Although New Zealand and Ireland are already bound by many of these standards, the difference might be that these standards are more nailed down than the present obligations through Part II of the ESC. Roth explains this as follows (PC: 2001). New Zealand is already bound by international law to meet many of the aims included in the ESC, and Ireland even more so as part of the more intensive EU network of obligations. So while New Zealand is not bound by the ESC itself, this web of international legal obligations means that other things binding us correspond to the ESC, although perhaps without providing the same high level of protection, because Part II adds a bit of content to the bare rights. So the choice of these ESC rights as a basis for worker goals is not unreasonable. Neither is the expectation by workers that these goals are met in New Zealand.

## Expanding worker goals

My inclusion of these broader rights for the table of worker goals relies on two arguments. The first involves the human rights emphasis on the indivisibility and interdependence of economic, social, cultural, civil and political rights (Distr. General, 1985). In human rights discourse, the doctrine is that all human rights are inter-related and inextricably linked, so because there is no precedence of one over the other, all people should be aiming to achieve all rights equally, everywhere (Roth, P.C.: 2001). The UN operates from this assumption that all human rights are of equal importance and are mutually supporting, so one is not possible without the others (*ibid.*). Subsequently, worker rights cannot be narrowly limited to one of these groups of rights, to the exclusion of others, just in order to keep such rights workplace-based. The interconnection of these rights necessarily means that they extend well beyond workplace issues.

Secondly, changes to the welfare state resulting from globalisation also mean that worker rights and goals cannot be limited to workplace issues. The reduction of state intervention and welfare provision means that many of the rights previously fulfilled by the state are now the responsibility of workers. Even in basic areas such as health, education, housing and social welfare, user-pays policies mean that workers have shouldered the ongoing costs in these areas. With the emphasis now on individual self-reliance, the state can only be called on for emergency, safety-net assistance. Subsequently, worker goals themselves have also broadened, in response to the influence of globalisation and subsequent changes, including these state

developments. A change in worker goals has basically been necessary to redress the negative effects of globalisation, evident in changing labour and employment relations, as discussed earlier.

### **ESC as the basis for worker goals**

Due to its wide-ranging nature, I have relied on the ESC rights as the basis for selection and measurement of worker goals. I used the ESC as a starting point for tabling worker goals as rights, and also for measuring the outcomes. The comprehensive list of aims in Part I of the ESC is supplemented by Part II which covers the requirements for meeting particular aims. The inclusion of such broad yet detailed worker rights and requirements within one document enables a strategic and cohesive approach to articulating worker goals. The measures under Part II for achieving these rights in most cases are specific enough to be used as a basis for measuring outcomes, also providing boundaries and continuity in deciding which type of indicators are appropriate for measuring substantive rather than procedural outcomes.

### **Selection of ESC rights and measures for the table of worker goals**

The choices I made in selecting broader worker goals are also based on other literature outlining these rights and goals. The table of worker rights I finally arrived at relies largely on a combination of the following sources, although reading various other international instruments has also clarified my ideas: "A taxonomy of labour standards" outlined by Portes (1994); the Fundamental International Labour Standards (ILO, 2000); Rodrik's indicators for core labour standards in Lawrence et al. (1996); the social drawing rights of Supiot (1999). Apart from goals mentioned above from the literature search, I also relied on informal conversations with New Zealand unionists and academics to cover the goals important to New Zealand workers (see personal communications, Appendix four). So while the rights and requirements within the ESC provided a broad basis from which to select worker goals, information on worker goals from the above sources guided my actual selection of the rights and requirements from the ESC, to be used in the final table of worker goals below.

### **Selection process for goals and measures**

I loosely followed the selection criteria and process outlined in the ESC, both to limit the number of rights chosen and to ensure inclusion of the more essential rights. Wherever possible, I also chose broader rights which seemed to encompass one or more other rights. Where more

major worker goals are absent from the chosen worker rights, I have attempted to include them instead in the measurements, e.g., the importance of education appears in the measurement of education levels attained at school leaving age. The development of indicators to measure substantive outcomes relied heavily on Part II of the ESC, although also drawing from Rodrik, Supiot, and labour representatives as mentioned above.

### The final table

The selected worker rights below focus on core labour standards, wider workplace-based labour rights, and the more extensive social and economic rights external to the workplace. These were chosen on the basis of their fit with worker goals as discussed previously. Cultural rights for workers also needed to be specifically addressed, being especially important for workers in New Zealand's bicultural society (Paul Harris, P.C.: 2001). While the selected worker rights exclude specific political rights, these latter rights are indirectly addressed in the inclusion of some civil rights, and also in the fact that New Zealand is a democratic country involving opposition parties and a supposedly free press.

### Aims of the table

This table of rights is aimed at articulating the major worker goals, and at measuring outcomes for workers in relation to the original goals. The outcomes for New Zealand workers resulting from world integration will be assessed as satisfactory in terms of whether or not they meet worker goals, themselves set out as the selected worker rights. The measurement of the substantive outcomes of the initial worker goals, all within the context of the two political-economic strategies, should then provide some indication as to which strategy is most beneficial for workers in today's changing employment relations environment in New Zealand.

### Limitations on selection of measures

In selecting the ESC rights for translation into goals in the table, I have attempted to include the most important and essential goals relevant to workers. However, the subsequent measures used in the table do not attempt the same coverage of the outlined in Part II of the ESC. The size of the thesis limits the number of measures that can be used, to ensure that data collection and analysis is manageable. Availability of data is another issue that has limited the selection of measures, especially for pre-1990 statistics. For measure 2 in particular (union-based collective bargaining across collectivised and individualised sectors), I have used primary data to calculate the measure. Such measures are then approximate, so the accuracy of data becomes another

issue. Although certain measures would represent particular goals much more effectively, e.g. the level of homelessness for measure 18, reliable statistics do not exist. This excludes the use of such measures. Although reasonably basic, many of the relevant statistics are also not directly available to the public, but held instead by government departments, sometimes in a rather piecemeal and disjointed fashion. Access to such information has been more difficult. Certain types of information have also been less accessible, especially regarding poverty measures. Government organisations seem less interested in such information.

Maintaining some sort of continuity in the statistics I have used has also been difficult because of the length of the period I am studying. Different time periods and methods used in the collection of the same primary statistics has complicated matters, precluding the use of some data, or meaning that apparent longitudinal trends are less accurate where combinations of data collection methods have been the only data available. I have kept to annual measures rather than ones spanning several years. Where certain years are unavailable, I have used the closest possible year and noted this in the table. I have also limited the selection of measures by criteria I have imposed. To make the comparison of outcomes under the two political-economic approaches easier, I have focused on New Zealand's election years for data collection. Because the table is aimed at measuring outcomes for workers rather than opportunities, I have not used the ratification of ILO conventions for measures, and have also avoided legislative-based outcomes for the same reason. In some cases the latter has not been possible. I have also attempted to provide some sort of connection between the remuneration, welfare and poverty goals, so have focused on income-based measures to link these wherever possible. So overall, rather than attempting to present all the relevant measures for each goal, I have instead provided more of a smattering which gives a rough indication of the changes and outcomes for workers over the past 20 or so years.

**Table one: Worker goals and measures for New Zealand**

<b>Worker goals</b>	<b>Measures of worker goals</b>
<i>Basic labour rights</i>	
1. Protection and promotion of freedom of association	1. Union density (percentage of union membership)
2. Protection and promotion of collective bargaining	2. Union-based collective bargaining coverage across collectivised and individualised sectors
3. Protection against forced labour	3. Number of benefit sanctions processed for failure to accept a suitable offer of work
4. Protection for children	4. A: Annual number of occupational disease notifications for children B: Annual number of fatal workplace accidents for children
5. Protection and promotion of equal rights and opportunities (based on gender)	5. A: Average hourly rate of pay (ordinary time) B: Average hourly rate for males (ordinary time) C: Average hourly rate for females
<i>Workplace / survival rights</i>	
6. Safe and healthy working conditions	6. A: Annual number of fatal workplace accidents B: Annual number of occupational disease notifications
7. Free expression of grievances	7. Personal grievance complaints resolved at lower level employment institutions
8. Dignity at work	8. A: Discrimination (PG) complaints resolved at lower level institutions B: Sexual harassment (PG) complaints resolved at lower level institutions
9. Protection during termination of employment	9. Unjustified dismissal (PG) complaints resolved at lower level institutions
10. Just conditions of work	10. Statutory number of weeks' paid annual leave
11. Promotion of cultural respect	11. Statutory number of days' paid tangihanga leave, excluding special leave
12. Protection of family life	12. A: Statutory number of weeks' paid parental leave B: Statutory number of days' special leave (family bereavement / illness)

<i>Economic / security rights</i>	
13. Provision of work	13. Unemployment level as a percentage of the workforce (HLFS)
14. Payment of a living wage / fair remuneration	14. Annual percentage real wage increase
15. Access to adequate social security and medical assistance	15. A: Average weekly wage B: Weekly unemployment benefit rate: single 25 years and over (and benefit rate as % of average weekly wage) C: Cut-off gross weekly income benchmark for non-beneficiary disability allowance, single 18+ (and benchmark as % of average weekly wage) D: Cut-off income benchmark for non-beneficiary community services card, for single person, living alone, = weekly % of gross allowable yearly income (and benchmark as % of average weekly wage)
16. Protection against poverty and social exclusion	16. A: Ratio of the 80 <sup>th</sup> percentile of disposable household income to the 20 <sup>th</sup> percentile of disposable household income B: Proportion of total popn. with net-of-housing-cost incomes below the 60% line
<i>Social rights</i>	
17. Access to housing	17. A: Percentage of households with dwellings owned/partly owned by residents B: Proportion of households with housing cost outgoings-to-income ratio greater than 30%
18. Protection of health	18. A: Infant mortality rate (deaths of children under 1 per 1000 live births) B: Male and female life expectancies (at age 0) C: Deaths from poverty-related illness: tuberculosis, meningococcal infection
19. Provision of and access to vocational training and education	19. A: Percentage of total labour force with vocational/university qualifications B: Summary of expenditure on education as proportion of GDP (%) (state-funded early childhood to tertiary, plus vocational training) C: Percentage of school-leavers without formal qualifications

## The Treaty of Waitangi and implications for the table of goals

Although beyond the scope of this thesis, the outcomes of the entire table should ideally also have taken into account the ethnic differences of workers in New Zealanders. Primarily on the basis of article two of the Treaty, that New Zealand is supposedly a bicultural society, outcomes for Maori and Pakeha workers should be similar. So statistics for all measures on a Maori-Pakeha basis are required. Again on the basis of article three, equal citizenship rights exist for all New Zealanders, so statistics are necessary for all of the measures on an ethnic basis to cover New Zealand's major ethnic groups: Pakeha, Maori, Pacific Islanders, Asian. Gender measurements are also necessary, especially within ethnic groups. Although looking at deprivation rather than success has become unpopular because it promotes the victim mentality towards groups such as Maori, comparison of statistics for these measures is still necessary if worker outcomes for New Zealanders are to be assessed on the basis of Treaty requirements. As Sen argues, some groups within more mature democracies appear more deprived than people in less developed countries (1994). Measuring such levels means that it is possible to see whether deprivation exists, and if it does, its extent, and in which areas. As Sen also notes, remedy of such failures in the practice of democracy largely involves the fuller use of political and civil rights (the former includes the latter), including more public discussion, more accessible information and more concrete proposals (*ibid.*).

## CONCLUSION

This chapter has put forward a way of articulating worker rights as goals, and of measuring results for workers in terms of substantive outcomes which are aimed at meeting worker goals. Human rights were examined as the basis of worker rights, and the importance of political rights also acknowledged. However, the resulting table of rights focuses mainly on core labour rights, wider workplace-based labour rights, and broader social and economic rights external to the workplace but still essential for workers, as these rights are most representative of stated worker goals. The European Social Charter 1996 provided the basis for selection of these worker rights, due to its comprehensive and detailed nature. Apart from the articulation of rights relevant to workers, the Charter also sets the criteria for the implementation of these rights, essential in the development of measures of substantive outcomes. While assessment of the ratification of ILO conventions will initially give some idea of procedural avenues available for New Zealand's workers, the table of worker goals and measures instead focuses on measuring substantive outcomes for workers. This allows a more relevant focus on the actual outcomes achieved for workers, as opposed to simply providing opportunities with the outcomes still unknown.



## **Chapter three**

# **GLOBAL TRENDS IN POLITICAL-ECONOMIES AND EMPLOYMENT RELATIONS**

### **INTRODUCTION**

This chapter takes a broadbrush perspective on international changes to political-economic regimes and employment relations. A definition of recent globalisation leads on to an examination of its effects on workers and nation states. While acknowledging the existence of other alternatives to globalisation, this study's analysis of resulting political-economic approaches focuses on neoliberalism, the third way, and social partnership in industrialised countries. Discussion also involves the subsequent patterns in employment relations. These include the decentralisation of employment relations, increased labour market flexibility, greater workforce skill development, and a decline in union membership. Chapter two sets the scene for the following chapters which provide a more focused analysis of similar developments in New Zealand.

### **GLOBAL DEVELOPMENTS**

#### **Defining globalisation**

Globalisation is a contentious issue. The existence of globalisation has been touted as an inevitable fact, a premise based largely on the promotion of such dogma, a self-perpetuating myth (Kelsey, 1998). A comprehensive definition provided by the International Labour Organisation describes globalisation as the combination of opening and integrating markets, technological innovation, and political reform, involving the following components (ILO, 2000: 7-8). The first is the heightening of competition, resulting from the liberalisation of trade and financial regimes and integration of world markets. Information technology then changes rapidly. Democratic political reform also occurs, along with the eclipse of non- and anti-market systems of economic organisation associated with state-planned economies.

#### **Globalisation and workers**

Globalisation has been central to major changes affecting working people both within and outside the OECD (Evans, 1998). Work and employment relations are being transformed by

technological change, growing trade, regional integration and investment, with trade unions consequently also facing the reality of globalisation (*ibid.*). This globalising economy does not work well for working people (TUAC, 1998: 30). The economic adjustment process accompanying financial and trade liberalisation has resulted in greater insecurity and inequality, plus a higher degree of employment volatility (ILO, 2000). In Europe, there is widespread unemployment, especially among the young; in the US, jobs are created but with stagnant or declining wages and benefits for the majority of working people; and in Japan, a continued and deepening recession occurred (TUAC, *ibid.*). A key characteristic of the new landscape is the entrenchment of high levels of unemployment and non-participation in the labour force amongst some sub-groups (Hutton, 1995, cited in Green, 1997: 506). A potentially divisive phenomenon that separates the community into labour market insiders and outsiders, unemployment constitutes a challenge to the social and political fabric of society (Eichbaum, 1997: 210). Additional problems faced by countries include the continuing uneven development of the black or informal economy, and enclave economies (Green, *ibid.*). These global developments are shaping not only the current forms of worker representation and employment relations, but are affecting worker goals and associated outcomes as well.

### Globalisation and nation states

Apart from these negative outcomes, one of the most contentious issues surrounding globalisation focuses on the alleged reduction in power of national state democracies in relation to growing global power. The process of globalisation is described as the "rapid increase in the pace of world market and social integration", with this tempo accelerating from the mid-1970s as a global response and solution to an uneven and stagnant world economy (Boswell and Stevis, 1997: 288, 290). Government policy shift towards deregulation in the 1970s and 1980s both stimulated the globalisation process and was a reaction to it, with the end of the Cold War compounding such changes (Tapiola, 1998). The subsequent disappearance of opposing and closed economic and political blocs supposedly removed all alternatives to a market economy, and created a new social reality (*ibid.*). The "end of geography" thesis presents globalisation as a one-way process, engulfing powerless nation states in the rapid development of an increasingly homogenous international community, an apparently unstoppable process (Hutton, 1993: 138-144). In this way, globalisation can be seen as either the internationalisation of trade and finance involving the decline of the nation state, or merely as an ideological cover for dismantling welfare states and deregulating economies (Salt et al., 2000).

## Alternatives to globalisation

Despite the end of geography theory becoming somewhat of a cliché, the inevitability of globalisation and its effects on nation states are still highly contestable. Although some predict a “borderless” world, others attempt to somehow amalgamate the demands of globalisation with those of state democracies. Others again resist all attempts at globalisation. While Reich (1990) suggests that globalisation is a reality to which companies and nations must respond, Kapstein argues that world economies continue to be overwhelmingly nationally defined with national governments still vital, and maintains that the majority of business remains within, rather than between, nations (1991/1992, cited *ibid.*). Evans argues against “myths” about the inevitability of global outcomes such as the end of the state and trade unions, because as a man-made phenomenon, globalisation can be shaped by human action (1998: 47). Kelsey also asserts that there are alternatives to globalisation, that it is “neither inevitable nor irresistible; instead, it is complex, contradictory and open to contest” (1999: 1). Even apart from pragmatic issues, the achievement of a borderless global free market and the extinction of nation states relies heavily on total acceptance of the concept of globalisation. Ongoing disputes show that whole-hearted adoption of that notion is far from being inevitable, let alone accomplished.

## POLITICAL-ECONOMIC RESPONSES TO GLOBAL CHANGES

### The decline of social democracy

Globalisation champions a free market approach to the economy and related policy-making on a world-wide scale. The rise of neoliberalism rested heavily on the declining acceptance of social democracy, perceived as ineffective in a globalising world. Changes in government policies inevitably accompanied the adoption of neoliberal theory over Keynesianism. When the OECD's broadly Keynesian stance buckled in the 1970s, governments began adopting monetarism and supply-side reform (Gaskell, 1998), with the goal of low inflation replacing that of full employment. As champions of deregulation and an unfettered market system, the influential roles of Reagan and Thatcher also combined to swing economic policy preference in many OECD countries away from views held by organised labour (*ibid.*). Parties established across western democracies as socialist, social democratic or labour gradually dropped the statist elements of their programmes, some even distancing themselves from labour unions (Lipset and Marks, 2000: 1). Most major socialist parties now accept market principles even in previously nationalised areas of the economy, with increased public ownership a non-contender (*ibid.*). So as the defining political economic paradigm over the past two decades, neoliberalism was the dominant global trend adopted by political parties of the right, the centre

and much of the traditional left (McChesney, 1999). Neoliberalism prospered at the expense of social democracy.

#### Alternative one: Neoliberalism

Returning to the laissez-faire principles of early nineteenth century liberalism, neoliberalism emphasises the primacy of the market, individualism and freedom of choice (Cheyne et al., 1997: 98). Neoliberalism apparently has an American bias regarding its origins and benefits. The doctrinal system underlying neoliberalism is also dubbed the "Washington consensus", and is "an array of market oriented principles designed by the government of the United States and the international financial institutions that it largely dominates, and implemented by them in various ways - for the more vulnerable societies, often as stringent structural adjustment programmes" (Chomsky, 1999: 19-20). Dominating world-wide for about fifteen years, and routinely imposed as a condition of debt financing by the IMF and the World Bank, the agenda of the consensus was also supported by Reagan and Thatcher, and endorsed in theory across most of the OECD (Kelsey, 1999: 32-33).

The basic rules of the Washington consensus are to liberalise trade and finance, let markets set prices, end inflation, privatise, and get the government "out of the way" (Chomsky, *ibid.*). Kelsey provides additional principles (1999: 32-33). The maintenance of low inflation is often made the responsibility of an independent central bank, with the government unable to use credit to boost jobs and growth. State support for domestic industry is withdrawn, and income tax scales are flattened and tax rates reduced. State activities and enterprises are commercialised and privatised, and users pay for state services. Government spending is cut, with income support and welfare provision reduced to a minimal safety-net. Private property assumes a greater importance, with property rights guaranteed. A more scathing account views neoliberalism as the "policies and processes whereby a relative handful of private interests are permitted to control as much as possible of social life in order to maximise their personal profit" (McChesney, 1999: 9-10).

#### Alternative two: The third way

The "Third Way" provides another alternative for those believing in the failure or devaluation of both social democracy and neoliberalism. With American and British voters insecure about the effects of rapid globalisation and technological advances, yet accepting the permanence of these trends (Philpot, 1999: 12), the third way was resurrected after the collapse of the Soviet empire by Clinton's U.S. Democrats and Blair's British New Labour (Giddens, 2001: 1). Third

way politics are therefore concerned with the changes behind the transformation of ideologies and politics, effectively globalisation, the emergence of the knowledge economy, and the rise of individualism (*ibid.*: 3). Also labelled "modernising social democracy", the third way refers to the "renewal of social democracy in contemporary social conditions" (Giddens, 2001: 2).

Although there is no single version of third way politics, the approach suggests key areas of structural reform. These include reform of the government and state, no state domination of either markets or society, a core role for civil society, construction of a new social contract linking rights to responsibilities, an egalitarian society, a dynamic yet full employment economy, the connection of social and economic policy, welfare state reform that copes with societal changes, policies to combat crime in the present and longer-term, policies coping with the environmental crisis, and a framework for responsible capitalism (*ibid.*, 5-13). The five core features of the third way approach are outlined even more succinctly as follows: reacting to a changed reality; pragmatic approaches to government; facilitative or enabling role of government; reciprocal obligations, both on the parts of the beneficiary and the government; and community orientated/partnerships (Bronn, 2001: 2). Despite the national variations obvious in the adoption of third way strategies, all third way approaches maintain that theirs is a response to irreversible social changes caused by globalisation, that state-led development failed and traditional left projects are obsolete (Gledhill, 2001: 129).

For many critics, though, the third way is simply neoliberalism in another guise (Gledhill, *ibid.*; Brittenden, 2000: 32). While Giddens (1999: 26) argues that the third way involves a reduction in inequality of outcome, and includes a redistributive programme (but one also compatible with individual initiative and freedom), Tony Blair's version sees inequality "mainly as a question of barriers to individual opportunity". However, Dahrendorf argues that under the third way, inequality is effectively dispensed with as a goal and replaced with social inclusion and, more recently, justice (1999: 16). The third way is not about "either open societies or liberty", instead showing an authoritarian streak in theory and in practice (Dahrendorf, 1999: 16-17). Third way reforms of the welfare state include the strict insistence on everyone working, and where normal employment (let alone desirable employment) is unavailable, people have to be forced to work by the withdrawal of benefits (*ibid.*). An earlier Blair-Schroeder document declared: "The state should not row but steer"- it should determine the direction, but not provide the wherewithal (*ibid.*). "Third Wayism" apparently not only provides a way of reintroducing social citizenship on the cheap, but also emphasises the notion that the ability to "function" in a capitalist society should become the key to all forms of self-fulfilment (Gledhill, 2001: 123-149).

### Alternative three: Social partnership

The continuance of the third way and more traditional political parties overlooks another political-economic alternative, the social partnership approach. This approach evident in Ireland also developed in response to changing economic and social conditions, with the ongoing commitment of both left and right political parties. Social partnership has been achieved through a social consensus between government and the social partners, including trade unions, employers' associations, farming organisations, and more recently, NGOs and civil society groups involving the unemployed and women (O'Donnell, 1998). This approach goes past the usual tripartite corporatism and neocorporatism more evident in European countries over the past 25 years, and well beyond the "social dialogue" advocated by the third way. Although the centralised agreements negotiated between social partners also extend beyond employment relations matters to include broader socio-economic goals (D'Art and Turner, 2000), an open market strategy is at the heart of Ireland's success (Easton, 1999: 54).

The social partnership approach in Ireland has gradually evolved to take account of the changing Irish socio-economic context, that has moved from "managing crisis" to "managing growth and rising expectations" with the move towards full employment (Dobbins, 2000). The Irish partnership agreements are renegotiated about every three years, with their increase in scope also reflecting the growing confidence amongst partners (McLoone, 2001: 2). While the employers' agenda has consistently been certainty in terms of wage costs, improved competitiveness and industrial peace, trade unions instead initially focused on job creation, assisting low paid workers, and the protection of living standards and welfare benefits (*ibid.*: 6). The agreements have subsequently moved from the focus on survival for a society and economy in deep trouble, towards improvements in jobs and economic performance, and lately to social inclusion and equity (*ibid.*). More specifically, the consensus covers wages, taxation and government spending aimed at buttressing macroeconomic policy, with the wage path assisting the anti-inflation strategy (Easton, 1999: 54). Microeconomic interventions actively support industry, while indirect support involves labour market interventions and a strong educational system, with "stunning" results for Ireland over the past 15 years (*ibid.*). The continuing economic boom in Ireland has fuelled rising expectations, with new challenges and issues for the partnership approach involving issues around income distribution, pay determination, and social equity (Dobbins, 2000).

## CHANGES TO EMPLOYMENT RELATIONS

### Converging divergences debate

These recent world changes in political-economic approaches have had a major effect on employment relations, from policy-making at government level to the implementation of employment strategies at enterprise level. The simultaneous globalisation and fragmentation of markets, along with technological innovations, have resulted in the growth of various models of employment relations within and not simply between nations (Locke, 1992). Research in 11 OECD nations has confirmed that adaptation to international competition is neither universal nor uniform, with the extent and forms of adopted employment relations varying considerably “within countries, between firms, industries and regions, and between countries with different historical traditions and institutional arrangements” (Locke et al., 1995: 143).

A more recent study continued the converging divergences debate, focusing on the U.S., Australia, Britain, Germany, Italy, Japan, and Sweden. The seven countries differed significantly in the nature and extent of changes in their employment systems, particularly in the relative mix of the various workplace practice patterns (Katz and Darbishire, 2000: 7). These growing variations within and across countries indicate that individual countries are becoming less distinct regarding employment practices, in turn highlighting the disappearance of clear-cut systems of employment relations (Locke, 1992, 1995, cited ibid.). All the same, while national employment systems are becoming more diverse internally, employment relations patterns are showing similarities across countries (Teague, 2001). These cross-national trends in employment relations are described below.

### Decentralisation of employment relations

The decentralisation of employment relations was the first and most obvious of the recent cross-national trends. The fragmentation of centralised pay-fixing systems involved an almost total shift to enterprise-based pay determination by the late 1990s (Brown, 1999: 153-154). Previously most European countries relied on national (including tripartite) or industry-level bargaining to establish wages, benefits and conditions of employment (Locke et al., 1995: 144-147). Industry-wide bargaining was relevant even in the highly decentralised labour relations system of the United States (ibid.). By de-institutionalising the fixing of wages and working conditions, governments increased employer discretion over such matters (Deery and Mitchell, 1999). Management also tended to endorse measures promoting the decentralisation and informalisation of employment relations (Katz and Darbishire, 2000: 4; Deery and Mitchell,

1999). This decentralisation of employment relations moved strategy and decision-making on human resources and employment relations to the individual enterprise, with managers then becoming the force behind changing employment practices (Locke et al., 1995: 144-147). The more direct employer-employee communication and growing forms of employee participation that resulted in turn accelerated the spread of various employment patterns (Katz and Darbshire, *ibid.*).

### Labour market flexibility

Decentralisation occurred together with the second change, greater flexibility in work organisation and the deployment of labour (Locke et al., 1995: 144-147). Increases in both decentralised bargaining and opportunities for individualised employment arrangements were usually necessary to further the political aim of greater flexibility in labour market regulation and the removal of rigidities (Deery and Mitchell, 1999). The pursuit of labour market flexibility itself was generally grounds for increased unilateralism over the structure and performance of work (*ibid.*). Government regulations and norms governing recruitment, dismissal/redundancy, lay-offs and the allocation of labour were relaxed or modified to provide greater managerial prerogative (Locke et al., *ibid.*). By increasing employer discretion and creating a climate more tolerant of alternative employment relations, the changes in labour law were a decisive ingredient in the "individualisation" and "union exclusion" processes (Deery and Mitchell, 1999). The outcome was an exploding number of part-time, temporary and/or special youth employment contracts in many countries (Locke et al., *ibid.*). As well as this growth in flexible work, working hours and labour market insecurity also increased (Green, 1997). The traditional full-time permanent job was replaced with part-time and temporary positions (*ibid.*). Increased managerial prerogative often resulted in reduced wages and conditions for workers, along with dualisation of the labour market through two-tier bargaining.

Connected to these changing external labour market practices were initiatives on the shop floor and in the internal labour markets of firms (Locke et al., 1995: 144-147). These aimed at soliciting the discretionary effort and creativity of workers at all organisational levels, through promoting the delegation of decision-making authority to problem sources, teamwork, problem identification and resolution, and increased coordination across functional boundaries. Innovations included total quality management, job rotation, quality circles, work teams, and flexible work hours and job arrangements (*ibid.*).

## Workforce skill development

The third development has been the growing importance of workforce skill development, with both firms and governments in most of the countries researched increasing their investment in these areas (*ibid.*). Allied to skill development and training is an increase in performance and/or skill-related pay systems (*ibid.*).

## Union decline

The fourth common pattern was a decline in union membership, with new forms of unions or employee associations emerging to challenge the established unions (*ibid.*). The growing internationalisation of markets contributed to both non-union competition and the development of low-wage employment strategies, and managerial initiatives resulted in sophisticated and often individualised employment strategies (Katz and Darbshire, 2000: 7). Globalisation and the resulting changes in employment patterns, labour markets, and employment relations profoundly affected trade unions (ILO, 1999: 1). The largest losses in union membership occurred in countries where unions had difficulties in membership recruitment or retention (Katz and Darbshire, 2000: 1; Locke et al., 1995: 146), or where the union role in society or in enterprises met with strong ideological resistance from business and government (Locke et al., *ibid.*). Apart from reduced union recognition, union decline also resulted from increased membership apathy and structural changes to industry (Brown, 1999: 153-154). The collapse in collective bargaining coverage reflected this dwindling union membership (*ibid.*). Halting this decline requires a completely new union approach to organising, and a huge commitment of union resources (Fine and Locke, 1996: 20).

So everywhere unions are in decline and management is resurgent, new forms of work organisation and a more flexible use of labour are evident, along with greater appreciation of and investment in skill formation and training. The dramatic decline in collectivism highlighted in recent trends in employment relations had been accompanied by rising individualisation. As an employment relations strategy, individualisation resulted from a coincidence of economic and political events, and of calculated managerial and political strategies (Deery and Mitchell, 1999: 14-15). Individualism's key feature seems to be the imposing of unilateral management control over the determination of employment terms and conditions, and the exclusion of trade unions from that process (*ibid.*).

## CONCLUSION

Political reform resulting from recent global changes has promoted neoliberalist ideology over social democracy, and mostly benefitted business interests. Other political-economic responses that still involve elements of social democracy include the third way and social partnership. The continued centrality of neoliberalist ideology to government policymaking under these alternatives also means that both responses are unable to deal effectively with the inequitable outcomes of free market societies. The rightwards shift evident in political-economic approaches indicates the former "left's" intention to simply ameliorate the drawbacks of neoliberalism's free market outcomes, rather than change direction or abandon ship.

This philosophy is reflected in the recent changes to employment relations, which have had a major effect on workers within industrialised countries. The decentralisation of employment relations has occurred in tandem with the deregulation of labour law. The resulting increase in managerial prerogative enabled greater labour market flexibility, with a massive decline in union membership and the development of alternative forms of worker representation. Workforce skill development has also occurred through state and business investment. The political emphasis in policymaking remains on individual self-sufficiency to cure free market ills, as opposed to the collective approach necessary to address inequitable outcomes for workers. A major focus of this approach must be the creation of decent employment - work does not exist in a vacuum. As TUAC President Lane Kirkland warned, "every economic or social problem which governments have to face today has its roots in the absence of work opportunities and decent wages" (TUAC, 1998: 66).

## **Chapter four**

### **NEOLIBERALIST POLICY-MAKING IN NEW ZEALAND**

#### **INTRODUCTION**

Government policy provides the means of achieving or subverting many worker goals. This chapter aims to highlight the connection between the two by outlining the economic, social and employment policies associated with neoliberalist governments in New Zealand, and the more general outcomes. The following chapter continues the thread by describing the resulting changes in employment relations, and the benefits or otherwise of the subsequent developments for workers.

A description of the extent and process of neoliberalism within New Zealand shows the radical nature of the local version, used by both left and right factions in government policy-making. Labour paved the way with major changes in economic policy, and National reinforced the neoliberalist direction by reforming employment and welfare policies. Analysis shows that the major plank in the redesign of New Zealand's employment relations was the Employment Contracts Act 1991, with its aims and implications clearly indicating its neoliberalist origins. However, workers were also hard-hit by the allied changes to employment-related policy, benefits, health, education and housing. Discussion of the broader policy outcomes emphasises the dramatic increase in unemployment and poverty during New Zealand's neoliberalist era, plus the growth of welfare beneficiaries. Despite major public protest against the method and direction of policy-making, and subsequent changes to the electoral system, neoliberalist reform continued until the end of the 1990s.

#### **NEOLIBERALISM UNDER LABOUR**

Although retaining some social democratic values, the Fourth Labour Government undeniably provided the foundations of neoliberalist policy-making. The 1984 Labour government's programme of regulatory reform was designed to generate sustained economic growth through increased competition, reduced rigidities and low inflation (Kelsey, 1998: 5). This commercialist / monetarist approach adopted by Labour (*ibid.*: 351) during its two terms in power focused on deregulation, restructuring and privatisation. The goal of full employment

was replaced with inflation control, to be achieved through labour market flexibility. Demand management was ousted by contractionary fiscal and monetary policies to reduce government spending, compounded by tax reforms and public debt reduction.

### Economic and social policy

The fourth Labour Government's move into neoliberalism was most obvious in its economic policy. The State-Owned Enterprises (SOEs) Act 1986 commercialised government trading departments, with allied changes in social goals. The majority of SOEs and other assets were later fully or partly privatised (Kelsey, 1998). Under the State Sector Act 1988, public sector industrial relations were effectively required to follow private sector arrangements more closely (Easton, 1997: 124). Greater flexibility and autonomy became available for chief executives in managing their departments, although with reduced political accountability. Public sector accountability was extended through the Public Finance Act 1989, which emphasised efficient resource use and changing processes within government departments, notably the management of and reporting on expenditure. The Reserve Bank of New Zealand Act 1989 adopted low inflation as a policy target over full employment, and aimed at containing government spending by maintaining price stability.

National added to this foundation by passing the Fiscal Responsibility Act 1993. Another instrument for controlling public sector resource use, this Act aims at transparency of public accounts, so that reliable financial information is available on which to make policy decisions (Cheyne et al., 1997: 130). The government is required to follow legislated fiscal management principles, with fiscal policies publicly assessed against principles. Labour's economic policy had provided a sound basis for National's extension of the neoliberalist stance.

The overall record of the Fourth Labour Government might leave the impression that, while there were radical changes in the sphere of economic policy, social policy was left relatively untouched (Rudd, 1997a: 247). However, the wider process of public sector reform is inextricably linked to the specific reforms of the welfare state, and involves the portfolios of social welfare, housing, health, education, justice and Maori affairs, with extensive changes of both a structural and processual character having occurred since the mid-1980s (Cheyne et al., 1997: 126). Moves in the direction of a liberal welfare state included the abandonment of full employment, a more regressive tax system, a leaner and meaner welfare benefit system, recommodified housing, and faltering steps towards reassessing the traditional role of the state in industrial relations (Rudd, 1997a: 250). Labour's two terms in office witnessed increases in poverty, income inequality and unemployment (*ibid.*: 248).

## LABOUR'S EMPLOYMENT POLICY

The Labour Relations Act 1987 was the Labour Government's attempt to reform the industrial relations system by encouraging enterprise and industry bargaining (Deeks et al., 1994: 81). Greater choice was available to employers and unions regarding the structure of agreements: national or industry-wide awards or collective agreements, industry-wide composite awards, enterprise-based composite or collective agreements (*ibid.*: 76). The 1990 Amendment Act was another attempt to provide further stimulus for decentralised bargaining, by removing the 'citing-out' constraint, yet maintaining national award protection for workers in small enterprises (*ibid.*: 75). 'Citing out' occurred when employers were removed from award coverage, with union agreement on this required before negotiations began for separate enterprise agreements (*ibid.*). Labour also passed the Parental Leave and Employment Protection Act 1987, which under specified criteria provided workers with unpaid leave on the birth or adoption of a child. The Employment Equity Act 1990 effectively introduced EEO into the private sector, and aimed at pay equity between men and women through pay comparisons across different types of work. So it seems that while initiating reform of the labour market, Labour also attempted to retain some sort of credibility with the party faithful, especially prior to the 1990 election.

## NEOLIBERALISM UNDER NATIONAL

### The hand-over

Although Labour had "opened the door to labour market deregulation" through its economic policies rather than industrial legislation (Kelsey, 1998: 180), the scene had nevertheless been set for major changes in labour relations. Initiation of the neoliberal project by a party of the social-democratic left served to disarm potential critics, especially the organised labour and social movements within Labour's ranks (*ibid.*: 348). In many respects, the policy differences between National and Labour in the 1990 election were not extensive (Cheyne et al., 1997: 43), and the model of pure neoliberal economic theory first applied by a Labour government was continued with equal, if not greater, fervour by a National government (Kelsey, 1998: 1).

## NATIONAL'S EMPLOYMENT POLICY

When National gained power in 1990, inflation and unemployment were still high and the promised economic recovery seemed no closer than it had been in 1984 (Cheyne et al, *ibid.*). With working-age beneficiaries exceeding 325,000 (140,000 more than 1984), the incoming

National Government proclaimed a welfare crisis in New Zealand (McLoughlin, 2000b: 36). Shortly after gaining power, National repealed the Union Representatives Education Act, and the Employment Equity Act. Then supported by Treasury, the Employers Federation and the Business Roundtable, the National Government passed the Employment Contracts Act 1991 (ECA).

Not only did union officials fail to provide strong and coordinated opposition to the ECA, but the CTU quelled attempts at this approach. Although there was strong evidence of support by union members for a general strike to oppose the ECA, the CTU prevented this, arguing that support was insufficient to sustain nationwide action (Kelsey, 1998: 186). But as Sue Bradford argues, there was tremendous public opposition to the ECA and allied benefit cuts in 1991, with groups like the Unemployed Workers Rights Centre having massive demonstrations at that time (*ibid.*). Workers and beneficiaries had every reason to be concerned about the ECA.

#### The blockbuster: provisions and implications of the ECA

The main objective of the ECA was to promote efficiency in the labour market. This was to occur through increased labour market flexibility, the decentralisation of labour relations, and the minimisation of unions (Hince and Harbridge, 1994). The government in turn pursued labour market flexibility and international competitiveness as the keys to economic growth (Walsh, 1997: 199). To this end, the legislation aimed at greater flexibility in setting terms and conditions of employment (especially downward pressure on wages and conditions), and to enable the reassertion of the employer's "right to manage" (Anderson, 1999: 225). The ECA provided the legal foundation for employment relationships to be atomised and controlled within a single employer's enterprise, and for unions (and collective bargaining) to be marginalised and less able to influence employment conditions (*ibid.*). The Act was intended to "place the management of employees and the terms and conditions of employment firmly in the hands of employers and managers of individual enterprises" (Bill Birch, Minister of Employment, cited in Jeffrey, 1995: 172).

Subsequently individualisation of the employment relationship was central to the ECA, as a way of achieving flexibility, decentralisation and union exclusion. This was obvious in the ECA's Long Title. It aimed to protect the rights of individual workers and employers to choose the bargaining agent and structure which best suited them, and to determine the scope of their agreements themselves (Deeks et al., 1994: 89). Thus the fundamental philosophy of the ECA was one which rejected New Zealand's collectivist tradition in favour of an individualist approach to labour relations (Anderson, 1991, cited *ibid.*). The ECA's language implied a new

perspective which focused on the employment relationship itself, with autonomous individuals on equal terms with their employers, and unions on the outer (Deeks et al., 1994: 90). This emphasis on a direct relationship between employers and employees was a major change, along with the assumption that both parties had the skills and abilities to negotiate contracts in a mutually satisfactory way (*ibid.*). The ECA not only relied on a greater imbalance of power of between workers and employers to achieve its goals through individualisation, it actively promoted this imbalance. Under the ECA, it was inevitable that the power imbalance inherent to the employment relationship would grow rapidly in favour of employers.

The ECA's focus on union exclusion and the decentralisation of labour relations was a key development in employment policy that ran against New Zealand's previous traditions. Points of particular departure included the move to individual and enterprise based bargaining arrangements, in contrast with the earlier occupational and industry based awards and agreements (Deeks et al., 1994: 100). The trade union role in negotiating employment contracts was not recognised, with no provisions for the registration of unions as the legitimate representatives of workers (*ibid.*). There was also no mention of procedures for resolving disputes over the settlement of wages and conditions (*ibid.*: 90). These omissions were previously two of the traditional mainstays of New Zealand's system of labour relations (*ibid.*). Effectively all statutory privileges for trade unions were removed, with unions required to secure explicit authorisation to negotiate on their members' behalf (Kelsey, 1998: 3). Individual employment contracts (IECs) replaced collective bargaining (Cheyne et al., 1997), with the coverage of IECs extended to both state and private sector employment (Kelsey, *ibid.*).

So several aspects of the new industrial relations regime were unsympathetic to union organisation, as follows (Harbridge and Honeybone, 1996, cited in Crawford et al., 1999: 391). First, the ECA abolished the special legal status and monopoly representation rights unions had enjoyed under the award system. Second, the Act abolished institutional arrangements intended to facilitate collective bargaining. The abolition of blanket coverage affected a fundamental shift in the locus of industrial relations. Multi-employer bargaining on a near-national basis was replaced virtually overnight by an enterprise level focus. The international experience suggests bargaining decentralisation is associated with lower levels of unionisation (OECD, 1994). Third, specific provisions of the Act, and early interpretations by the Courts, placed significant obstacles in the way of unions seeking to pursue collective negotiations on behalf of their members and allowed some employers to pursue aggressive de-unionisation strategies (Dannin, 1997).

An anomaly was the added protection that the ECA provided to some employees. The specialist labour jurisdiction of the Employment Tribunal and Court was extended to IECs as well as CECs, and personal grievance procedures also became applicable to all employment contracts (Deeks et al., 1994: 100). The extension of the personal grievance protection is most likely explained by the desire to remove an attraction of union membership and by political considerations (Anderson, 1999: 210). However, the move towards a single jurisdiction and single legal system for both IECs and CECs is argued as one of the most dramatic changes occurring in the system under the ECA (Szakats, 1992, cited *ibid.*: 90). These decisions could also be argued as acceptance of a continued role for government in regulating employment relationships, albeit reduced, in contrast to the free market model that the ECA resulted from (Deeks et al., 1994: 90, 100). The minimal regulation provided by the ECA aimed to prevent the unequal power between employment parties being exploited to unconscionable levels (*ibid.*).

To a much greater extent though, the ECA emphasised market regulation over state involvement. This would supposedly enable individual choice within the employment relationship. The ECA's key themes which reflected this greater "freedom of choice" involved freedom of association through voluntary unionism, freedom of contract through new bargaining arrangements, and freedom of representation through choice of bargaining agent (Meuli, 1991: 3). A premium was placed on freedom of association, with the assumption that contractual freedom springs from the effects of unimpeded market forces (Churchman, 1991). This style was adopted rather than adjusting the unequal bargaining power between employer and employee (*ibid.*). The ECA was also incompatible with ILO principles requiring the actual promotion and encouragement of collective bargaining as being fundamental to the concept of freedom of association (Hughes, 1994). A criticism in the ILO's review of the ECA was that collective and individual employment contracts were treated essentially as equivalent options under the legislation (Crawford et al. 2000: 300).

### Minimum conditions of employment

The aim of providing some protection for more vulnerable employees nevertheless continued in the minimum code standards attached to the ECA. These provided an additional floor of employment rights, with minimum terms and conditions of employment for workers covered under the ECA, and include the following (Brosnan and Rea, 1991: 148-149). Pay-related legislation involved the Minimum Wage Act 1984 (which gradually increased), the Wages Protection Act 1983, and the Equal Pay Act 1972. Leave provisions were included under the Holidays Act 1981, the Parental Leave and Employment Protection Act 1987, the Volunteers Employment Protection Act 1973, Anzac Day Act 1966, and the Waitangi Day Act 1976.

Although statutory minimum conditions have been part of New Zealand's industrial relations system since the late 1800s, the ECA involved additional minimum conditions (Deeks et al., 1994).

### Other employment-related legislation

Newer provisions that became applicable to employees covered under the ECA included the Health and Safety in Employment Act 1992 (HSEA) and the Human Rights Act 1993 (HRA), summarised below (Harte, 2001: 8-10). The HSEA introduced managerial self-regulation into health and safety matters, and created difficulties in convicting for non-compliance (Hughes, 1993: 1). Again, trade unions were not automatically recognised as worker representatives, with health and safety management instead becoming the domain of employers and managers of individual enterprises, although without any prescribed form of involvement (Jeffrey, 1995: 177). (*ibid.*).

The HRA provided increased protection of human rights by prohibiting discriminatory practices. Both direct and indirect discrimination became unlawful on the grounds of gender, marital status, religious or ethical belief, race and colour, ethnic or national origins, and age (relating to employment and retirement). Subsequent legislation extended the prohibited grounds to include disability, political opinion, employment status (being unemployed or a beneficiary), family status, and sexual orientation. While providing some assistance to workers, the HRA's drawbacks include its focus on a complaints-based system that deals with discrimination on an individual rather than systemic level (Briar, 1994). This limits its legislative effectiveness due to the responsibility on relatively powerless individuals to prove discrimination (*ibid.*).

Legislation involving accident compensation and privacy also affected workers. The Accident Rehabilitation and Compensation Insurance Act 1992 (ARClA) greatly reduced the previous legislative cover and payment available for work-related accidents. Although eligibility for ACC was cut and pay-out levels were reduced, the right to take civil action for personal injury (abolished when the earlier scheme was introduced in 1974) was not restored (Kelsey, 1998: 3). The previous no-fault accident compensation system was instead redesigned to shift the funding burden for non-workplace accidents from employers to workers and other individuals (*ibid.*). ACC itself was restructured in June 1999, being split into four companies to increase competition and privatisation within accident insurance (Rasmussen and McIntosh, 1999: 399).

The Privacy Act 1993 provided benefits to workers by protecting individual privacy regarding personal information, applying to both public and private sectors. However, the government's motivation in passing the Act was to allow increased information sharing between government agencies to reduce benefit fraud (Parliamentary Debates, Vol. 517). The Act basically facilitated the implementation of changes in the government's welfare "welfare" policies which targeted unemployed workers.

### National's welfare policy

National's two-pronged approach to unemployment also involved its social welfare and income support policies, with the benefit system seen as adding to labour market inflexibility. The budget deficit was another issue to be addressed. So the government turned viciously on the welfare state, "cutting welfare and housing benefits, raising user charges and dismantling institutions in preparation for further privatisation in accident compensation, education, health, and housing" (Easton, 1993: 158-159). The 1991 benefit reforms included tighter eligibility criteria and greatly reduced benefit levels, with the unemployed being particularly hard-hit. Job seekers were to be encouraged back to work, with the state simply providing a basic payment through the greater targeting of benefits. The reforms aimed at reducing dependency on the state, establishing a modest safety net, and eliminating the vestiges of universal access to welfare (Cheyne et al., 1997: 44). However, almost all social security benefits for adults were cut (Easton, 1997: 52), involving other worker groups as well. With the ECA, these changes provided a coherent and ideologically driven justification for a complete transformation of the welfare state (*ibid.*). A case management approach was then introduced to further discourage welfare dependency and increase the self-sufficiency of beneficiaries (McLoughlin, 1997). DSW initiatives culminated in the Community Wage which was introduced in 1998. This work-for-the-dole scheme replaced unemployment and sickness benefits, and made it clear that welfare was no longer a right, instead to be paid only if "social responsibilities" were met by beneficiaries.

The redesign of New Zealand's welfare state went as far back as 1984, and extended to other areas also affecting workers. These included the provision of compulsory education, the provision of the health system, the provision of public housing provision, and the provision of tertiary education provision (Easton, 1997: 83). Under the extra costs of user-pays policies, workers were simply urged to tighten their belts in anticipation of the economic recovery from which all would supposedly benefit. However, a sustainable economic recovery was far from guaranteed (Kelsey, 1998: 10). In fact, the New Zealand economy performed very badly, largely due to poor decision-making by businesses, after the government handed control of the

economy over to them (Gaynor, 2000). Stagnation, recession and instability dominated economic life (Kelsey, 1998: 349), with the country and many of its people a great deal worse off (*ibid.*: 10). While the Labour government was responsible for the early decline, National had further fuelled unemployment and deregulated the labour market, along with allied reforms (*ibid.*).

## VOTER DISSENT

The change to New Zealand's electoral system was the result of voter dissatisfaction with both the political policy-making process, and subsequent policy. Despite government cultivation of the media and vast sums spent on public relations consultants and advertising, many New Zealanders remained hostile to the structural adjustment programme Kelsey, 1998: 44). The distress after the 1991 benefit cuts was so great that there was a concerted outcry from the general public, led by the churches and community welfare organisations, and backed by survey and anecdotal evidence (Easton, 1997: 53). Deprived of any real political choice under the existing system, people expressed their dissent by voting the electoral system out (Kelsey, *ibid.*). The mixed member proportional (MMP) electoral system replaced FPP in 1996, in the hope of reintroducing greater democratic representation. The dynamics associated with passing legislation under MMP resulted in predictions that policy stability, rather than policy radicalism, was likely to be the order of the day under MMP (Shaw, 1997). This rested on the probability of coalition governments rather than single party majority governments, with the major reforms of the previous decade likely to be locked in (*ibid.*) This was certainly true for macro-economic policy, with little or no change in this area. Previous legislative reforms of the financial market and public sector made such reform difficult, with problems in multi-party governance since MMP reinforcing this. Post-MMP changes in economic policy mostly compounded the neoliberal direction and substance of such policy, and maintained its centrality to all other policy.

Conversely, substantial change was achieved under MMP in social policy between 1996-99. Despite the minority National Government of 1996 having to form a coalition with NZ First, and also requiring support from other political actors within parliament to formalise policy, radical change still occurred. Examples include the community wage scheme and accident compensation legislation. While these changes could perhaps be seen to represent policy "stability" by simply extending the neoliberal direction of existing labour and welfare policies, they were nevertheless extreme. So it was still possible under MMP for New Zealand governments to effect major policy transformations through rapid legislation, even in the face of major public opposition. The re-emergence of political pragmatism in 1993 and the partial

paralysis in the lead-up to MMP were minor inconveniences in the overall scheme (Kelsey, 1998: 349).

### The extent and process of neoliberalist reform

Another difference from the international approach to neoliberalism was that the extent of the solution applied to New Zealand's economic problems was perhaps the most radical worldwide. Since 1950, New Zealand's economy had been the most highly protected in the OECD (Kelsey, 1998: 5). Conversely, in 1994, Moody's Investors Services observed that the "reorientation of New Zealand economic policy after 1984 represented one of the most ambitious and comprehensive structural reforms undertaken by any OECD country", while the Economist went further in 1993, noting that "During the past decade New Zealand has implemented reforms more radical than any other industrial country's" (cited *ibid.*: 7-8). This radical exercise in structural adjustment was unilaterally undertaken by a democratically elected government within an advanced capitalist economy (*ibid.*: 1). That this occurred without voter mandate, instead purely through the choice of both Labour and National governments, is not so extraordinary when their method of policy-making is taken into account.

The approach used by both left and right governments in New Zealand to implement neoliberalist policies was also extreme. Firstly, the state rejected its previous interventionist approach, along with corporatist accommodations between government and the main groups. This was then replaced with an autocratic style of policy implementation in order to achieve goals. The governing party's ability to implement policy relied on controlling parliament through a process of institutional leverage, and on using an approach similar to the blitzkrieg in warfare (Easton, 1997: 80). This approach used a "lightning strike" for each case, involving a policy goal radically different from the existing configuration, to be attained in a short period, following a surprise announcement and a very rapid implementation (*ibid.*). Although each blitzkrieg was different in detail, the aim each time was to take some substantial aspect of the economic and social framework and transform it profoundly (*ibid.*).

### The outcomes of neoliberalism

The radical exercise in structural adjustment implemented in New Zealand by neoliberalist governments (Kelsey, 1998: 1) certainly transformed the socio-economic landscape. Unemployment rose to unprecedented levels in the 1990s, along with numerous social and economic costs. The widespread distress caused by the 1991 benefit cuts was compounded by the sharp rise in unemployment that occurred at the same time (Easton, 1997: 52.). A noticeable

increase in poverty also resulted from these slash and burn reforms of the 1990s, especially affecting beneficiaries, as well as low-income workers caught by the higher rents for state and private housing (McLoughlin, 2000a: 36). The problem was worst for single parent families (*ibid.*). By 1995, after a decade of radical structural change, New Zealand had become a highly unstable and polarised society (Kelsey, 1998: 350). Its under-skilled, under-employed, low wage, low inflation, high exchange rate, export-driven economy was totally exposed to international economic forces (*ibid.*). Victims of the market were forced to depend on a shrinking welfare safety net or private charity (*ibid.*). Unemployment and poverty had become structural features of New Zealand life, with poverty and hardship expected to remain the same even if unemployment returned to the previous level of the mid-1980s (*ibid.*)

## CONCLUSION

Ushered in the back-door by a Labour government, the neoliberalist takeover in New Zealand caught voters unaware. From 1984 onwards, Labour Government policies enabled major economic reform in a dramatic shift away from previous social democratic ideals. The deregulation, restructuring and privatisation that resulted in New Zealand's economy under Labour provided a sound basis for the 1990 National Government to extend this structural reform, which might otherwise have proved more difficult. While Labour had generally initiated reform of the welfare state and public sector, and made only tentative changes to employment-related legislation, these changes again were sufficient to create a basis for a massive onslaught by the National Government. The dramatic changes to New Zealand's employment and welfare policies from the early 1990s not only had immediate and disastrous effects for workers, but further entrenched the earlier neoliberalist legislation and mindset. The advent of MMP was largely ineffective in even moderating let alone undoing the previous neoliberalist policies. The decrease in state intervention and reduced protection in employment-related matters that occurred under New Zealand's neoliberalist governments seemed like a permanent fixture. During New Zealand's neoliberalist period, business and economic interests benefitted at the expense of workers, despite the growing disadvantage to those New Zealanders already marginalised in both the labour market and society.



## Chapter five

# EMPLOYMENT RELATIONS UNDER NEOLIBERALISM

### INTRODUCTION

The previous chapter highlighted the interrelated nature of employment, economic and social policy, and that under neoliberalist policymaking, economic objectives took precedence over other policy goals. Chapter four also indicated that the broader social and economic outcomes resulting for workers under neoliberalist policymaking were largely negative. This chapter more specifically examines the developments in employment relations during the same neoliberalist era in New Zealand, developments which were a direct outcome of the changes made to employment policies under neoliberalism. The workplace trends resulting from this Labour and National government policymaking are discussed and analysed. The focus is subsequently on decentralisation, increased labour market flexibility, reductions in workforce training and education, and union decline.

### LABOUR GOVERNMENT: OUTCOMES IN EMPLOYMENT RELATIONS

#### Decentralisation of employment relations

While the Labour Government avoided major changes in its employment policy, the decentralisation and deregulation of New Zealand's labour market were certainly set in motion. The new industrial framework created by the LRA was aimed at encouraging the decentralisation of labour relations to enterprise level. Large firms began the move to single enterprise awards by breaking out of the national awards system, and a number of unions combined their awards to a single one in composite industry awards (Easton, 1997). However, this movement towards a more decentralised bargaining structure was not rapid, and national awards and agreements remained a major feature of the labour relations system (Deeks et al., 1994: 73).

The public sector was more affected by decentralisation than the private sector at this time. The SOEs took radical steps towards decentralisation of their labour relations structures and practices (*ibid.*: 72). Performance-based salary scales and IECs were introduced, union membership declined, and management increased its autonomy in all areas of HRM with

minimal union resistance (Walsh, 1988, cited ibid.). Although the framework of negotiation remained highly centralised in the remainder of the public sector, the structure of agreements nevertheless shifted from an occupational base to a departmental base (ibid.).

### Labour market flexibility

Labour market flexibility increased in both the supply of labour, and in pay and conditions, generally similar to international trends. There were substantial increases in part-time and short-term employment, and in the use of subcontract labour in both private and public sectors (Deeks et al., 1994). Between 1984 and 1990, real wages declined significantly, there was considerable liberalisation in the hours of work, and variable rates of wage increase were negotiated in different industries and occupations, broadly in line with market conditions (ibid.). National awards were unable to sustain real wages or provide security of employment, and concession bargaining produced various “clawbacks” by employers of previous conditions (ibid.).

### Workforce skill and education development

The development of workforce skills and education in New Zealand also seemed to be following international trends. For the unemployed, training and skill development had taken precedence over job creation by the mid-1980s. Subsidised employment schemes such as PEP were replaced by large-scale ACCESS work training projects in 1987. For those in work, apprenticeships were readily available under the Apprenticeship Act 1983. A smaller, more productive and more highly skilled labour force was emerging in the large private corporations, the SOEs and the public sector (Deeks et al., 1994). In the smaller companies in the private sector, and in the peripheral worlds of sub-contract and part-time work, the labour force was mainly made up of unskilled workers in low status, low paid jobs, highly vulnerable to unemployment at short notice (ibid.: 78). So despite the benefits of a group of highly skilled workers, the problems associated with a dual labour market had already begun.

### Union decline and worker representation

Along with these more vulnerable workers, unions were also beginning to struggle. Between 1985 and 1991, union membership dropped by 80,000, and the number of unions more than halved (Statistics New Zealand, 2002). Unemployment had badly eroded the membership base, and the growth of part-time and contract employment had increased the size of the secondary or peripheral labour market, a segment particularly difficult to organise (Deeks et al., 1994). The confidence of members in their unions was further eroded by major concessions on working

practices, gained by employers with minimal union resistance or involvement (*ibid.*: 79). Apathy, complacency and passivity were also a problem, with neither unions nor workers prepared for the deregulation and decentralisation of employment relations (*ibid.*). The decline of union power had begun, in keeping with changes overseas.

## NATIONAL GOVERNMENT: OUTCOMES IN EMPLOYMENT RELATIONS

### Decentralisation

The ECA provided the means to decentralise New Zealand's employment relations system, a major change in line with international trends. The push for decentralisation came largely from business interests from the early 1980s onwards, with the ideal of globalisation acting as a catalyst. While the LRA enabled the first moves towards decentralisation in practical terms, the ECA ensured this outcome. The ECA marked the end of the wage-fixing element of the traditional wage earners' welfare state in New Zealand, and the associated social protection (Castles and Pierson, 1996: 241). The ECA embodied a strong policy of "enterprise confinement", aiming to confine employment issues and bargaining to single enterprises (Anderson, 1999). There was a noticeable shift under the ECA from awards and multi-employer bargaining to individual employment contracts and collective bargaining at the enterprise level (Hughes, 1994). The collapse of multi-employer bargaining resulted in the ILO (unsuccessfully) requesting the New Zealand government to reverse its policy, and to legitimise strikes in support of multi-employer bargaining (Harbridge et al., 2002: 65). By discarding what remained of the arbitration system, the state had also opted decisively for a bargaining model (Walsh, 1997b: 183). While the arbitration model had emphasised uniformity, industrial harmony, continuity in relationships, and equity in outcomes, the bargaining model focuses on diversity, conflict, dynamic relationships, and outcomes concerned with efficiency rather than equity (*ibid.*). This choice was to shape the processes and outcomes of New Zealand's future employment relations. Single employer, enterprise bargaining had become the predominant form of bargaining under the ECA, in both public and private sectors (Harbridge et al., 2000).

### Labour market flexibility

The ECA's secondary goal aimed at greater labour market flexibility, to be achieved through its emphasis on individualism and contractualism. During the 1990s, massive shifts occurred in both the structure and content in the determination of employment conditions for much of the workforce (Harbridge et al., 2000: 74). When the blanket coverage of awards disappeared, this included controls on the use of non-standard employment, such as casual and part-time work

(Anderson, 1999). Unless covered by minimum standards legislation, controls regarding minimum conditions of employment also vanished (*ibid.*). These involved industry-based wage levels (including overtime, penal and shift-work rates), maximum hours of work, meal and other rest breaks, tool and clothing allowances (*ibid.*). The ECA replaced this system with a purely contractual regime for establishing the terms and conditions of employment (*ibid.*: 209). The ECA's effect was mainly due to its institutional impact, especially on the structures and processes of bargaining, and on the respective powers of unions, employers and employees (Deeks et al., 1994: 531). The shift of bargaining power towards employers allowed them greater flexibility in organising the supply of labour to their enterprises, and in managing the labour process within them (*ibid.*).

This enterprise-based contractual approach seriously weakened unions and greatly increased employer control over bargaining outcomes. Decisions regarding recruitment, redundancy, dismissal, layoffs and the allocation of labour effectively became the domain of managerial prerogative (Deeks et al., 1994). Along with the accelerated flexibility of New Zealand's labour supply and process, Hince and Harbridge argue that increased casualisation of the workforce was also achieved through the employment of temporary and part-time workers (1994). Although Wilson (2002) and Kelsey (1998) agree that the casualisation of work increased under the ECA, Walsh and Brosnan argue against this (1999: 124). While temporary (mostly part-time) and fixed term employment certainly increased between 1991 and 1995, together with full-time contractor/consultancy work, casual employment actually declined by 3% during that period (*ibid.*). While the occurrence of casualisation therefore remains debateable, these post-ECA changes certainly amounted to increased contractual flexibility. This occurs when employers reduce their core labour force, and increase their use of part-time employees, employees on short-term and fixed term contracts, and sub-contractors and homeworkers (Deeks et al., 1994: 145). The goal behind this is increased flexibility in the numbers of people employed, to avoid major costs when employer demand for labour falls (*ibid.*). Although the neoliberalist faction certainly initiated the push for greater contractual flexibility, the economic downturn in the 1990s undoubtedly contributed to its implementation.

The increased labour market flexibility resulting during this period was also evident in greater job and pay flexibility, with cuts to pay and conditions for workers. Women in particular had lower wage movements compared to men, with fewer penal and overtime opportunities (Hince and Harbridge, 1994). Lack of pay equity legislation and adequate parental leave provisions also disadvantaged women especially (Stuart, 1995: C1). Marginalisation was more prevalent for individuals with reduced bargaining power, those workers traditionally disadvantaged in the labour market. Along with women, this included Maori, Pacific Islanders, disabled and young

workers. The poverty levels of Maori and Pacific Island employees remained much higher than those of Pakeha (Walsh, 1997: 283). Nevertheless, the events of the 1980s and 1990s also encouraged the development of tino rangatiratanga for Maori communities, partly in response to problems created by neoliberalism in New Zealand, and partly due to an evolving concern with cultural identity and economic autonomy, (Spoonley, 1994: 96). The viewpoint that women fared worse than men under the ECA is not unanimous, either. On the basis of her 1993 study, Ryan argued that gender was a less important explanatory factor than location in the labour market (1994, cited in Walsh, *ibid.*). So the effects of the ECA remain contentious, apparently delivering some benefits as well as the obvious drawbacks for workers.

Still, the outcomes of the ECA do seem to be mostly negative. The growth of two-tier bargaining structures occurred, along with increased labour market segmentation and reduced equity in employment outcomes. Outcomes in non-unionised sectors indicated higher dismissal rates, greater levels of turnover and injury rates, increases in compulsory redundancies, and less consultation between employers and employees (Hince and Harbridge, 1994). Regarding employment terms, the most dramatic shifts over the decade involved working time arrangements, with significant removal of specified weekly clock hours, penal rates, and in some cases overtime rates (Harbridge et al., 2000: 74). This flexibility in working time arrangements was the key to changes made to employment conditions generally (*ibid.*). These in turn made important contributions to labour cost savings in many industries (*ibid.*). Greater adjustments towards labour flexibility in the collectivised sector were more evident in the period immediately post-ECA. During the somewhat radical labour market adjustment in the 1991-1993/94 period, employers adjusted wage levels and systems, and focused on greater flexibilities in working time patterns (*ibid.*, 1997: 61). The adjustments sought were largely achieved, and by 1996/97, considerable stability had been reached in determining employment conditions under collective bargaining at the enterprise level (*ibid.*). Despite the increased labour market flexibility that resulted from the ECA and was in line with international trends, business interests continued to press for the removal of both the minimum code legislation, and the Employment Tribunal and Court.

### Workforce skill and education development

Another international trend is the growing investment by both firms and governments in workforce skill and training development, linked to performance or skill-related pay systems. This is one area where New Zealand shows a quite different pattern. The Apprenticeship Act 1983 was replaced by the Industry Training Act 1992, which devolved resources and administration for apprenticeship training from state to industry. ITOs were established to act

merely as supervisory rather than training agencies, and new apprentices were contracted to employers with terms and conditions negotiated under the ECA. Under this legislation, the numbers of apprentices dropped dramatically, and in November 1994 only half as many people were taking apprenticeships as ten years before, although in 1995 that trend reversed (Kelsey, 1998: 266-277). Polytechnics cut training courses because of lack of funds, and participation rates on government training schemes were low (*ibid.*). Education and training policy was uncoordinated, and the vision of ‘seamless’ education through the national curriculum and qualifications framework proved cumbersome to design and implement (*ibid.*). The market model of training designed and funded ‘stakeholders’ (the employing industry and trainees) was difficult to reconcile with the planning required for the necessary broad-based skill development (*ibid.*). The fastest growing occupations have been those requiring higher education (Callister, 1990, cited in Deeks et al., 1994), so the upgrading of worker skills and knowledge is crucial (Deeks et al., 1994). However, the OECD saw New Zealand companies’ investment in training as insufficient by international comparison (*ibid.*). Despite the lack in the provision of training and education to acceptable levels by both state and business, the use of skill and performance-related pay systems continued to increase in New Zealand during the 1990s. And employers were able to continue to demand workers with higher skills than necessary, due to the choices available in staff recruitment as a result of unemployment levels. These industry-based training issues are compounded by problems in New Zealand’s “public” education system, as discussed in chapter 9.

### Union decline and worker representation

The ECA had two goals, to force wages down and to break the unions (Kelsey, 1998: 182). The latter was achieved most dramatically, making way for the former. The more important changes during the 1990s are characterised by significant de-unionisation and the growth of individual employment contracts (Harbridge et al., 2000: 74). Under the ECA, union membership and density declined, along with the number of unions. The collapse of multi-employer bargaining was a key explanator of the decline, together with a substantial increase in the level of free-riding (*ibid.*) and non-inclusive bargaining. It is estimated that free-riding increased under the ECA from around 16% in 1989/90 to around 27% by 1999/2000 (Harbridge and Wilkinson, 2000, cited in Crawford et al., 2000: 299).

The ECA was a key factor in explaining both the speed and scale of the initial drop in union membership, and the subsequent inability of the union movement as a whole to stop these declines (Crawford et al., 1999). However, the ongoing declines in union membership and density were probably due to structural changes in employment (*ibid.*). These included the shift

of employment from traditionally strongly unionised manufacturing to weakly organised service sectors, although perhaps more important in the New Zealand context was the changing share of public and private sector employment (*ibid.*). Another significant factor was probably the decline of employment in large and medium sized workplaces, and the concentration of employment growth in workplaces of fewer than 10 employees (*ibid.*: 2000: 299).

Along with this major trend of declining union membership and density, trade union structures also evolved in line with international trends in the emergence of “super unions” and small “boutique” unions, explained as follows (Crawford et al., *ibid.*). Amalgamations have been a major survival strategy adopted by unions, resulting in a greater concentration of union membership in a small number of large unions. Smaller unions have usually appeared within individual workplaces. These trends suggest that unions face co-existent pressures for centralisation and decentralisation. Another trend particularly evident in the public sector is fragmentation of existing representation, with employees breaking away from their traditional union and forming their own organisation (*ibid.*: 291). It is one of the pressures on union organisation that these trends of concentration and fragmentation co-exist (*ibid.*). So while the ECA has had a substantial and negative effect shock effect on trade unionism in the first 18 months, New Zealand’s case has been largely consistent with the international experience common to many industrialised countries, with a longer-term declining trend due in large part to structural changes in the economy (*ibid.*: 292, 298). Still, the changing economy could itself be seen as largely the result of the application of the neoliberalist approach.

The post-ECA union decline resulted in other changes to worker representation and outcomes in New Zealand, outlined below by Oxenbridge (1999: 227, 247). Around two-thirds of workers represented themselves in the process of developing IECs, with trends towards groups of employees representing their fellow workers. Unions represented most workers covered by CECs, with union representation higher in the public sector than in the private sector. Management-initiated staff associations also developed, along with the use of external employment advocates. A disturbing number of young workers and service workers in the hospitality and retail sectors were covered by informal or unwritten contracts, often not negotiated at all. Up to one-third of workers were covered by rollover and standard form IECs, denoting little worker input into the contract formation process. The small firm sector in New Zealand was characterised by a high level of IECs (particularly informal, standard form and rollover IECs), non-negotiation modes of contract formation, and minimal union presence or representation. Unions responded to decollectivising forces by focusing on larger sites and those offering the greatest recruitment potential, largely withdrawing from the small firm sector.

Other issues affected union power in New Zealand. Perhaps the most crucial factor that shifted the balance of power in New Zealand industrial relations was the extensive limitations placed on the right to strike (Anderson, 1999). The inability to impose economic pressure on an employer meant that employees were largely powerless to improve or protect their economic position (*ibid.*). The minimum legal obligations imposed on employers to bargain under the ECA made the right to strike particularly important for workers, who had no other lawful alternative if employers refused to bargain or make concessions (*ibid.*). The prohibition of secondary or sympathy strikes also made any form of support virtually impossible for workers seeking to negotiate their own contract in smaller workplaces, the norm in New Zealand (*ibid.*). Not surprisingly, strikes became “as rare as the kokako” (McLoughlin, 2000a: 57).

An additional problem was internal divisiveness within the union movement itself, illustrated by the acrimonious split of the central union body into the NZCTU and NZTUF organisations. The defection of twelve unions from the CTU to form the more militant TUF was largely due to the CTU’s passive reaction to the ECA, plus its support for rapid trade liberalisation under the GATT (Kelsey, 1998: 187). Although the issue of union disunity is fairly common elsewhere, the other difficulties are more relevant to New Zealand, resulting from its more extreme version of employment policy under the ECA.

## CONCLUSION

The changes to employment relations during New Zealand's neoliberal era resulted in extremely negative outcomes for workers. These outcomes were in direct contrast to worker goals, yet resulted from neoliberal government policymaking as discussed in the previous chapter. Although the decentralisation of New Zealand's employment relations system began under the 1984 Labour Government, in particular affecting the public sector, it was the collapse of multi-employer bargaining post-ECA under National that ensured the demise of centralised bargaining across all sectors. The move to enterprise-based bargaining also emphasised the growth of individual employment agreements. The subsequent increase in managerial prerogative was reinforced with the deregulation of New Zealand's labour market in the 1990s, and increased labour market flexibility was the inevitable outcome. Although difficulties for unions began in the 1980s, the deregulation and decentralisation of employment relations under National had a massive effect. Union density and membership declined, with a corresponding growth in free-riding and non-inclusive bargaining. Union structures changed, along with the rise in alternative forms of worker representation. Internal divisiveness within the union movement itself simply added to the existing challenges facing workers. Although Labour had focused on increasing the level of workforce skills and development during the 1980s, National

moved against state assistance towards this throughout the 1990s. Responsibility in this area was instead devolved from the government to business and to workers themselves, creating further difficulties for workers. Although this reduced focus on workforce skills and education was contrary to international trends in employment relations, the other developments during New Zealand's neoliberal era instead reflected what also occurred overseas- a decentralisation in employment relations, increased labour market flexibility, and a decline in union power.



## Chapter six

# THIRD WAY POLICY-MAKING IN NEW ZEALAND

### INTRODUCTION

As a political-economic strategy, third way policymaking in New Zealand appears to have been used as an alternative to the earlier neoliberalist policies and outcomes that were largely negative for workers. This chapter initially shows that public dissatisfaction with neoliberalism led to its downfall in New Zealand. The resulting third way policy platform touted by Labour is discussed, followed by an outline of the subsequent Labour-Alliance Coalition and the Labour-Progressive Coalition policy platforms. Related social and economic policy is then covered, with analysis of the provisions and implications of the Employment Relations Act. This Act was produced by New Zealand's third way as its central plank in employment policy. In the lead-up to the summary, other employment-related policy developed under the third way includes worker training, minimum wage increases, ACC, health and safety, whistleblower protection, leave provisions, and the minimum standards and ERA reviews.

### GROWING PROTEST

Major protest against the neoliberalist direction of government policy had started in the 1980s, with demonstrations over the impending State Sector Act by public sector workers. The huge opposition to the ECA which followed represented a broad cross-section of society. Increased public protest over welfare retrenchment was also obvious in the "Beyond Poverty" conference of 1997 (which countered the government's "Beyond Dependency" conference), and the month-long Hikoi of Hope nation-wide march in 1998. These protests clearly indicated the high level of public dissatisfaction with the neoliberalist policy produced by New Zealand governments. For the disenchanted voters of New Zealand's left and right, Labour's third way policy platform during the 1999 General Election perhaps offered fresh hope.

### LABOUR'S THIRD WAY POLICY PLATFORM

New Zealand Labour's approach to the third way falls somewhere between the old "state knows best" mentality and the more recent "leave everything to the market" philosophy (Steve Maharey, cited in McLoughlin, 2000: 38-39). Core features of the third way include: reacting to a changed reality; a pragmatic style and facilitative or enabling role for government; reciprocal

obligations for both beneficiary and government; and a community orientated/partnerships approach (Bronn, 2001: 2). More generally, the local version of the third way advocates “a brand associated with the politics of the centre-left, with Democratic politics in the United States and with the labour party/social democratic politics in Europe” (Harris and Eichbaum, cited NZPA, 1999b: 14). The effect on Labour’s policy platform is obvious, with its initial focus on social policy, then the greater emphasis given to economic policy in the second year, in an attempt to combine economic doctrine and social policy which effectively pleases both Labour voters and business. However, Labour’s third way push has been diluted by its Coalition partners. In the Labour Coalition’s first term, the Alliance pulled Labour somewhat towards the left, while United has provided a more moderating rightwards influence after the 2002 General Election. So although Labour is responsible for the lion’s share of policy, both Coalition partners have undoubtedly weakened the third way effect, in particular the Alliance.

Even apart from its support within the Labour caucus, the third way approach is also reflected in New Zealand's union movement, through the CTU's earlier adoption of the “utopian third way” (Bramble and Heal, 1997: 138). The CTU itself promoted a ‘third way’ between the rival capitalist strategies of unbridled free markets and Muldoonite centralism, ‘shifting bargaining away from occupation and towards enterprise and industry, changing work methods, negotiating around improvements to productivity, and recognising the need for modern, internationally competitive production systems’ (Council of Trade Unions, 1991: 23, cited ibid.: 135). Even back in 1999, a study of trade union officers showed that the far left had almost become an irrelevancy, the left and centre left dominated, and any allegiance to the right of the political spectrum was virtually non-existent (Howells, 2002: 242). So with the NZCTU now co-ordinating policy on behalf of over 90% of New Zealand's union members, it is not surprising that third way thinking filtered through Labour's ranks so effortlessly.

## SOCIAL AND ECONOMIC POLICY

### Labour-Alliance Coalition approach

The overall policy approach of the incoming Labour-Alliance Coalition of 1999 was highlighted in the March 2000 Budget Policy Statement. The six shared goals were to develop an innovative society which creates jobs and provides opportunities for all New Zealanders; foster education and skills; close the gaps dividing New Zealand society; restore trust in government and promote a strong public service; treasure and nurture the environment; and celebrate New

Zealanders' identity as a people (Parliamentary Debates, 2000: 2925-2926). So in a nutshell, the Coalition's shared goals involved economic growth, social equity and environmental responsibility (*ibid.*: 2935). The foundations of these initiatives were access to education, to affordable housing, to health services, to a job and to an income in retirement that is consistent with peace of mind, dignity, and a capacity to participate actively in society (2000: 2926). Subsequently the Coalition's first Budget was concerned mainly with social issues and carrying out pre-election promises regarding these (*ibid.*, 2001: 9576). The next year, the Coalition moved from a focus on social to economic policies.

### The Labour-Progressive Coalition

The underlying emphasis on economic policy continued under the Labour-Progressive Coalition. As from 2002, the objective of the Coalition was the implementation of a comprehensive policy programme aimed at increasing economic growth, reducing inequality, and improving the social and economic wellbeing of New Zealanders in a manner which is environmentally, socially and economically sustainable (Parliamentary Debates, 2002: 8). Its general policy priorities were employment, support for low income families, health and education (*ibid.*). Conservative and predictable fiscal management was seen as a necessity, along with a monetary policy that aimed for price stability while being sufficiently flexible to accommodate the maximum sustainable rate of economic growth (*ibid.*). Hence the renegotiation of a new Policy Targets Agreement (*ibid.*).

## EMPLOYMENT POLICY

### The Employment Relations Act: provisions and implications

The Employment Relations Act 2000 (ERA) resulted from the government's desire to create a balanced employment relationship framework (Statistics New Zealand, 2002: 213). This meant redressing the ECA's sequel, a gross imbalance in bargaining power tipped heavily in favour of employers. Subsequently, the ERA emphasised collectivism, as opposed to the individualistic and contractual nature of employment under the ECA (*ibid.*). Helen Clark sees the Act's basic thrust as promoting collective bargaining and giving trade unions greater status (Peters, 2000a: 3).

The ERA's key provisions reflect this emphasis on collectivism. The main object of the ERA is to build productive employment relationships, by promoting mutual trust and confidence in all aspects of the employment environment and the employment relationship. The ERA aims to do

this by requiring good faith behaviour between employment parties, addressing the inherent inequity of bargaining power, promoting collective bargaining and mediation, protecting individual choice, and reducing the need for judicial intervention. The Act also promotes New Zealand's observance of the principles underlying ILO Conventions 87 and 98, namely Freedom of Association and the Right to Organise and Bargain Collectively. So overall, the Act aims at productive employment relationships and the observance of international labour standards, both of which require a more collective approach in New Zealand's employment policy.

Whether collectivism under the ERA is required mainly to assist workers and their organisations or to achieve economic growth through increased productivity is somewhat dubious. The ERA certainly signalled the government's intention to bring fair dealings and a more balanced approach into the workplace (Wilson, 2000). But this was apparently a secondary goal, a means to an end. Labour's Margaret Wilson stated that the primary goal of the proposed ERA legislation was to increase productivity, by balancing power between employment parties and by promoting trust-based relationships (Rasmussen and Beer, 2000a: 218). Wilson also saw the Act as recognising the "diversity of workplace agreements necessary in building a modern economy and the need for workplace relations which encourage productivity and support economic growth and job creation" (2000). In this light the ERA appears mainly as a tool for economic development, which once achieved, will then supposedly provide the actual benefits for workers. This sounds somewhat familiar to the neoliberalist mantra that all New Zealanders would eventually reap the rewards of economic growth.

Third way principles also clearly underlie the Labour Coalition's ERA policy. Under the third way agenda of regulating for competitiveness, fair treatment within employment is required primarily for instrumental reasons, not as a good in itself (Collins, 2001: 308). Without fair treatment, employees will be uncooperative and unwilling to agree to flexible working arrangements, with the consequence of damaging the efficiency and competitiveness of the firm (*ibid.*). So while buttressing the confidence of employees regarding fair treatment, the third way aims at avoiding rigid legal entitlements (*ibid.*). Legislation subsequently requires a commitment to fair treatment, but without determining the precise content of those commitments, so that work flexibility is not obstructed by fixed legal rights (*ibid.*). The ERA's "good faith" provisions certainly seem to reflect this rather intangible approach.

The main provisions of the ERA include the requirement for parties in the employment relationship to deal with each other in good faith. Under section 4 of the ERA, this duty applies to consultation between employers and employees; employer proposals that might affect their

employees, including the contacting out of work, or selling or transferring the business; redundancy; workplace access by union representatives; and specified contact between a union and employer. Good faith also applies to collective bargaining, and matters involving collective agreements or related variations. Apart from obvious procedural requirements (Boxall, *ibid.*), such bargaining requires both parties to provide information that is reasonably necessary to support, substantiate, or respond to claims made for bargaining purposes. This information can be provided to an independent reviewer if considered confidential.

However, while the “good faith” principle is central to ideas underlying the legislation, and applies to all employment-related parties and matters, it does not mean that negotiating parties must reach agreement (NZGO, 2000). This raises issues in the implementation and outcomes of the “good faith” approach. The ERA provides minimal clarification of both the concept and its application in employment relationships, with reliance on individual workers and unions to take litigious action to fill these legislative gaps. The intention of the ERA is apparently that good faith involves “fair dealing” and reasonable conduct (Harrison, 2001: 91). Under section 4 of the ERA it also means that employment parties must not do anything that misleads or deceives the other, or is likely to, directly or indirectly. But while the statutory provisions and centrality of good faith in the legislation clearly show that it not to be given an unduly narrow interpretation, the outer limits of this requirement will take considerable working out in practice (*ibid.*: 90). As Boxall argues, the ambiguities in the good faith concept could introduce undesirable complications into the collective bargaining process in New Zealand (2001: 33). This typically third way approach provides opportunities rather than ensuring actual outcomes, with workers and employers themselves required to define and develop productive and collectivist employment relationships. Labour has clearly adopted the third way's pragmatic and facilitative stance, with the ERA also highlighting a partnerships approach to employment relations at that involves reciprocal obligations at enterprise level. Labour's acknowledgement of a changing workplace includes an overt acceptance New Zealand will not return to its corporatist past.

Despite the uncertainties surrounding good faith, the ERA still assists collectivism by strengthening the union role in the workplace. Unions regained the sole right to be the worker party to collective agreements (Boxall, 2001: 33), so that collective bargaining is limited to employers and unions. Collective bargaining may also include multi-party agreements. Union access rights to workplaces were increased (*ibid.*) to include union business (recruitment, and promotion of unions and membership). Union membership enables workers to be covered by collective agreements applicable to relevant work at that employer's (*ibid.*). If/when a superior collective agreement is achieved for unionised workers, new union members and new employees can then come under the collective agreement without employer obstruction or

pressure to do otherwise (*ibid.*: 34). Employment relations education leave also became available for union members. Unions must be independent of employers, follow a registration process, and have democratic and reasonable rules. So the first message of the ERA is about the need to treat unions as socially important organisations representing worker interests (*ibid.*: 32).

However, the voluntary nature of union membership under the ERA has several implications. While the ERA effectively warns employers not to interfere with legitimate union activity, it is not a return to the “monopoly” aspects of the arbitration system regarding coverage and membership (Boxall, 2001: 32). The ERA retains voluntary unionism in conjunction with universal access to the personal grievance machinery, as under the ECA (*ibid.*: 31). So union density will probably only rise by 5%, and is unlikely to reach beyond 30% of employees (*ibid.*: 29). The ERA also raised concerns about whether unions would have the resources or expertise to fulfil their duties, even if there was only a slight increase in unionisation (Rasmussen and Beer, 2000a: 215). Voluntary unionism creates major “free rider” problems for unions, which often have fewer resources than they need because more people take the benefits of union-negotiated improvements than actually pay for them through union fees (Boxall, 2001: 31). Employers can still negotiate a “standard individual agreement” with representatives of workers not in a union (*ibid.*: 33), so free-riding remains possible on an individual basis.

The ERA strengthens existing individual rights and creates new ones (Boxall, 2001: 35) in various ways. These include rights to information; representation (including the right to join or not join a union); a form of contract consistent with the real relationship involved; consultation before restructuring or redundancies occur; mediation and rights to subsequent legal determination in the Authority/Court system; and have an agreement based on “unfair bargaining” reviewed by the ER Authority (*ibid.*). Individual recruitment and bargaining now have greater procedural requirements (*ibid.*: 33). Prospective employees must receive a written “intended agreement”, be advised of their right to seek independent advice and be given reasonable opportunity to seek it (*ibid.*). New employees whose work is already covered by a collective agreement must initially work under the same terms and conditions, although can negotiate a different individual agreement after 30 days if mutually agreed by the employer. Fixed term agreements are allowable only where genuine reasons exist, and where employees are properly advised of the implications (*ibid.*). Probationary periods are only possible if agreed to by the employment parties. So freedom of choice and individualism retain protection under the ERA, in line with the general consensus that a return to previous policy of compulsory unionism and arbitration is undesirable. Subsequently the ERA’s second key message is about reaching agreement with individuals on the form and terms of their employment relationships,

with the major implication that employers will need to be more careful regarding individual negotiations and agreements (*ibid.*: 35).

Increased opportunities for collective and individual worker protection are reinforced by greater state regulation within the mediation service. While the Employment Court and Court of Appeal remain, new institutions include the Mediation Service and the Employment Relations Authority. The former focuses on dispute resolution, while the latter acts as an investigative body in determining employment issues. Mediation becomes the compulsory initial process in personal grievances, and reinstatement returns as the primary remedy in unjustified dismissal (Boxall, 2001: 30). Strike laws are somewhat strengthened, with employers only able to request rather than require staff to temporarily replace strikers, and strikes for multi-employer agreements becoming legal (*ibid.*: 33). However, it is very unlikely that the multi-employer provisions will stimulate more strikes and lockouts or increase wage flow-on pressures (*ibid.*: 30). During strike action, non-striking workers may be suspended without pay if normal work is subsequently unavailable, current employees may be used to carry out the work of strikers, and extra workers may be employed if required for health and safety reasons. So while strike laws have increased the feasibility of industrial action for workers, opportunities also remain for employers to side-step the effects of such action. Workers are also much less inclined to take industrial action than they were even a decade ago. The neoliberal era apparently resulted in lower worker expectations and a reluctance for industrial action, perhaps due to a decline in union power and outcomes, lower real wages, the closer employment relationship, and job insecurity. These days, workers simply cannot afford to take industrial action when the outcomes are still heavily weighted in favour of employers.

So worker self-reliance and market regulation remain important, again in line with third way policy. Subsequently the ERA is a tentative effort at pleasing both camps, giving workers a stronger foot-hold by reducing managerial prerogative in some areas, but still leaving procedural and substantive outcomes of the bargaining process up to the employment parties to decide. The outcomes for workers effectively rest on this bargaining process. As Boxall argues, the content of agreements come down to what the direct parties negotiate, and this includes the level of pay settlement and other conditions (2001: 28).

#### OTHER EMPLOYMENT-RELATED POLICY

While the ERA is New Zealand's major plank in current employment policy, other initiatives have been taken in this area under Labour's third way approach. Apart from the changes

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outlined below, the minimum standards legislation outlined in chapter 5 still covers New Zealand's workforce.

### Worker training

In March 2000, Helen Clark announced that the newly established Apprentice Training New Zealand would support the return of disaffected youth to the workforce (Rasmussen and Beer, 2000a: 223). It was hoped that the scheme would tackle skill shortages head on (*ibid.*). The Government's Modern Apprenticeships programme was launched in July 2000, initially funding 500 new apprenticeships with the aim of having 3000 apprenticeships in place by 2002 (*ibid.*, 2000b: 335). The programme focused on 16 to 21 year olds, and there would be pilot schemes run in 18 industry sectors (*ibid.*). MAPs provides another example of Labour's reliance on the third way partnership approach with workers and employers.

### Minimum wage increases

The statutory minimum wage for adults increased to \$7.55 from March 2000, and youth minimum rates increased to \$4.55 (Rasmussen and Beer, 2000: 105). A further review into youth rates was also promised (*ibid.*). The age of eligibility for the statutory adult minimum wage was reduced from 20 to 18 years in December 2000 (Rasmussen and McIntosh, 2001: 138). Young workers eventually received an increase from March 2002, when the statutory minimum wage of 16 and 17 year olds increased to \$6.40 an hour, and the adult minimum wage increased to \$8 per hour (*ibid.*, 2002: 143).

### ACC, health and safety

The coalition government moved quickly to repeal the 1999 ACC reforms, announcing this in December 1999 (Rasmussen and Beer, 2000: 105). Negotiation of new contracts with private insurers would cease, and all self-employed and new business would automatically be covered by ACC (*ibid.*). The ACC would again become the sole supplier of accident insurance, and all private contracts would stop (*ibid.*). The state-owned workplace insurer (@Work) was also scrapped with the return to a nationalised ACC environment (Rasmussen and Beer, 2000a: 219). The Injury Prevention, Rehabilitation, and Compensation Act 2001 came into effect in April 2002. Under that law, accident victims with permanent injury and sexual abuse victims with permanent mental injury qualify for lump-sum payments (Young, 2002a). Although the maximum lump-sum payment has increased compared to the system that ended in 1992, the criteria is also tougher, with no retrospective entitlement (*ibid.*). The code of ACC Claimants'

Rights is also due to be released in 2003, and outlines 8 claimants' rights, including the right to be treated with dignity and respect, to have their views considered, and to be treated fairly (Dyson, 2002). The Code sets out a detailed complaints procedure and series of remedies following any breach (*ibid.*).

The Health and Safety in Employment Amendment Act came into effect in May 2003. One of the Act's objectives is to encourage greater partnership between employers and employees (Thickett et al., 2003), again a reflection of third way principles. The Act's coverage has been extended to include volunteers and loaned employees, as well as air crew and crew aboard ships (*ibid.*). In brief, the Amendment provides for employee participation in health and safety training, clarifies whose job it is to address hazards, and increases Government powers to raise and resolve safety issues (NZPA, 2002: A11). It also imposes heavy fines for failure to address safety problems that lead to stress, injury or death (*ibid.*), and employers will be unable to insure against fines (Rasmussen and McIntosh, 2002: 138). The definition of harm and hazard now expressly includes physical and mental harm caused by work related stress and fatigue, with employers having a duty to identify, eliminate and/or minimise such hazards (Thickett et al., 2003: 141). Employers must develop and maintain an employee participation system where there are 30 or more employees, or where an employee requests such a system (Thickett et al., 2002). Health and safety representatives may identify and bring hazards to the attention of the employer, and may also issue "hazard notices", which amount to a prior warning before "spot fines" (*ibid.*: 144). Where government enforcement authorities decide against commencing proceedings, other parties may bring prosecutions (*ibid.*).

However, it can be difficult to establish whether stress or fatigue is work-related, or arose from matters outside an employer's ambit of responsibility (*ibid.*: 145). And given the difficulties in eliminating stress, parties to an employment relationship may instead focus on identifying and eliminating workplace hazards which may cause physical or mental harm (*ibid.*). So while the Amendment is a step in the right direction, it seems rather unlikely that workers wanting to retain their jobs or related conditions are likely to issue hazard notices or spot fines to their employer. The "partnership" aspect of the Amendment again diverts responsibility for worker well-being onto workers themselves, who are expected to do the job of labour inspectors within their own workplace.

Another planned Labour coalition initiative is a Ministerial inquiry into the management of hazardous substances in the workplace (Wilson, 2002). This inquiry has been prompted by the

illnesses of workers in the health, printing and manufacturing sectors, who have been exposed to chemicals such as aldehydes and solvents (*ibid.*). The inquiry is expected to identify any gaps in the management of these substances in those industries, and identify possible improvements that can be made (*ibid.*).

### Whistleblower protection

In early 2000, the Government announced that legislation to protect whistleblowers would protect all workers who disclose information of serious wrongdoing in their workplace (Rasmussen and Beer, 2000a: 222). The Bill aimed at giving workers immunity from criminal or civil liability if they came forward with information. The Protected Disclosures Act came into force in January 2001. The Independent reported that the PDA applied to both public and private sector employers. While the PDA encouraged all employers to adopt and publish internal procedures to facilitate disclosures, it was mandatory for public sector organisations to establish such procedures.

### Leave provisions

New Holidays legislation aims to reduce the simplify and clarify existing entitlements (Wilson, 2002a), reduce uncertainty, stress and costs, and create a regime that is much easier to understand and apply (Wilson, 2002). The Holidays Act Amendment Bill provides for an additional payment for those who work on statutory holidays, and separate out rights to sick and special leave (*ibid.*). Employers will be required to pay staff time-and-a-half, and give a day in lieu for working any of the 11 annual statutory holidays (Langdon, 2002: 3). It will be possible to accumulate up to 15 days special leave, and bereavement leave will be more flexible (Harro, 2002).

With senior Labour ministers against the introduction of four weeks' annual leave on economic grounds (Young, 2002), this was excluded from the new Holidays Act provisions. However, Progressive Coalition MP Matt Robson sponsored the Holidays (Four Weeks Annual Leave) Amendment Bill, which increases minimum annual leave by a week, and which has been sent to a select committee (*ibid.*). In early December 2002, the Labour caucus agreed to support the Bill after pressure from both the party organisation and trade unions (*ibid.*). However, Helen Clark and Steve Maharey both stated that four weeks leave would not be introduced this term (Watkins, 2002: 1, *ibid.*, 2002a), but the government is not ruling out putting this on the agenda

for its third term in office (*ibid.*, 2002a). Overall, the contribution of Labour MPs resulted in codifying and strengthening procedural aspects of the current Holidays Act, while the Alliance-Progressive MPs focused on increasing the minimum legal entitlements.

The paid parental leave came into force on 1 July 2002, thanks largely to the efforts of the Alliance MP Laila Harre. Under the Parental Leave and Employment Protection Amendment, new mothers will get \$325 before tax a week, or their full weekly wage, whichever is lowest (Rasmussen and McIntosh, 2002: 138). However, a number of new mothers will not be entitled to the benefits of the scheme: if they are self-employed, work less than 10 hours a week, or have changed jobs in the previous 12 months (*ibid.*).

#### Minimum standards review

The changes to the Holidays Act were part of the Minimum Standards review set up in December 2000, which also focused on other areas. These included consideration of a range of measures to protect workers in the event that their work is transferred, sold, or contracted out to a different employer (Wilson, 2002), under the Advisory Group on Contracting Out and transfer of Business. Margaret Wilson has promised that any measures the government undertakes will be tailored to ensure that there is protection of employment conditions and opportunity for continuity of employment in contracting out situations (2002).

In July 2002, the government also announced plans for a Ministerial Advisory Group to examine the adequacy of redundancy law and provision, and the introduction of a minimum code of practice for state sector contractors to ensure observance of fair and ethical employment practices (Wilson, 2002a). A review of the effects of casualisation on the workforce was also mentioned, with the government particularly concerned about the pressure casualisation puts on families, given the irregular and often anti-social hours involved (*ibid.*).

#### ERA review

A review of the ERA is planned. The review will focus on giving effect to the aim of promoting, as opposed to simply permitting, the free association of workers and collective bargaining (Wilson, 2002). Matters covered in the review will include whether more administrative support is needed to facilitate multi-employer collective bargaining, especially where the size of employer units in particular sectors makes enterprise bargaining inefficient and ineffective; the adequacy of the Act's provisions to discourage and prevent the undermining and avoidance of

collective bargaining; the extent to which the Act's intent, and in particular the principles of good faith bargaining, are given sufficient weight in the Act's application; and whether compliance costs associated with the bargaining process can be reduced (*ibid.*).

### The way forward

By 2002 the danger for Labour was not its electoral dominance, but its identity (Espinier, 2002). National had been reduced to 20% support and the "old left" completely expunged from parliament (*ibid.*). So New Zealand's third way approach certainly appeared popular with voters. This successful capture of the centre ground was largely achieved through fiscal rectitude and conservative economic management, with Cullen apparently unwilling to spend the staggering surplus (*ibid.*). Yet as Cullen himself stated, "Economic growth is a means to an end, not the end itself. It is about creating real opportunities for all, a richer, inclusive, more diverse and more dynamic nation, and about creating the resources to enable governments to provide better social services" (*ibid.*). If the fifth Labour government is unable to deliver on that, then its epitaph may well be that it provided good political and economic management, a hand up for industry, a new supreme court – but no story to tell (*ibid.*).

### CONCLUSION

Falling somewhere between the previous new right approach and social democracy, Labour's third way in New Zealand seemed to provide a more hopeful mix of free market economics and social policy. Despite major debate, the Employment Relations Act took effect in 2000. Although the ERA aims at productive employment relationships by promoting good faith behaviour and collective bargaining, the Act's primary goal is increased productivity. So even under Labour Coalition policymaking, economic objectives (business interests) have generally taken precedence over worker goals (and the policy required to achieve these). While some of the third way's policy initiatives certainly deliver substantial improvements to workers, the third way emphasis on self-reliance and the provision of opportunities rather than minimum standards means that positive outcomes for workers and their organisations continue to rely heavily on bargaining power and allied resources, still severely depleted after a decade of neoliberalism. Subsequently worker gains have been moderate, acting more to halt the earlier negative trends in outcomes for workers rather than delivering significant improvements.



## Chapter seven

# EMPLOYMENT RELATIONS UNDER NEW ZEALAND'S THIRD WAY

### INTRODUCTION

Chapter six showed that under the third way in New Zealand, Labour Coalition governments moved from an initial emphasis on social to economic goals. However, economic objectives appear to have been the driving force behind employment policy throughout the third way era so far. This chapter aims to evaluate changes to employment relations in New Zealand resulting from the third way's employment policy, by focusing on the four trends that are apparent in other industrialised countries. Subsequently the chapter starts by assessing whether employment relations have reverted to a more centralised approach, then the level of labour market flexibility is examined. This is followed by discussion on workforce skill and education development, and an analysis of worker representation and possible union resurgence.

### LABOUR COALITIONS: OUTCOMES IN EMPLOYMENT RELATIONS

#### Continued decentralisation of employment relations

In comparison to the ECA, the ERA certainly promotes multi-employer bargaining, so by implication a less enterprise-based, more centralised approach to labour relations has become possible. In mid-2000, just prior to the ERA's introduction, multi-employer bargaining existed predominantly in the education sector, and as framework agreements in parts of both the manufacturing sector, and the accommodation, restaurants and cafes industry (Harbridge et al., 2000: 74). The number of employees on multi-employer collective agreements increased slightly in the two years post-ERA (Thickett et al., 2002: 77), an increase equivalent to 3% of the Industrial Relations Centre sample of collective settlements (*ibid.*: 24). So after an initial slump post-ERA, multi-employer agreements increased to a level exceeding the ECA period. Again this growth was concentrated in a few industries, namely education, manufacturing, food retailing, and also health (*ibid.*: 77). Conversely, the number of core government employees covered by multi-employer agreements has increased noticeably under the ERA, with such coverage higher overall in the core government than in the private sector (*ibid.*). However, generally the increase in multi-employer bargaining post-ERA is still minimal.

So New Zealand's bargaining structure remains largely enterprise and workplace-based (Boxall, 2001: 28), despite the recent increase in multi-employer bargaining. Although the ERA bolsters multi-employer bargaining, this approach has been largely decimated in the private sector and faces an uphill battle to return (Harbridge et al., 2000: 74). Multi-employer bargaining is very difficult to organise as well (Boxall, *ibid.*), depending in part on unions finding employer groups willing to negotiate (Harbridge et al., 2001). This collective approach to bargaining is also an unlikely preference for New Zealand workers, who evidently relate much more closely to the issues and people concerned in enterprise or workplace-based bargaining (Boxall, *ibid.*). When these factors are combined with the entrenched reliance on enterprise bargaining in New Zealand, a return to multi-employer bargaining is highly unlikely. So enterprise bargaining will probably remain the dominant mode, and individual bargaining the dominant form (Boxall, 2001: 29).

### Labour market flexibility

The minimal increase in multi-employer bargaining post-ERA, combined with the continued emphasis on enterprise-based individual bargaining, more or less ensures some degree of ongoing labour market flexibility. The small amount of bargaining that occurred under the ERA to June 2001 did not bring any significant improvement to employment conditions for people on collective settlements (Harbridge et al., 2001: 70). Instead the changes were those normally expected under the gradual drift of employment conditions under the ECA (*ibid.*).

By June 2002, the ERA had still not affected collective bargaining a great deal (Thickett et al., 2002: 77). Apart from structural changes required by the Act, there was no significant buy-back of terms and conditions that were lost by employees over the preceding decade, although the related decline had halted (*ibid.*). The average annualised wage rates increased by 2.4 % over the 2001/2002 year (*ibid.*), and by 2.6% for the earlier 2000/2001 year, the second (equal) highest increase since the introduction of the ECA (Harbridge et al., 2001: 70). However, the annual wage change of around 2.4% (plus or minus 0.3%) since September 1996 suggests that the ERA has not led to an era of high wage settlements (Thickett et al., *ibid.*). So in broader terms, wage increases under the ERA in New Zealand's collectivised sector have been similar to wage increases during the last three years of the ECA. Also with this wage rate data applicable only to the collectivised sector, presumably wage increases have been even lower in the larger individualised sector. In addition, while recent wage increases can be partly attributed to the ERA, other labour market effects have contributed, such as inflation in excess of 3% and falling unemployment over that year (Harbridge et al., *ibid.*). Both factors have combined with the ERA in pushing up wage rates in recent years, painting a brighter picture for outcomes under

the ERA. Real wage rates provided in the next chapter give a more accurate indication of net gains for workers.

Despite these wage increases, the rise in the statutory minimum wage to \$7.55 hourly in March 2000 caught some 223 CECs short (Rasmussen and Beer, 2000b: 340), an indication of the pitifully low wages still being paid even under collective settlements. Conversely, a survey by the Employers and Manufacturers Association showed that people with technical skills are getting at least 50% more than those without these skills, with the wages of accountants and IT workers having grown fastest in the 5 years to 2001 (Rasmussen and McIntosh, 2001: 141). So labour market segmentation remains a problem under the ERA, and pay and job flexibility obviously continues.

Another trend of the 1990s persists for employees on collective settlements, the deterioration of working time provisions (Thickett et al., 2002: 78). While there has been no major recovery of these provisions under the ERA, some conditions (overtime and the ordinary working week) have continued to decline (*ibid.*). The Earnings and Employment Survey from November 1999 to August 2002 shows strong employment growth, with over 100,000 new employees (Statistics New Zealand). However, almost a third of these were part-time positions (*ibid.*). A survey of 1602 companies by TMP Worldwide in November 2001 also found that staff turnover in New Zealand companies was above the internationally recognised danger level of 15%, in areas such as tourism, the health sector, IT, advertising/marketing and retail sectors (Rasmussen and McIntosh, 2002: 140). So flexibility in working time arrangements continues. Conversely, leave provisions remained stable, including entitlements to parental leave and four weeks' annual leave, and the mid-90s move towards inclusion of redundancy provisions also continues (Thickett et al., 2002: 78). Further clawbacks will probably also be modest, and will most likely depend on union strength within industries, product conditions, and (most importantly) a wide range of economic factors, especially the growth rates of industries and the economy itself (*ibid.*). So taking into account the above outcomes, and with the ECA trends also apparently continuing, it seems that labour market flexibility continues under the ERA regarding pay and jobs, and to a lesser extent, contracts.

Still, there has been a reduction in the changes that initially occurred under the ECA. The stability in employment conditions in the 2 to 3 years up to mid-2000 was reflected in, and driven by, the longer terms of the contracts (Harbridge et al., 2000: 74). Another factor in the reduced rate of change was MMP, which slowed legislative change in the development of new labour law in New Zealand (*ibid.*: 75). With the life of agreements limited to just 3 years under

the ERA (*ibid.*), this slow-down in change could reverse. One longer-term result could be greater variations in these areas of labour market flexibility.

### Workforce skill and education development

Under the third way approach adopted by key members of the Labour Coalition governments, education has certainly had renewed attention, in particular work-related training. With the modern apprenticeships programme launched in mid-2000, and 500 people apprenticed in 2001 (Rasmussen and Beer, 2000b), the scheme was popular with workers and business alike. The programme exceeded its original target, with 3254 young people in training by the end of June 2002 (NZPA, 2002a: 11). This represented a 23% increase over three months, with a 20% increase in the number of Maori involved (*ibid.*). In line with the scheme's focus on industries with skill shortages (Rasmussen and McIntosh, 2001), most apprentices are involved in construction and engineering, and also forestry, motor vehicles, electrotechnology and agriculture (NZPA, *ibid.*). The scheme aimed at 6000 apprenticeships by December 2003 (NZPA, 2002b).

However, Wellington's Regional Economic Development Agency (WREDA) argued in October 2002 that it will take some time for apprentices to fill the current gap in skill shortages (Loh Ho-Sang, 2002: 1). Although a lack of highly trained engineers, tradespeople and technicians was restricting growth in Wellington companies, there were even greater skill shortages in the provinces, especially Hawke's Bay and Wanganui (*ibid.*). Earlier in November 2000, the Dominion reported that New Zealand had a shortage of 3,000-5,000 IT staff (Rasmussen and McIntosh, 2001: 135). At the end of 2001, skill shortages were reported in key industry sectors such as manufacturing, IT, health and education, with between 25% and 36% of firms having trouble in finding skilled labour (Rasmussen et al., 252). The WREDA argued that a short-term solution would be a change in immigration laws, to get skilled tradespeople and technicians into New Zealand (Loh Ho-Sang, 2002: 1). Alternatively, the Wellington Chamber of Commerce (WCC) said that there was a "very definite" gap between the skills offered by school leavers and required by employers (*ibid.*). The WCC saw the early resolution of the NCEA qualifications debate as a good start to future upskilling (*ibid.*).

Another factor contributing to New Zealand's skill shortages is the "brain drain" phenomenon. Wellington was the biggest victim regarding emigration, with a net migration loss of 3076 people back in the year ended June 2000 (Rasmussen and Beer, 2000b: 340). The Dominion reported that the phenomenon was not confined to white-collar employees, as between 1995 and September 2000, over 20,000 trades people had left New Zealand (Rasmussen and McIntosh,

2002: 252). The brain drain also involved more than just young people, with a report in May 2001 from Competitive Auckland stressing that the number of people aged between 30-59 who had moved overseas in the past year had almost doubled compared to 1995 (*ibid.*, 2001a: 252). While the government proposed loosening its immigration policy to combat ongoing shortages of skilled workers (Rasmussen and McIntosh, 2001a), law firms encouraged younger staff to stay longer by offering bonuses, sabbaticals, and repayment of student loans (*ibid.*; *ibid.*, 2001).

The lack of on-going education and training for workers themselves is another issue affecting the skills shortage. The New Zealand Herald reported that a survey by Statistics New Zealand found that people in full-time employment spent minimal time in education and training, including workplace training (Rasmussen and Beer, 2000a: 227). Only 4-6% of full-time employees continued with education and training, with the bias that those already with qualifications were more likely to upgrade their skills and qualifications (*ibid.*). However, in May 2002, the government announced several initiatives to boost training and education (Rasmussen et al., 2002: 255). These included increased funding for the apprenticeship scheme and for workplace training organisation, an incentive package for beneficiaries to move into sustainable jobs, funding for training and education for work in innovative industries, extra research funding, and increased tertiary funding if tertiary institutions agreed not to raise fees (*ibid.*). Still, in a DOL report for the 3 months ended June 2002, 12% of businesses reported growth problems because they had difficulty finding staff (Rasmussen and McIntosh, 2002a: 372). The same report found that the demand for unskilled labour was also growing, with unskilled labour being harder to find than it had been at any time since 1985 (*ibid.*). So despite government initiatives, the shortfall in skilled labour continues, with unskilled labour becoming another issue.

#### Worker representation and union resurgence

While increased productivity was the underlying motivation for both the ECA and ERA, the ERA certainly targets collectivism as the primary way of achieving this. But whether this approach promoted by the ERA will result in significant union regrowth in New Zealand's current environment is another matter. DOL figures showed that union membership increased 5.6% between December 1999 and March 2001, an increase from 302,405 to 319,660 members (Rasmussen and McIntosh, 2002: 136). Looking at the total workforce, union membership rose from 17% to 18.3% post-ERA (Wilson, 2002). Ross Wilson of the CTU was hopeful that union membership would increase from about 18% of the workforce to about 30% under the ERA (Rasmussen and McIntosh, 2001: 131), with the CTU announcing a recruitment drive for workers under 18 in January 2000, as an attempt to recover "a lost generation of workers"

(Rasmussen and Beer, 2000a: 216). The number of unions have also increased under the ERA. By September 2002, a total of 173 unions had been registered under the ERA provisions, with 72% of these registered during the first 6 months of the ERA (Wilson, 2002). With only 82 unions registered in December 1999 (Statistics New Zealand, 2002), the number of unions have more than doubled. However, even with the rush of new small unions under the ERA, the concentration of union membership in the top ten largest unions remained unchanged from the previous few years (May et al., 2002: 311). In December 2001, this membership concentration was at 77% (*ibid.*).

The coverage of collective union employment agreements has also grown under the ERA (Wilson, 2002; Rasmussen and McIntosh, 2002a: 364; Thickett et al., 2002). However, a study by the NZ Institute of Economic Research in the ERA's first year showed that individual employment agreements had become slightly more widespread (Rasmussen et al., 2002: 250). This finding is also supported in the following chapter, when looking at total wage and salary earners in the workforce. By mid-2002, collective union agreements had increased and collective non-union agreements had decreased, but overall, the percentage of total collective settlements had decreased while individual agreements had increased. As also discussed in the next chapter, strong labour force growth apparently outstripped union density growth, with the indication that these new workers mostly preferred individual agreements.

Increases in union collective contracts are also partly attributable to the transfer of workers from non-union collective agreements to unionised versions. The ERA's requirement that a collective agreement can only be negotiated by a registered union left almost 60,000 previously unrepresented employees unable to continue practices established under the ECA (Thickett et al., 2002: 77). These contracts were renegotiated by established and new unions, although some employees also remain on 'standardised' individual agreements (*ibid.*). From the large increase in the number of registered trade unions, it is apparent that many small 'one-site' unions are representing employees in an individual firm (*ibid.*). Although many of the renegotiated agreements contain the provision that the agreement covers all employees, this is not the intention of the Act and is possibly outside the law (*ibid.*). So despite the ERA's aim of encouraging employees to join the collective agreement, some employees are effectively gaining the same conditions as the collective, or negotiating an individual agreement with the same conditions of the collective, without having to actually join the union (*ibid.*). Essentially, such individuals are free-riding on the union's negotiating prowess (*ibid.*). So unfortunately for unions, the ECA-related issues of free-riding and non-inclusive bargaining continue to affect union recruitment, though obviously to a lesser extent, despite the ERA's legislative changes aimed at preventing this.

Another ERA change that could also in theory strengthen unions is the facility for multi-employer agreements. Success in this approach will certainly lead to some growth in collective bargaining coverage, and may result in some resurgence in union membership (Harbridge et al., 2001: 71). In October 2001, the New Zealand Herald reported the start to “the largest multi-employer exercise yet under the ERA”, covering more than 6,000 nurses and midwives in the Auckland area (Rasmussen and McIntosh, 2002: 136).

However, despite such events, the number of employees on multi-employer collective agreements has only increased slightly since the ERA (Thickett et al., *ibid.*). The collapse of multi-employer awards under the ECA and the lack of growth in multi-employer collectives under the ERA creates a serious difficulty for unions (May et al., 2002: 318). Negotiating on an enterprise basis in small workplaces has high transaction costs which unions are unable to sustain (*ibid.*). Small employers also predominate in New Zealand, and increasingly so, with 55% of all full-time equivalent jobs being in organisations employing less than 50 workers, a 7% increase on 1991 (*ibid.*). The organising strategies currently being pushed by the CTU are also resource intensive, requiring great commitment (*ibid.*). So resourcing is still a serious constraint for unions (*ibid.*). Unions remain concentrated in the public sector and in manufacturing, too, rather than in those sectors growing at a faster rate than the labour force overall, but which still have low union density levels (*ibid.*). Another difficulty is that established unions are effectively having to compete with new unions for membership, often on the basis of lower membership dues (*ibid.*). So the union movement is dispersed and still struggling with the decimation of the 1990s (*ibid.*). Another legacy of the ECA, the anti-union mindset of some companies also inhibits a collective approach under the ERA. This approach is apparently feasible even in larger companies. In June 2000, the National Business review reported that Telecom, the country’s biggest company, would be nearly “union-free” in the near future (Rasmussen and Beer, 2000b: 332). With less than 4% of employees covered by a CEC, it was rumoured that a planned restructuring of Telecom’s service division would reduce the number of employees covered by CECs even further (*ibid.*).

However, New Zealand’s union movement has indisputably regained a certain amount of strength since the ERA’s introduction, with a reduction in internal strife probably contributing to this. In June 2000, the NDU (New Zealand’s fifth largest union) announced its intention to re-affiliate with the CTU (Rasmussen and Beer, 2000b: 332). The two union confederations – the Council of Trades Unions and the Trades Union Federation – also agreed to amalgamate in August 2000 (*ibid.*: 337). The resulting confederation, The New Zealand Council of Trade Unions, involves unions with almost 290,000 members (May et al., 2002: 317). Not only did this amalgamation strengthen New Zealand’s trade union movement by combining resources

and strategies, but also reunited the moderate and more radical factions. However, because many of the new unions have no sense of affinity with the wider union movement (Barry and May, 2002, cited *ibid.*), only 32 of the 165 registered unions have affiliated with the CTU (*ibid.*). More importantly, though, CTU affiliates comprise 88% of total union membership, representing 18 of the 20 largest unions in New Zealand (*ibid.*).

Despite the rightwards shift evident in the union hierarchy (discussed in the previous chapter), union leadership seems to have taken a slightly more militant stance since the Labour coalitions have been in power. And to good effect. The Labour caucus agreed to support a Bill increasing minimum annual leave from three weeks to four after pressure from trade unions and the party organisation (Young, 2002). Unions had been lobbying the Labour caucus over the issue, but the labour leadership was reluctant to put the issue back on the political agenda, nervous in the wake of falling out with business early in Labour's first term (Watkins, 2002: 1). The caucus backing promotes the measure going to a select committee in tandem with the Holidays Act, and overrides opposition from some of Labour's most senior ministers who want no change to the minimum annual leave this term (*ibid.*, 2002a: 2). Unions also pushed successfully for an increase in the statutory minimum wage for young people, and took a harder line in the changes to health and safety legislation, as well as the ongoing job protection measures in the current minimum standards review. Additional union strength was evident in a major court case where the finding supported the extended scope of union rights under the ERA. In December 2001, the Employment Court found that the only statutory ground for denying workplace access to union officials was prejudice to national security or the investigation of offences (Rasmussen and McIntosh, 2002: 142). The Court of Appeal later endorsed the Employment Court's ruling that Carter Holt Harvey had breached the union access and good faith provisions of the ERA (*ibid.*, 2002a: 373). This breach occurred when the organisation had two union leaders arrested for entering a workplace to ascertain whether new employees were doing the work of striking employees (*ibid.*).

However, the provisions of the ERA were also used in the Courts to undermine the strength of existing trade unions. In July 2000, the Warehouse announced an "in-house union", reportedly an independent initiative by former staff (Rasmussen and Beer, 2000b: 334). It was subsequently revealed that the company had financially supported the union's formation (*ibid.*). Still operating under the ERA, the union achieved a 20% membership with over 1,000 members, creating recruitment difficulties for the National Distribution Union which had few members at the Warehouse (Rasmussen and McIntosh, 2001a: 247). The Auckland-based union Firefighters Association of New Zealand (FANZ) used the ERA to justify its demand for contract negotiations with the Fire Services, and the Commission stressed that it was also

obliged to bargain with FANZ under the ERA (*ibid.*, 2001: 140). The breakaway FANZ group pursued separate negotiations with the Commission because members wanted to retain their 56-hour contract, which was more lucrative than the 42-hour contract of the original Professional Firefighters Union (*ibid.*). In November 2001, the Employment Court ruled that the independence of an in-house meatworkers' union was not compromised, despite the employer having paid the union's \$10,000 formation costs (*ibid.*, 2002: 139). The Aotearoa Meatworkers Union claimed that company funding of the union aimed at polarising the workforce, and enabling the negotiation of a substandard pay deal (*ibid.*). Although the employer had also paid for the union's legal and training costs, the Court held that the union had operated at arm's length from the employer (*ibid.*). So it appears that even under the tighter ERA union criteria, employer-initiated unions are still legally acceptable as worker organisations. Not only do such unions provide the means of undermining genuinely worker-based unions through a "divide and rule" strategy, but they also tend to result in substandard pay and conditions for the workers they represent, and eventually for the rest of the workforce as well.

Increased union power was supposedly more readily available under the ERA's relaxation of strike laws, in particular the option of striking for multi-employer agreements. Despite some high profile disputes and the controversy over the ERA, Statistics New Zealand reported that with only 21 work stoppages, the year 2000 had the lowest number of stoppages in a single year since 1935 (Rasmussen and McIntosh, 2001a: 248). However, while the number of work stoppages remained flat over the 3 years to June 2001 (Statistics New Zealand, cited *ibid.*, 2002: 138), overall the number of strikes doubled from 21 in 2000 to 42 in 2001, with the manufacturing and education sectors hardest hit (Rasmussen et al., 2002: 252). The CTU argued that the rise in stoppages was expected, with the CTU putting extra effort into educating people about their rights (*ibid.*, 2001: 352). Conversely, Business NZ believed that the ERA made industrial action more likely because it tilted the balance towards unions (*ibid.*). However, the ERA still provided opportunities for employers to replace striking workers, while civil law then enabled employers to have strikers themselves restrained. In May 2001, the High Court granted an injunction which prevented the Waterfront Workers Union from disrupting work carried out by Mainland Stevedoring (Rasmussen and McIntosh, 2001a: 250). Although the WWU was protesting against the casualisation of waterfront jobs, the Court ruled that the union would be in contempt of court if it prevented the organisation from pursuing its legitimate business (*ibid.*). Balancing this case was a more recent one in June 2002, where a company was fined for using freelance workers during a strike by the company's employees (*ibid.*, 2002a: 365). This decision emphasised that outside workers could not be hired to do the job of striking employees, except when warranted by health and safety reasons (*ibid.*). The decision indicated the shift towards strikes under the ERA (*ibid.*), perhaps increasing the possibility of industrial action as a union

tool in negotiations concerning employment agreements. Nevertheless, widespread industrial action is still extremely unlikely with the government unwilling to ratify the ILO's Convention 87. As Margaret Wilson admitted, the main issue being looked at is the status of sympathy and protest strikes (Wilson, 2002b). It seems rather ironic that a Labour Coalition is unwilling to ratify an ILO convention on freedom of association.

## CONCLUSION

The changes in employment relations under New Zealand's third way have delivered a mixed bag for workers. Despite its promotion of multi-employer bargaining, the ERA has not led to a significant increase in centralised bargaining over employment terms and conditions. The indication is that bargaining and the employment relations focus will remain enterprise-based. Apart from the difficulties in organising a more centralised approach, both workers and employers in New Zealand now seem to prefer the entrenched decentralised mode (Boxall, 2001). In practical terms, while unions have benefitted from a certain rebalancing of bargaining power, labour market practices prevalent under neoliberalism continue to undermine workers and their organisations: free-riding, workforce casualisation, labour market segmentation and legal restrictions on sympathy strikes. Subsequently the growth in union membership post-ERA has still been fairly minimal, with alternative forms of worker representation posing additional challenges for unions. Labour market flexibility in pay, jobs, and contracts also persists under the third way, admittedly to a lesser degree than during the neoliberalist regime. So while a major clawback of previous terms and conditions of employment has not occurred under the ERA, at least the earlier deterioration in outcomes for workers has reduced or halted. Reinforcing these positive changes is the third way's emphasis on workforce skill development through the apprenticeship scheme. Conversely, there are outstanding issues around New Zealand's skill shortages, linked to problems such as the "brain drain" and the lack of ongoing and training for workers. So all in all, while the third way's employment policy appears to lay the foundation for positive improvements, the related trends in employment relations indicate that the third way in this country has as yet failed to deliver significant gains for workers. Third way policy appears to have had little effect in redirecting the trends in employment relations that are linked to negative outcomes for workers.

## Chapter eight

# OUTCOMES FOR NEW ZEALAND WORKERS

### INTRODUCTION

In looking at the outcomes for local workers under neoliberalist and third way policymaking, this chapter moves beyond the narrower workplace-based focus on employment relations that was used in the previous chapters. An examination of the ratification of ILO labour conventions involves both the fundamental and wider conventions. These ILO conventions provide useful international standards for evaluating related policies and outcomes, forming an important part of comparative research in this study. A description of outcomes related to basic ILO labour rights includes union density, collective bargaining coverage, protection against forced labour, protection for children, and equal rights and opportunities. Other goals linked to workplace rights under the ESC then cover safe and healthy working conditions, free expression of grievances, dignity at work, protection during termination of employment, just conditions of work, cultural respect, and protection of family life. This is followed by goals from ESC rights linked to economic outcomes, encompassing the provision of work, payment of a living wage, access to adequate social welfare and medical assistance, and protection against poverty and social exclusion. Prior to the summary, social outcomes based on ESC rights include access to adequate housing, protection of health, and vocational training and education.

### RATIFICATION OF ILO CONVENTIONS

#### ILO fundamental labour conventions

Ratification or otherwise of ILO labour conventions by governments give some indication of labour standards for workers in that country. The ILO's fundamental conventions are commonly accepted on an international basis as setting minimum labour standards. Agreement on these basic conventions has been reached by representatives from nation states, plus both worker and employer groups. Yet well after their inception, New Zealand had ratified just over half of these standards. Seven of the ILO's eight fundamental international labour standards existed well before 1984. By then, New Zealand had ratified only four of these basic ILO conventions. These were the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention,

1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), ratified in 1938, 1968, 1983, and 1983 respectively. The three fundamental ILO conventions not ratified by New Zealand remained that way between 1984 and 1999, this country's period of neoliberalism. These conventions were the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Minimum Age Convention, 1973 (No. 138). The eighth fundamental ILO convention was introduced in 1999, the Worst Forms of Child Labour Convention, 1999 (No.182). This was ratified by New Zealand in 2001 under the Labour-Alliance Coalition.

However, the three fundamental conventions not ratified during the neoliberalist regime have fared little better under the third way. Despite Labour's earlier criticism of the National government for its refusal to ratify conventions 87 and 98, these conventions have still not been ratified in the 3 years since 1999. As late as June 2002, the Coalition started a consultation process involving employer organisations and unions to gauge their views on ratification of these two ILO conventions (Rasmussen and McIntosh, 2002a: 364). Apart from supporting collective bargaining, these conventions would allow strikes on economic and social grounds (*ibid.*). While the government eventually ratified Convention 98 in 2003, the sympathy and protest strikes are still issues preventing the ratification of Convention 87 (Wilson, 2002b). The other fundamental labour standard requiring ratification (No.138) has apparently not even merited public discussion, yet it involves the protection of children. Clearly the New Zealand state, under both neoliberalist and third way regimes, has been unable or unwilling to guarantee even such fundamental rights as freedom of association and the effective abolition of child labour. Rights which in turn would have provided at least some form of workplace protection for New Zealand's unions and most vulnerable workers, children in particular.

There are also strong arguments for adding to the current fundamental ILO conventions. The ILO signalled those eight conventions just to push them in particular, because they needed extra attention (Paul Roth, P.C., 2001). Although some of the other ILO conventions are certainly less relevant today (*ibid.*), it is simply their sheer number rather than any lack of importance that precludes greater attention to them. Other conventions which are now also being pushed very heavily by the ILO include labour inspection and workplace safety, for example (*ibid.*). The NZCTU President also argues that health and safety conventions should be identified by the ILO as fundamental and vital rights (Wilson, 2000: 89). Yet none of these major ILO conventions on health and safety (conventions 155, 161, 162, 174, 176) have been ratified by New Zealand (*ibid.*), even under the recent Labour-Alliance coalition. So again, the third way approach has done little better than neoliberalist strategies in ensuring that the ILO's basic health and safety labour standards are established in New Zealand.

## Wider ILO conventions

Obviously these broader ILO conventions are also important in providing essential worker protection, and go well beyond the scope of the eight fundamental conventions discussed above. However, the sheer number of conventions prohibits ratification, let alone compliance. The total number of ILO labour conventions currently in force totals 157 (excluding those withdrawn or shelved), and is still growing. Between 1984 to 1999, the ILO conventions increased by 23. During that same period, only one ILO convention was ratified by New Zealand, through the Labour government in 1987 (the Tripartite Consultation Convention, 1976). By 1999, New Zealand had ratified a mere 27.1% of the 155 ILO labour conventions still in force by then. In 2001, Labour-Alliance ratified the Labour Statistics Convention, 1985, bringing the number of ratified conventions (of those currently in force) to 44 by December 2002, or 28% of the total in force. While ratification since 1984 has occurred only under Labour-based governments, the overall improvement has been minimal under both neoliberal and third way regimes. Compliance with ratified ILO conventions is another issue again, with ratification not necessarily ensuring compliance. The CTU president argued back in 1992 that New Zealand was not complying with ratified ILO Convention 17 regarding worker compensation for accidents (Wilson, 2002). The same issue was raised again in 2002 (Rasmussen and McIntosh, 2002a), so New Zealand still has problems regarding compliance with the more important ILO conventions, as well as with the low level of ratification.

## BASIC LABOUR RIGHTS LINKED TO FUNDAMENTAL ILO CONVENTIONS

Ratification or otherwise of the fundamental and broader ILO conventions provides a useful indication of the labour standards and opportunities available for workers in a particular country. However, national economic and social indicators can more importantly show the actual outcomes for workers, as opposed to the provision of opportunities. Selected indicators (as discussed earlier in chapter 2) which broadly co-relate to the above fundamental ILO conventions are used below to highlight related changes in New Zealand between 1984 and the present. The indicators also enable some comparison of outcomes for workers under the neoliberalist and third way approaches.

**Table two: Outcomes for measures of worker goals in New Zealand**

Measures of worker goals	1984	1987	1990	1993	1996	1999	2002
1. Union density (% of union membership for wage and salary earners, December (From May et al., 2002: 310, based on HLFS figures.)	53.1% (1985)	55.7% (Sep 89)	51.7% (May 91)	33.8%	24.4%	21.4%	22% (2001)
2. Union-based collective bargaining coverage across collectivised and individualised sectors (includes union(s) as party and non-party to settlement)	N/A	N/A	68% (1989/90)	25.5% (1993/94)	28.9% (1996/97)	28% (1998/99)	25.9% (2001/0)
3. Number of sanctions processed for failure to accept a suitable offer of work (after the introduction of the extended Work Test in 1998)	N/A	N/A	N/A	N/A	N/A	7 (1998/99)	108 (2000/0)
4. A: Annual no. of occupational disease notifications for children (year to June)	A: N/A	A: N/A	A: N/A	A: N/A	A: N/A	A: 47	A: 9
B: Annual no. of fatal workplace accidents for children (year to June) (1990-1996 includes farms only, 1998 onwards covers all workplaces)	B: N/A	B: N/A	B: 6 (1990/91)	B: 1 (1992/93)	B: 4 (1995/96)	B: 2 (1998/99)	B: 5 (2001/0)
5. A: Average hourly rate of pay (November quarters, except 2002 = August)	A: \$7.71	A: \$11.52	A: \$14.13	A: \$14.76	A: \$16.07	A: \$17.42	A: \$19
m: Average hourly rate for males (ordinary time, Nov.quarters, 2002 = August)	m: \$8.39	m: \$12.57	m: \$15.28	m: \$15.95	m: \$17.42	m: \$18.63	m: \$20.4
f: Average hourly rate for females (ordinary time, Nov.quarters, 2002 = August)	f: \$6.66	f: \$10.08	f: \$12.59	f: \$13.21	f: \$14.33	f: \$15.95	f: \$17.2
6. A: Annual number of fatal workplace accidents (to June), attended by OSH	A: NA	A: NA	A: 50	A: 46	A: 53	A: 44	A: 73
B: Annual number of occupational disease notifications	B: NA	B: NA	B: NA	B: 706	B: 1954	B: 939	B: N/A
7. Total personal grievance (PG) complaints resolved at lower level employment institutions, year to June (total agreements/settlements/decisions/adjudications/determinations, for the Mediation Service, Employment Tribunal/Authority)	N/A	N/A	500 (1991/92)	1242	2701	3265	4017
8. A: Discrimination (PG) complaints resolved at lower level institutions, to June	A: N/A	A: N/A	A: 3 (1991/92)	A: 5	A: 0	A: 18	A: 80
B: Sexual harassment (PG) complaints resolved at lower level institutions, "	B: N/A	B: N/A	B: 2 (1991/92)	B: 2	B: 7	B: 15	B: 51
9. Unjustified dismissal (PG) complaints resolved at lower level institutions	N/A	N/A	468 (1991/92)	1203	2568	2906	2914
10. Statutory number of weeks' paid annual leave	3	3	3	3	3	3	3
11. Statutory number of days' paid tangihanga leave, excluding special leave	0	0	0	0	0	0	0
12. A: Statutory number of weeks' paid parental leave	A: 0	A: 0	A: 0	A: 0	A: 0	A: 0	A: 12
B: Statutory number of days' special leave (family bereavement / illness)	B: 5	B: 5	B: 5	B: 5	B: 5	B: 5	B: 5
13. Unemployment level as a percentage of the workforce (HLFS, June quarter)	4% (Dec.85)	4%	7.5%	9.9%	6%	7%	5.4% (Sep)
14. Annual percentage real wage increase	-5.0	0.2	1.4	-1.2	1.2	1.2	0.8

MEASURES OF WORKER GOALS		1994	1995	1996	1997	1998	1999	2000
15.	A: Average weekly wage (ordinary time, \$, November quarters, 2002=August)  B: Weekly unemployment benefit rate: single 25 years and over (and benefit rate as % of average weekly wage)  C: Cut-off gross weekly income benchmark for non-beneficiary disability allowance, single 18+ (and benchmark as % of average weekly wage)  D: Cut-off income benchmark for non-beneficiary community services card, for single person, living alone, = weekly % of gross allowable yearly income (and benchmark as % of average weekly wage)	A: 285.91  B: N/A  C: N/A  D: N/A	A: 422.38  B: 151.92 = 36%  C: 276.00 = 65.3%  D: N/A	A: 513.61  B: 168.88 = 32.9%  C: 299.00 = 58.2%  D: N/A	A: 546.71  B: 156.28 = 28.6%  C: 305.00 = 55.8%  D: 336.54 = 61.6%	A: 600.07  B: 167.65 = 27.9%  C: 392.00 = 65.3%  D: 349.48 = 58.2%	A: 645.50  B: 173.99 = 27%  C: 402.00 = 62.3%  D: 362.42 = 56.1%	A: 709  B: 185 = 26.  C: 440 = 62%  D: 385 = 54.3
16.	A: Ratio of the 80 <sup>th</sup> percentile of disposable household income to the 20 <sup>th</sup> percentile of disposable household income (Ministry of Social Development)  B: Proportion of total population with net-of-housing-cost incomes below the 60% line (benchmarked to 1998 median, Ministry of Social Development)	A: N/A  B: N/A	A: 2.35 (1987/88)  B: 12.7% (1987/88)	A: 2.6 (1990/91)  B: N/A	A: 2.55 (1993/94)  B: 26.7% (1992/93)	A: 2.7 (1996/97)  B: N/A	A: 2.7 (1997/98)  B: 22.0% (1997/98)	A: 2.7 (2000/0)  B: 22.6 (2000/0)
17.	A: Percentage of households with dwellings owned/partly owned by residents  B: Proportion of households with housing cost outgoings-to-income ratio greater than 30% (Ministry of Social Development)	A: 70.9% (1981)  B: N/A	A: 73.2% (1986)  B: 11% (1987/88)	A: 73.8% (1991)  B: N/A	A: N/A  B: 21% (1992/93)	A: 70.7%  B: N/A	A: N/A  B: 24.5% (1997/98)	A: 67.8 (2001)  B: 24% (2000/0)
18.	A: Infant mortality rate (deaths of children under 1 per 1000 live births)  B: Male and female life expectancies (at age 0)  C: Deaths from poverty-related illness: tuberculosis, meningococcal infection	(1985) A: 10.9%  B:m=71 f=77.3  C: N/A	A: 10.9% (1988)  B:m=N/A f=N/A  C: N/A	A: 8.4%  B:m=72.4 f=78.3  C: 18, 1	A: 7.3%  B:m=73.1 f=78.9  C: 11, 10	A: 7.1% (Dec)  B:m=74.3 f=79.6  C: 13, 17	A: 5.6% (Dec)  B:m=75.7 f=80.8  C: 11, 19	A: 5.6% (Sep)  B:m=N f=N  C:N/A, (2001)
19.	A: Percentage of total labour force with vocational/university qualifications (basic/skilled/intermediate/advanced vocational, and bachelor/higher degree)  B: Summary of expenditure on education as proportion of GDP (%) (state-funded early childhood to tertiary, plus vocational training)  C: Percentage of school leavers without formal qualifications (year to March)	A: NA  B: 4.9%  C: 33.3%	A: NA  B: 4.9%  C: 22.1%	A: NA  B: 5.8%  C: 16.5%	A: NA  B: 6%  C: 16%	A: 32.8%  B: 5.3%  C: 19.1%	A: NA  B: 5.9%  C: 17.2%	A: 35% (2001)  B: 6% (2000/0)  C: 17% (2001)

N/A = not available

## Protection and promotion of freedom of association

A useful indicator for the protection and promotion of freedom of association is union density. This is defined as the proportion of potential union members who belong to a union (Bamber and Lansbury, 1998, cited in May et al., 2002: 309). Union density based on the total employed labour force also includes employers, self-employed and unpaid family members (*ibid.*) as well as employees, so the following figures are based on wage and salary earners only. Union density was at 55.7% in 1989, but it had already fallen 4% by May 1991 when the ECA was introduced (*ibid.*: 310). However, a massive reduction occurred post-ECA, with union density dropping by almost 18% between 1991 and 1993 (*ibid.*). Longer-term, union density more than halved under National/New Zealand First, falling from 51.7% in 1991 to 21.4% in 1999 (*ibid.*). When the Labour Coalition came to power in 1999, the drop in union density over the neoliberalist period had already exceeded 30%.

Under the third way approach this de-unionisation trend reversed post-ERA, with union density rising to 21.9% by December 2000, and reaching 22% a year later (*ibid.*). So union density for wage and salary earners increased by just 0.6% in two years, with this increase slowing in 2001. Union membership shows a similar pattern, having increased by 5.4% in 2000, then by 3.6% in 2001 (May et al., 2002: 317). While this may indicate a slowing of membership growth, it is too soon to tell at this early stage (*ibid.*). With this membership increase for 2001 edging just slightly ahead of the growth in the labour force, union density increased only minimally on the previous year (*ibid.*: 309). Nevertheless, the data overall still indicates the first rise in union membership in more than a decade (*ibid.*), after the introduction of the ERA under the third way approach.

## Protection and promotion of collective bargaining coverage

The earlier neoliberalist trend in de-unionisation dramatically affected the collective bargaining coverage of unions. The changes to collective bargaining coverage within the collectivised sector of New Zealand's labour market are highlighted in data derived from the Industrial Relations Centre's yearly updates. Under the LRA, collective awards and agreements required union negotiation, so all representation that involved collective bargaining was by nature union-based. This effectively meant 100% union-based collective bargaining in the collectivised sector in the 1989/1990 year. However, under the ECA, unions represented only 85% of employees in collective negotiations during the 1992/93 year (This includes unions as party and non-party to the contract, and is derived from Harbridge and Kiely, 1995: 7). The remaining 15% of employees under collective coverage involved non-representation or non-union agents (*ibid.*).

Collective union coverage remained the same in the 1993/94 year, then increased to 87% for the following year (*ibid.*) and also for the 1996/97 year (Harbridge et al., 1997: 14). So some re-collectivisation occurred since the early de-collectivisation of the ECA, with a slight increase in collective bargaining coverage (*ibid.*: 61). Apparently the main cause of this growth was largely employer-driven (*ibid.*). Employers who initially used IECs for their employees found the transaction costs too high, so tried to standardise employment conditions back into CECs (*ibid.*). Union-based collective bargaining coverage dropped again to 85% by June 1999 (*ibid.*, 1999: 15), perhaps not surprisingly with Labour's pre-election ERA proposal.

Less predictably, collective bargaining coverage remained at 85% the following year, during the time of the ERA Bill (*ibid.*, 2000: 16). However, union-based representation for collective bargaining increased dramatically post-ERA, covering 89% of employees in the collectivised sector in the 2000/2001 year (*ibid.*, 2001: 16), then reaching 92% in the 2001/2002 year (Thickett et al., 2002: 17). As expected, the percentage of "unrepresented" employees in collective settlements dropped, with these employees generally either joining large existing unions, or small enterprise-based unions (Harbridge et al., 2001). Collective settlements involving non-union agents disappeared altogether by 2002 (Thickett et al., 2002), as required under the ERA. So when looking only at the collectivised sector of New Zealand's labour market, there was a 15% drop in union-based collective bargaining coverage under the ECA, followed by a 7% increase post-ERA. In this light, the ERA has undoubtedly promoted union-based collective bargaining.

However, the ERA's effect on collective bargaining coverage seems much less unsuccessful when analysis involves both the individualised and collectivised sectors of New Zealand's labour market. The following data is derived from the IRC yearly updates mentioned above, along with statistics for the same period taken from the Earnings and Employment Survey (Statistics New Zealand, 2002. The total number of employees taken from the EES statistics includes both part-time and full-time workers, but proprietors are excluded.) In the 1989/90 year, union-based collective bargaining covered 68% of all employees, with the remainder covered by non-union collective and individual negotiations. By June 1994, union-based collective bargaining coverage had fallen to 25.5% of all employees, a 42.5% reduction in collective coverage. This corresponds to the 40-50% reduction in collective bargaining coverage over this post-ECA period, in comparison to the coverage levels achieved in 1989/90 (Harbridge et al., 1994). In the 1994/95 year, union-based collective bargaining coverage began rising again, and reached 28.9% in 1996/97, but fell again to 28% in the 1998/99 year. So despite some fluctuations, collective bargaining coverage involving New Zealand's individualised and collectivised sectors fell overall by about 40% post-ECA. This reduction in collective

bargaining coverage equated to some 250,000-300,000 employees during the 1990s (Harbridge et al., 1999: 68). Individual bargaining instead became the prevalent method for negotiating the terms and conditions of employment, and when it occurred, collective bargaining was at the enterprise level (*ibid.*).

Looking again at collective bargaining coverage over both the individualised and collectivised sectors, unexpected changes occurred under the third way regime. Collective bargaining coverage continued to fall during two years that followed the Labour-Alliance rise to power, including the first 9 months post-ERA. In the year ended June 2001, union-based collective bargaining coverage dropped to 25.6% of all employees, while non-union collective and individual bargaining increased to cover practically three-quarters of New Zealand's employees. This collective bargaining level was very similar to the initial post-ECA rate. During the 2001/2002 year, union-based bargaining increased slightly to 25.9%, a minimal 0.3% recovery from the previous year. So between 1999 and 2002, the coverage of union-based collective bargaining fell overall by about 2%. Although this drop is not substantial compared to the post-ECA reduction, it is contrary to the ERA's aim to promote collective bargaining. Still, the reduction could be due to several things. The removal of 700 CECs from the Industrial Relations Centre's database in late 2000 (Harbridge et al., 2001) is the most likely reason. But even when including these related 10,000 or so workers in the data, the collective bargaining coverage for 2001 only reaches 26.3% and 26.6% in 2002. So although slightly smaller, there is still a drop in collective bargaining coverage post-ERA, followed by a minimal increase.

Other factors could account for the corresponding increase post-ERA in workers covered by individual agreements. The ground gained by unions (and highlighted above in union density increases) has undoubtedly been "negated" by the rapid employment growth of recent years. Perhaps union membership has also partly been bolstered by the transfer of employees from collective non-union agreements to union agreements under the ERA, rather than actual inroads into the numbers still on individual agreements. However, free-riding is the most likely explanation for the changes to collective bargaining coverage under the ERA. In 1991, free-riding was estimated at 16% of this coverage, rising to some 27% by the end of the 1990s (Harbridge and Wilkinson, 2001, cited in Harbridge et al., 2002: 75). More recently, the ERA also seems to have facilitated free-riding to a certain extent. The "new employee" and "coverage" clauses of the ERA have proved difficult to manage in reality, with about half of the new agreements extending coverage to all employees, regardless of the requirement for employees to be union members (*ibid.*). Free-riding will probably remain a significant problem (*ibid.*), despite the ERA's intention to reduce this. So while union-based settlements (as a percentage of all collective agreements) have certainly grown under the ERA, the coverage of

non-union collective and individual bargaining has increased even more. This means that in terms of New Zealand's broader labour market, collective bargaining coverage overall has actually reduced rather than increased under the third way, to a level similar to the neoliberal lowpoint post-ECA in 1993.

### Protection against forced labour

When looking at protection against forced labour and related outcomes, an obvious measure in industrialised countries is the number of perhaps illegal immigrants working in sweatshop conditions. Even after the introduction of the ERA, cases in this category within New Zealand have been too common. Six illegal businesses surfaced in early 2000, with employees working extremely long hours in sweatshop conditions, also being paid below-minimum wages minus holiday pay (Rasmussen and Beer, 2000a). In another "sweatshop" prosecution, workers were reported as living and working in unsatisfactory conditions, with their passports withheld by the employer, while a third case in 2000 also involved breaches of minimum statutory legislation (*ibid.*) A similar case came before the Employment Tribunal in September 2001 (Rasmussen et al., 2001), and others as recently as April and June 2002 (*ibid.*: 2002; *ibid.*, 2002a). As well as being denied "the most basic entitlements", the last case also involved a worker who paid \$15,000 to "buy" his job (*ibid.*: 252). In these situations, worker choice became minimal or non-existent concerning the type of work accepted, and concerning the related pay and conditions of employment, all of which were subsequently well below New Zealand's statutory minimum levels. These cases show that the employment outcomes for some workers here continue to fall below the minimum legislated standards, even under the ERA.

However, statistics covering such situations are too inaccurate for longitudinal comparison of New Zealand's labour relations. So instead I focused on the Work Test sanctions introduced under the community taskforce scheme in the late 1990s. Although "voluntary unemployment" benefit stand-downs started in the early 1990s, based on beneficiary refusal to seek or accept work, this became a more controversial issue in the late 1990s because of the "work for the dole" scheme. Even before legislated, the Bill drew criticism from the Human Rights Commission, which called into question the spirit of the Bill, "given the coercive nature of the legislation" (Rasmussen and McIntosh, 1999: 101). During the later years of New Zealand's neoliberal period, this policy extended beyond unemployed beneficiaries to include people receiving sickness, domestic purposes and even invalids benefits.

The following data on work-testing is based on figures provided by the Ministry of Social Development (2003), and relates to the introduction of the extended Work Test in 1998. The

data indicates the number of sanctions processed for failure to accept a suitable offer of employment, effectively the number of benefit stand-downs imposed throughout New Zealand. From April to September 1998, there were no sanctions processed because of failure to accept employment. After work testing was introduced in September 1998, the sanctions began. Between October 1998 and June 1999, 7 sanctions were processed. This rose sharply to 57 in the 1999-2000 year, then under the Labour Coalition almost doubled to 108 sanctions in the 2000-2001 year. So the most dramatic increases in benefit sanctions resulting from the extended Work Test occurred under the third way regime, with the number of sanctions almost doubling in the 2000/2001 year. Figures regarding benefit sanctions before and after these dates are unavailable. While these figures give some indication of worker coercion in New Zealand, again they are under-reported, with policy changes sometimes occurring too rapidly for related data collection to actually occur within the department. Although the unemployed are still work-tested and required to accept community work, work-testing stopped for people receiving the DPB, sickness and invalids benefits (Rasmussen et al., 2000b; ibid.: 2002) during the third way regime. However, work-testing for people receiving unemployment benefits continues under the Labour-Progressive Coalition.

#### Protection for children

Another very basic labour standard is the protection of children. A useful indicator for the protection of children against hazardous work is the annual number of workplace-related disease notifications for children. In keeping with the application of ILO Convention 182 (The Worst Forms of Child Labour), the following data includes all persons under the age of 18. For the year July 1998-June 1999, OSH received 47 disease notifications for children (OSH, 2003, released under the Official Information Act). In the next year, this dropped sharply to 11 notifications, but rose again to 19 notifications in the 2000/2001 year (ibid.). In the 2001/2002 year, notifications fell again to 9 (ibid.). While these figures are unable to provide longitudinal comparison between the neoliberalist and third way periods, and also fluctuate considerably, the 1999 figure was certainly more than double any of the following years. However, due to non-reporting levels and the long-term development of diseases, these figures under-represent the number of children affected by workplace-related diseases. There is also no separate OSH database covering the work-related death, disease and injury levels for children.

Death rates for children are included in the annual number of fatal workplace accidents attended by OSH. In the year ended June 1999, 2 children died in workplace accidents (OSH, 2002). In the 1999/2000 year, this doubled to 4 deaths, and during each of the 2000-2001 and 2001-2002 years, 5 children died (ibid.). These horrific outcomes show that a consistently high number of

children died in workplace accidents during the past three years, with the majority of these deaths being farm-related. So children have definitely not been well-protected from workplace hazards recently, despite the apparent reduction in the work-related disease rate for children. Earlier figures on child deaths are instead limited solely to farming accidents, and cover the period from 1990/91 to 1997/98. Again, some of these fatalities involved child employees, while others were by-standers in the workplace. A total of 21 children died in work-related farming accidents during this 8-year period, with the worst year being 1990/91, when 6 children died (Bradford, 1998). This tragic and preventable loss of young life (*ibid.*) continues, with recent deaths showing that farms remain a high-risk workplace for children.

### Protection and promotion of equal rights and opportunities

The area of equal rights and opportunities is also highlighted as a basic right in ILO conventions. In looking at equal pay for equal work, I used average pay rates to highlight possible gender differences, with data based on ordinary time and hourly rates. There were obvious differences between the hourly pay rates for men and women throughout the neoliberalist era, with women's average hourly pay rates well behind men's. In 1989, women received 82.5% of the average hourly rate for men (derived from the Earnings and Employment Survey, Statistics New Zealand, 2002). The earnings gap reduced a little in the late 1990s, so that women were receiving 85.6% of the men's hourly rate by 1999 (*ibid.*). However, during the neoliberalist decade the average hourly earnings gap decreased only by about 3% overall, with women still receiving almost 15% less than men in 1999 (*ibid.*). By late 2000, the earnings gap had increased again slightly under the third way regime, with women earning only 83.9% of men's hourly rate (*ibid.*). Although decreasing again in August 2002 to 84.4% of men's, women's hourly rate still remained below the 1999 level (*ibid.*). So under the third way regime, the earnings gap between New Zealand's men and women actually worsened, falling to a level below that in 1999. Still, the earnings gap during most of the neoliberalist era was greater than the levels under the third way.

## WORKPLACE / SURVIVAL RIGHTS

### Safe and healthy working conditions

Broader workplace outcomes must also be included in assessing outcomes for workers, especially in areas such as health and safety. Looking at workplace safety, the annual number of fatal accidents in New Zealand workplaces fluctuated during the 1990s. In 1990, workplace

fatalities (to June) reached 50, and was lowest at 41 in 1997, peaking the year after at 56, then dropping again to 44 in 1999 (Statistics New Zealand, 2002). In the first year of the Labour coalition, the fatality rate rose to 57 by June 2000; then fell to 40 in 2001 (*ibid.*). However, OSH figures showed that work-related deaths then almost doubled over the next 12 months (*ibid.*, 2002a). For the year ended June 2002, workplace deaths reached an appalling 73. These fluctuations also occurred in the occupational disease statistics. In 1993, the (first available) annual number of occupational disease notifications was 706, which more than doubled by 1996, reaching 1954 notifications, then dropped back again to 939 notifications in 1999 (*ibid.*). The occupational disease figure was lower during the Labour coalition, falling to 812 in 2000 (*ibid.*), with more recent figures not available. The fluctuations in workplace fatality and disease data is probably due to greater attention to health and safety matters following the more disastrous years, and indicates the improvement possible in these areas.

Injury rates show much less fluctuation longer-term. Work-related accident claims reported to the ACC were approximately constant between 1994/95 and 1996/97, and then fell (from 281,000 to 243,000) up to 1998/99 (Ministry of Social Development, 2001). This represents a 13.5% reduction. Total claims reported to the Accident Insurance Regulator for the 1999/2000 year also dropped, by 10% to 217,000 claims (*ibid.*, 2001). However, different collection methods were used from that year onwards, so it is difficult to conclude much from this difference (*ibid.*). In the 2000/2001 year, work-related accident claims increased to 226,932 (*ibid.*), a 4.6% increase on the previous year. So overall, workplace fatalities fluctuated during the neoliberal era, and increased dramatically during the third way regime. Work-related disease notifications were higher during the neoliberal period, and dropped under the third way. Work-related accidents reduced noticeably at the end of the 1990s, then increased more recently, though still remaining well below the levels of the mid-1990s.

### **Free expression of grievances**

Dispute resolution is another area central to just conditions of work. The personal grievance (PG) procedure is the outlet available to workers to air grievances with their employer, or former employer. Under the ECA, PG actions were possible regarding unjustifiable dismissal, disadvantage caused by the employer's unjustifiable action, discrimination, sexual harassment, or duress regarding union membership or non-membership. The ERA added racial harassment to this list.

Information derived from the Reports of the Department of Labour (1992-2002) gives some indication of the number of PGs taken by employees under the ECA and ERA. The following

figures are based solely on complaints involving agreements, settlements, decisions, adjudications and determinations under the Employment Tribunal, the (ERA) Mediation Service and the Employment Authority during the period of the ECA and ERA. Totals under the ECA exclude mediation, which could account somewhat for any lower ECA levels in comparison to higher ERA figures. Cases where workers have withdrawn complaints, decided against proceeding, or have not settled, are not included. So while the number of settlements provided here gives some indication of the number of PGs lodged, the total number of PGs actually lodged initially is certainly higher. Hence a certain amount of under-reporting is involved in this respect. In the 1991/92 year, there were 500 PGs resolved in the Employment Tribunal (*ibid.*). In the following year this jumped to 1242 complaints, then to 2701 in the 1995/96 year (*ibid.*). By 1998/99, PGs totalled a massive 3265, increasing again to 4017 in 2001/02 (*ibid.*). Up until the mid-1990s, PGs at least doubled on the previous figures, then reduced to about 20% and 23% increases in later years. So PGs continued to increase under both the neoliberal and third way regimes, although certainly increasing much more rapidly immediately post-ECA. However, the increase in PGs post-ERA is nevertheless higher than the percentage increase in the late 1990s.

### Dignity at work

Measuring dignity at work is more difficult, especially when based on the broader grounds of non-discrimination, and sexual and racial harassment. Information again derived from the DOL Reports (1992-2002) indicates action taken against discrimination and harassment in the workplace, through PGs under the ECA and ERA. The following data is provided on the same basis as in the earlier section above. In the 1991/92 year, discrimination regarding employment involved 3 PG cases and increased to 5 the next year (*ibid.*). Although there were no complaints in the 1995/96 year, discrimination complaints increased to 18 three years later. Discrimination cases more than doubled in the 2000/01 year to 41, then practically doubled again in the 2001/02 year, reaching 80 complaints recorded (*ibid.*). The same trend is evident regarding PGs for sexual harassment. Only two cases of sexual harassment were taken up in both the 1991/92 and 1992/93 years (*ibid.*). There were 7 cases in the 1995/96 year, then 15 three years later (*ibid.*). Again in the 2000/01 year there were 49 sexual harassment cases, and 51 complaints the year after (*ibid.*). Perhaps the move to the more worker-friendly Mediation Service under the ERA is behind this recent increase, with workers more willing to take up complaints in a less threatening environment. The other alternative is that discrimination and sexual harassment are increasing in workplaces.

## Protection during termination of employment

During the 1990s in New Zealand, there was no statutory obligation for employers to specifically inform and consult with workers during termination of employment, including redundancy. Again, the inclusion of such a clause in collective and individual employment contracts relied on their negotiation into contracts, by mutual agreement. Unjustified dismissal then required employees to undergo the drawn-out personal grievance procedure, also an expensive process with the majority of workers being on IECs. So while retrospective action was possible, employee protection against the prevention of arbitrary dismissal by employers was minimal. Although the coverage of the dispute resolution process broadened during the 1990s, there was a much greater onus on individuals in accessing this process. Statutory and union backup had decreased, while job insecurity had increased, both reducing the likelihood of workers taking up a grievance.

However, the number of PGs concerning unjustified dismissal increased rapidly under the ECA. As above, the following information is derived from the DOL Reports (1992-2002), and is also provided on the same basis as the previous sections. In the 1991/92 year, after the ECA was introduced, the number of PGs involving unjustified dismissal that reached some sort of settlement was recorded at 468 (*ibid.*). A year later, this had more than doubled to 1203 complaints (*ibid.*), then doubled again to reach 2568 cases in the 1995/96 year (*ibid.*). The increase in unjustified dismissal complaints peaked in the 1997/98 year at 3154 cases, although a year later in 1998/99 the total had fallen to 2906 (*ibid.*). The number of PGs involving unjustified dismissal continue to drop, reaching a “low” of 2751 in the 2000/01 year, but rising again slightly in the 2001/02 year to a total of 2914 cases (*ibid.*). The most dramatic increase in the number of PGs involving unjustified dismissal certainly occurred under the ECA. By the 1997/98 year, unjustified dismissals showed a 670% increase on the 1991/92 figure, and even the lower 1998/99 was still six times greater than in 1991/92. This would appear to indicate that unjustified dismissals certainly increased under the ECA, at least in the first few years. The actual numbers of unjustified dismissals that occurred would have been substantially higher than this as well, with the exclusion of claims as discussed above, and the ECA’s more formal and legalised PG procedure deterring most workers from even lodging a claim. The more recent reduction in unjustified dismissals could perhaps be a result of the ERA’s “good faith” provisions, which may initially have acted as a deterrent for less reasonable employers, although the decrease did start pre-ERA. However, the 2914 figure is still a concern, indicating a higher level of unjustified dismissal cases in the 2002/02 year than in the 1998/99 year, despite the intervening reduction in these dismissals and the introduction of legislation aiming at a more cooperative approach through the “good faith” provisions of the ERA. The 2001/02 year

also shows a 6% increase on the previous 2000/01 year, which itself was a five-year low. Still, whether the 2001/02 increase in unjustified dismissals becomes a trend remains to be seen.

### Just conditions of work

Outcomes for workers regarding just conditions at work also merit attention. Leave provisions give some idea as to whether contractual employment conditions are reasonable, and in particular, the number of weeks' paid annual leave. Under New Zealand's statutory legislation, all employees are entitled to three paid weeks' holiday each year, with an additional five days' special leave (for family bereavement, illness, or domestic reasons). This entitlement remained unchanged between 1984 and the present, throughout both the neoliberalist and current third way regimes. This has been despite union pressure on the government for an increase in annual leave to four weeks per year (NZPA, 2000: 7), in line with Australia and European countries. Under the Labour coalition, the present entitlement to paid annual and special leave looks set to stay, at least for the next three years. As also discussed in chapter 7, proposed changes under the Holidays Act review instead seem focused on codifying and strengthening the procedural aspects of the current Act, rather than increasing leave entitlements.

Conversely, collective agreements have traditionally increased the entitlement to paid and unpaid leave from the minimum provided for in legislation (Harbridge et al., 2000: 75). Employees on collective contracts were typically entitled to four weeks' annual leave after 6 or 7 years' service with the same employer (Harbridge et al., 1994), with this qualifying period decreasing to 5 years by 1999 (*ibid.*, 1999). By mid-2001, 90% of employees on collective settlements had a fourth weeks' annual leave, although for over 60% of employees this again was only available after a minimum of 5 years' employment (*ibid.*, 2001: 71). Also in 2001, about 22% of employees were entitled to four weeks' annual leave after a single year of service (*ibid.*). Special leave under collective settlements was also more generous than the legislative entitlements (*ibid.*, 1994; *ibid.*, 1999), and bereavement leave became more discretionary too (*ibid.*). Post-1999 entitlements to sick, domestic and bereavement leave continued to be greater under collective agreements than statutory provisions (*ibid.*, 2001). However, the earlier trend towards 'unlimited' sick leave slowed (*ibid.*, 2000), and the whittling away of long service leave continued (*ibid.*, 2001). So while statutory leave provisions remained the same during the neoliberalist period, and seem unlikely to change under the third way, employees received improved leave entitlements under collective settlements, and continue to do so. Nevertheless, even under collective settlements, entitlement to four weeks' paid annual leave still requires five years of service for most employees.

The right to cultural respect is another matter connected to statutory leave provisions. The length and entitlement criteria of bereavement leave have created major problems for Maori regarding attendance at tangihangas, and continue to do so. Maori have fought very hard over the last few years on tangi leave, with the bereavement provisions being based only on immediate rather than extended family (Syd Jackson, interview: 2001). Apart from recognition of Maori rights as the tangata whenua of New Zealand, Maori also have special cultural obligations in certain situations (*ibid.*). These responsibilities are much broader in terms of the whanau, so that in some cases the person who has died may not even be related in a close blood sense, but instead through the particular relationship as members of the same whanau (*ibid.*). So for Maori, the responsibility to these people when they die is equally as onerous as it is if they were immediate family (*ibid.*). The length of bereavement leave is another issue, with five days going in one tangi if the dead person was someone close to you, and you had responsibilities for the whanau and general organisation (*ibid.*). The impending changes to bereavement leave might help somewhat towards this flexibility necessary for Maori concerning tangis. However, a basic form of tangi leave itself is still not part of statutory legislation, so that access to such leave (beyond what is provided under special leave) still relies on specific negotiation of this into collective and individual contracts. As far as I am aware, there is also no official or ongoing record of past or current levels of tangi leave negotiated as part of collective or individual settlements in New Zealand.

Another means of operationalising respect for cultural differences includes the right for Maori to attend Maori Land Court meetings, time off to pursue their land claims (Paul Harris, interview: 2001). Some employment agreements in New Zealand do already contain these provisions (*ibid.*). However, Maori Land Court and Waitangi Tribunal procedures can be very long and time-consuming (Syd Jackson, *ibid.*). People have lost their jobs, or had to walk away from their jobs, when they were involved in the preparation of those cases (*ibid.*). So people in that situation should have the right to take leave to be able to meet those responsibilities, ideally paid leave, but if not, at least their jobs should be protected (*ibid.*). Syd Jackson also believes that jobs should be kept open for those Maori involved in land occupation as a last resort (*ibid.*). To avoid lip service regarding cultural respect, it is useful to actually specify these agreements (Paul Harris, *ibid.*). In certain sectors that is easily done, for example in the non-profit sector that includes welfare and charitable service (Syd Jackson, *ibid.*). These types of provisions have been negotiated into employment contracts for the last ten years or so, and can now often be negotiated into contracts involving work in the non-profit sector (*ibid.*). However, in the private sector, in particular the profit-making sector, it is very difficult to do this (*ibid.*). And the private

sector covers most of New Zealand's labour force. So unfortunately the right for Maori to cultural respect through workplace agreements still appears to lie in the realm of lip service, with reliance still on individuals or unions to negotiate these terms into employment agreements. Statutory minimum legislation which extends these cultural rights to all employees is still non-existent.

### Protection of family life

The level of protection of family life is also reflected in the type of parental leave available for workers. This remained unchanged from 1987 onwards, to be taken on an unpaid basis for up to 12 months if certain criteria were met, again in direct contrast with European workers receiving paid parental leave. And again in opposition to union demands for paid parental leave (NZPA, *ibid.*). Parental leave under CECs in New Zealand also followed the statutory provision (Harbridge et al., 1994) during the neoliberalist period. From 1999 until mid-2002, the eligibility for parental leave under most collective settlements followed the 1987 Act as well. However, the core government sector differed, with the majority of parental leave provisions with collective agreements providing more generous eligibility criteria (*ibid.*, 2001). From July 2002, most workers became entitled to 12 weeks' paid parental leave under specified criteria, a big step forward due largely to the Alliance, rather than to Labour's third way approach. This policy change represents a huge improvement for employees planning to have children.

## ECONOMIC / SECURITY OUTCOMES

### Provision of work

Economic security was further jeopardised for New Zealand workers by the unemployment levels. In 1985, unemployment was at 4%, and had already begun rising (HLFS, Statistics New Zealand). Although unemployment peaked at 10.9% in September 1991 before gradually decreasing to 6% in 1996, it began rising again in 1997, reaching 7.7% by December 1998 (*ibid.*). By 1999, unemployment was still around 6.8% (*ibid.*). Around that time, Kelsey argued that unemployment was unlikely to return to the previous lower levels, and was now a structural feature of New Zealand's economy (1998). The Department of Labour's post-election briefing papers on labour market and employment relations trends also appeared to imply that structural unemployment was here to stay. Although the DOL predicted further reductions in employment, it also expected that unemployment would remain concentrated in certain regions, ethnic and

age groups, as well as amongst the low-skilled (Rasmussen and Beer, 2000a: 217). And despite some fluctuations, unemployment overall did continue to drop, briefly hitting 5.1% in June 2002, but rising again to 5.4% in September 2002 (HLFS, *ibid.*). So while unemployment in New Zealand rose to its highest levels during the onset of the neoliberal era, after only 3 years under the third way approach, unemployment was at its lowest in 14 years.

### Payment of a living wage / fair remuneration

Current worker goals focus on raising living standards, and the production of jobs and economic growth in an equitable way (TUAC, 1998). A higher basic wage attracts a better standard of employee, and provides greater work satisfaction, leading to lower staff turnover and less absenteeism, plus rising productivity (Donovan, 2002). On a community level, the living wage stimulates consumer activity, resulting in spending that revitalises local economies (*ibid.*). Other costs such as health and welfare fall as standards of living among citizens rise (*ibid.*). So a “living wage” implies more than making ends meet, instead being able to live comfortably.

The annual real wage tells a very different story to annual wage increases, presenting a somewhat blacker picture. (Because there is no official real wage measure, the LMPG (2002) derived this by taking the average hourly wage rate for each year, deflating it by the CPI, and then presenting the data as annual percentage changes.) In 1984, the annual real wage was -0.5%, increasing to 1.4% by 1990 (LMPG, 2002). By 1993, the real wage had dropped sharply to -1.2%, then risen and stabilised at 1.2% for both 1996 and 1999 (*ibid.*). This could hardly be called a living wage. The fall in real wages between 1976 and 1996 even extended beyond New Zealand’s working class, culminating in the “middle class squeeze” (Welch, 1999: 16). So during the neoliberal post-ECA period, annual real wages were at their lowest in 1993. And while real wages increased and stabilised from 1996 onwards, this was not to last under the third way regime. In 2000, the real wage increase was negative at -1.4, then rose to 1.5 in 2001, falling again to 0.8 in 2002 (LMPG, 2002). This was the smallest real wage increase since the mid-1990s. Undoubtedly skilled workers have been receiving real wage increases, especially those in the export sector (Goulter, 2002). But many workers are still on wages that are lagging or stagnant (*ibid.*). The state sector is particularly difficult in this regard, with real wage increases hard to achieve against the constraints of a tight budget (*ibid.*). The public difficulties faced by health workers in negotiating real wage outcomes that are sufficient to attract and retain skilled staff are a good example (*ibid.*). So although the ECA enabled the introduction of a low-wage approach, the third way regime has been even less successful in delivering real wage

increases. Not a great result for the third way regime, particularly regarding an outcome that is essential to ensure worker well-being in other areas of life.

#### Access to adequate social welfare and medical assistance

The growth of income inequality and poverty levels was an issue especially for beneficiaries and workers on low incomes. A comparison of gross weekly benefit rates to the average weekly wage (ordinary time) shows that benefits reduced in real terms, rather than keeping up with wage increases. Between 1987 and 2002, the weekly unemployment benefit rate for a single person (25 and over) gradually reduced from 36% of the average weekly wage in 1987 to 27% of the weekly average in 1999, a reduction of 9% during the neoliberalist regime. By 2002, the benefit rate had fallen again to 26.1% of the average weekly wage. So in the 15-year period, the unemployment rate for single 25 year-old adults reduced from more than a third of the average weekly wage to just over a quarter of the weekly wage.

For non-beneficiaries receiving disability allowance (aged 18+), the cut-off benchmark for gross weekly income started at a much higher level than the income provided for the unemployed. In 1987, the income benchmark was 65.3% of the average weekly wage, almost twice as high as the unemployment benefit. However, this benchmark dropped sharply to 55.8% by 1993, increased again to the original rate in 1996, and reduced to 62.3% in 1999. By 2002, the benchmark had fallen again to 62%. So although the rate fluctuated, from beginning to end the non-beneficiary income benchmark was still maintained around a similar level and was also much higher than the unemployment level. While their allowable income level had fallen slightly overall, some initial losses had been recouped. Non-beneficiaries receiving disability allowance had obviously fared better than the unemployed under both the neoliberalist and third way regimes.

For a non-beneficiary, single and living alone, the cut-off income benchmark started at 61.6% of the average weekly wage, and gradually reduced, to 56.1% by 1999, and then to 54.3% by 2002. So while this income benchmark was double the unemployment level throughout, it was initially higher than the non-beneficiary disability rate in 1999, but reduced well below that level by 2002. So overall, the people receiving unemployment benefits certainly fared worst of all, both in comparison to the average weekly wage rate and to the non-beneficiary income benchmarks. The community services card group were the next worst off, with the disparity between their income benchmark and the average wage increasing by 7.3% in a 9-year period. The non-beneficiary disability allowance group fared best overall, with a 3% increase in the

existing disparity between their income benchmark and the average weekly wage in the 15-year period. However, their position was maintained thanks only to the benchmark increase in 1996, as in the six years before this the benchmark had dropped quite dramatically. So the welfare policy approach appears to be that the unemployed must take care of themselves, while those working but still on generally low incomes deserve some assistance, and those working but disabled in some way (and requiring medical treatment) should be given the most assistance. Effectively still working on the “deserving” and “undeserving” poor approach during the neoliberalist era, and even under the third way regime.

### Protection against poverty and social exclusion

Poverty and inequality deepened as unemployment and the gap between rich and poor grew (Kelsey, 1998: 349-350) during the neoliberalist period in New Zealand. The Social Report 2002 provides a longitudinal overview of income inequality in New Zealand between 1987 and 2001 (Ministry of Social Development, 2002). The Report shows that New Zealand's per capita market income increased since 1988, but that this increase was not reflected in the economic standard of living of all New Zealanders. Income inequality between 1988 and 2001 emphasised the growing disparity between high and low incomes. In 2001, the disposable income of a household at the 80<sup>th</sup> percentile was 2.7 times larger than the income of a household at the 20<sup>th</sup> percentile. In 1988, the ratio was 2.4. Income inequality rose between 1987/88 and 1990/91, then fell slightly, and has been rising again since 1993/94. Much of this increased gap is due to a larger overall rise in the incomes of the top 20% of income earners, especially between 1988 and 1990, and 1994 and 1998. Incomes of those in the bottom 20% remained approximately constant, after adjusting for inflation over the entire period. The middle 60% experienced a slight decline between 1988 and 1994, but with increases between 1994 and 1998. So those at the top end of the income distribution have improved their position, while those at the bottom or in the middle of the distribution have remained constant or decreased in real terms.

The level of poverty is another important indicator when looking at incomes. The Social Report 2002 also provides information on populations with low incomes, as follows (*ibid.*). The Report defines this as the proportion of the population in economic family units with equivalent income net of housing cost below a particular threshold. I have used the 60% threshold, being 60% of the median of the 1998 equivalent net-of-housing-cost incomes. The measure takes account of incomes, housing costs and family size, and is adjusted for inflation and taxes. In the year to June 2001, 22.6% of the population were living below the 60% threshold. This was a slight increase on the proportion in the previous survey year to March 1998 (22%). The proportion of

the population with low incomes increased sharply in the early 1990s, reached a peak in the mid-1990s, and declined over the latter half of the decade. Still, in 2001 the proportion of the population below the threshold was still substantially higher than it was in 1998. Based on a measure of 60% of median equivalent disposable household income in 1998, New Zealand ranked 12<sup>th</sup> out of 20 OECD families. The incidence of low incomes here is particularly high for sole parent families, those reliant on benefit income, or living in rented accommodation, and for Pacific peoples, Maori and other non-European ethnic groups. As the Report notes, insufficient economic resources limit individuals' ability to participate in their communities and wider society, effectively restricting their quality of life. Research indicates that long-lasting, low family income in childhood is associated with a higher likelihood of negative outcomes, such as lower educational attainment.

The impact of low incomes on the economic standard of living of the population is reflected in the direct measures of living standards. These show that a relatively small but significant part of the population is likely to experience crowding or food insecurity. Sole parent families, Maori, Pacific and other non-European families are more likely than other groups to have a low economic standard of living. Both direct and subjective measures of economic standard of living suggest that low living standards are concentrated among working age families rather than the retired population. So as the report implies, income inequality and poverty have increased in New Zealand during the neoliberalist regime, and are still issues of concern.

## SOCIAL OUTCOMES

The social wage must also be included in the analysis of worker outcomes, with areas of particular importance including housing, health and education. The reduction in state provision within these areas, in tandem with increases in user-pays costs, increased the necessity for New Zealand workers to stretch their income even further to cover allied costs previously met by the state.

### Access to adequate housing

Although home ownership is part of the great New Zealand dream, housing costs are a major determinant of disposable incomes. The level of home ownership also provides some indication regarding the accessibility of housing for New Zealanders. The percentage of households with

dwellings owned or partly owned by residents was at 70.9% in 1981 (census figures, Statistics New Zealand). This peaked in 1991 at 73.8%, then reduced to 70.7% in 1996 (*ibid.*). So the rise and decline in New Zealand's home ownership over a period of 15 years started and finished around the 71% mark. By 2001, home ownership had fallen below this mark to 67.8%. However, although this was almost a 3% drop in home ownership, the reduction between 1990 and 1996 was slightly bigger. It appears that home ownership is gradually becoming more difficult to achieve in New Zealand, under both the neoliberal and third way regimes.

Housing affordability is another measure indicating the accessibility of housing. In 2001, almost one quarter of households were paying housing costs greater than 30 % of their income, as explained below (Ministry of Social Development, 2002). Since the late 1980s, there has been a substantial increase in the proportion of households spending more than 30% of their income on housing. Between 1988 and 1993, the proportion rose from 11% to 20% of households, reaching just over 24% in 1998, and has since plateaued. Reducing only minimally since 1999, housing inaffordability has become a major issue for New Zealand's workers under both neoliberalist and third way regimes. High housing costs relative to household income are of most concern regarding low income households. Data analysis on those households in the lowest 20% of the (equivalised) household income distribution shows a similar increasing trend over the 1988-2001 period, but with significantly higher proportions of households spending more than 30% of income on housing. In 2001, 42% of households in the lowest fifth of the household income distribution spent more than 30% of their income on housing, an increase from 16% in 1988. Affordable housing is an important factor in the wellbeing of families and individuals, with high housing costs leaving insufficient income for other basic needs such as food, clothing, transport, medical care and education. But as the Social Report 2002 implies, those least able to afford it are having to spend a larger part of their income on housing costs these days, with the situation apparently not improving in recent years. This leaves even less available for the necessities of life, from an already inadequate income.

### Protection of health

Looking at health outcomes over the neoliberalist period, the levels have certainly improved. Infant mortality rates (deaths of children under 1 per 1000 live births) have gradually dropped, from 10.9 percent in 1985 to 8.4 percent in 1990 (OECD health, LMPG), then down to 5.6 percent in December 1999 (extrapolated from Key Statistics, Statistics New Zealand: 2002). So infant mortality rates almost halved between 1985 and 1999. While the infant mortality rate remained at 5.6% in September 2002, earlier on it had risen to 6.1% in 2000 (*ibid.*), a 0.5%

increase on 1999. Overall though, while fluctuations have occurred throughout the period discussed, the rate had generally been dropping rather than increasing to this extent. Outcomes seem to have been fairly similar under both neoliberalist and third way regimes.

Male and female life expectancy rates (at age 0) showed the usual gap between sexes, with women having the higher expectancy rate. In 1985, the male rate was 71 years, increasing to 75.7 years by 1999. In 1985, the female rate was 77.3 years, rising to 80.8 by 1999. So while life expectancy rates increased for both sexes, males had a larger increase than females over this period, an increase of 4.7 years compared to the female 3.5 years' increase. And in 1985, the male life expectancy was 91.8 percent of the female rate, while in 1999, the male rate had increased to 93.7% of the female's. Figures for 2002 are unavailable.

However, although the infant mortality and life expectancy rates have generally improved during the neoliberalist era, and these trends have continued under the third way, the incidence of illnesses associated with overcrowding and poverty is a different story. Overcrowding is believed to have contributed to the high occurrence of illnesses, including tuberculosis (Hoby, 2001). In 1999, 452 cases of tuberculosis occurred in New Zealand, a 20-year high (*ibid.*). A total of 353 cases of tuberculosis were notified in 2000, a 22.2% decrease on 1999 (NZ Public Health, 2001: 76). However, despite this drop, the trend has been a gradual increase in the reported occurrence of tuberculosis since the lowest reported incidence in New Zealand in 1988 (*ibid.*). Between 1990 and 1999, 164 people died from tuberculosis (New Zealand Health Information Service, 2000; NZ Public Health, *ibid.*). And between 1989 and 1999, there were a frightening 4321 reported cases of tuberculosis in New Zealand (NZHIS, 2000a). Meningococcal disease has also reached epidemic proportions. A total of 650 cases of meningococcal disease were recorded in 2001, giving a disease rate of 17.4 per 100,000 (NZ Public Health, 2002: 1). This is the highest rate since the start of the epidemic, and brings the total number of cases since its start in 1991 to 4195 (*ibid.*). Much worse still, 171 people have died from meningococcal disease between 1990 and 2001 (NZHIS, 2000; Ministry of Health, 2002). Infectious respiratory diseases disproportionately affect the young, the elderly, Maori and Pacific peoples (Ministry of Health, 2001). Some of these diseases, such as rheumatic fever and meningococcal disease, result in significant long-term illness and disability (*ibid.*). And the transmission of these diseases, especially in children, is closely linked with overcrowding and poverty (Baker et al., 2000, Gant and Parton, 2000, cited *ibid.*).

## Provision of and access to vocational training and education

The outcomes for New Zealand workers regarding education are not so clear-cut. Government expenditure on education as a percentage of GDP gives some idea of the input in this area. The following data on education expenditure includes the total spent on public education from the early childhood to tertiary levels, plus all public vocational training. This amount remained at 4.9 percent for both 1984 and 1987, then rose to 5.8 percent in 1990, and peaked at 6 percent in 1993 (Data Management Unit, 2002). The amount spent then decreased in 1996, but increased to 5.9 percent in 1999 (*ibid.*). So the increases and reductions in education spending during the 1990s appear to coincide to a certain extent with the rise and fall of unemployment during that time. However, in 2002 government spending on education increased marginally while unemployment decreased, with spending at 6% of GDP, a 0.1% increase on spending under the third way in comparison to the neoliberalist approach (*ibid.*). No doubt the overall increase in state spending on education and vocational training during the 1990s aimed at upskilling the prospective workforce to minimise unemployment. There certainly appears to be an inverse relationship between the level of state spending and the percentage of school leavers without formal qualifications in the years including 1987 to 1999. The greater the state spending on education, the lower the proportion of school leavers without qualifications for that year, and vice versa. So for school leavers, extra state spending undoubtedly paid off under both the neoliberalist and third way regimes.

Trends in the actual qualifications gained by the workforce are more difficult to gauge, due to changes in the census categories of data collection. However a comparison of the 1996 and 2001 census data is worthwhile. In the following data, the category of “vocational qualifications” includes basic, skilled, intermediate and advanced qualifications, while “university qualifications” refer to bachelor or higher degrees, and the total labour force includes the employed and unemployed. The data was extrapolated from Census 1996 and Census 2001 (Statistics New Zealand, 1998 and 2002a respectively). Of the total labour force, 32.8% had either vocational or university qualifications in 1996. In 2001, this total in qualifications had increased to cover 35% of the labour force. In 1996, 22.2% of the labour force had vocational qualifications, but this dropped to 21.8% by 2001. Conversely, 10.6% of the labour force had university qualifications in 1996, but this increased to 13.2% in 2001. So while vocational qualifications have decreased slightly by 0.4%, university qualifications have grown by 2.6%. The cutbacks in apprenticeships during the 1990s probably contributed to the fall in vocational qualifications, along with rising unemployment and the employer demand for greater qualifications. However, the percentage of the labour force with these higher qualifications has only increased by 2.2% over 5 years, not a major increase when there is an acknowledged

shortage of skilled workers in New Zealand at present (as discussed earlier), and increased technology and specialisation within work itself requires greater skills and training and/or education. As Easton points out, the first requirement to manage advanced technologies effectively is formal tertiary training (2002: 38).

## CONCLUSION

The outcomes for workers gained under the neoliberal and third way regimes are a mixed bag. Although ratification of the fundamental ILO labour conventions increased slightly under the third way approach, basic worker rights covering freedom of association and the protection of children have yet to be ratified. A minimal increase in ratification of the wider ILO conventions has occurred since the demise of the neoliberalist regime, but the major ILO conventions on health and safety again have not been ratified by New Zealand's third way government.

Looking at basic labour rights, union density and collective bargaining coverage fell dramatically during the neoliberalist era, then reversed slightly post-ERA. Occupational disease rates for children have halved during the third way era. However, work-related deaths for children, although very low in number, have nevertheless doubled under the third way, as have work-testing sanctions for the unemployed. The male-female earnings gap has also increased recently. Other workplace-related outcomes show similar variations. Workplace deaths have increased markedly in the last few years, while occupational disease has been lower overall in comparison to the neoliberalist period. The number of personal grievance cases (unjustified dismissals in particular) increased rapidly post-ECA but slowed to a negligible increase under the ERA. Conversely, the level of discrimination cases (including sexual harassment) increased minimally during the neoliberalist regime, but rose noticeably under the third way.

Moving on to outcomes involving economic goals, unemployment peaked post-ECA, then fell gradually to an all-time low under the third way. However, real wages have also recently fallen, and the gap in income relativities continues to increase between people on low incomes and those on the average wage, especially so during the neoliberalist period. Income inequality and the poverty level both increased during the neoliberalist years, with the former stabilising and the latter continuing to rise under the third way. While the statutory provision of annual and special leave remains unchanged, along with the omission of specific tangihanga leave, the introduction of paid parental leave under the third way is a major advance for workers.

Outcomes based on social goals show similar variability. Regarding health, the rate of infant mortality reduced during the neoliberal period, and has since stabilised, while deaths from the

poverty-related illness meningococcal infection have increased in recent years. The level of home ownership has gradually decreased since 1990, with housing affordability also decreasing apart from the slight reversal recently. Government spending on education has fluctuated under both regimes, as have the numbers of school-leavers without formal qualifications. Conversely, the percentage of the labour force holding vocational and university qualifications has increased during the third way years.

Due to these variations in results, it is difficult to say whether outcomes for workers have improved or worsened overall in any one of these areas under either political-economic regime. While changes that were clearly negative for workers (such as de-unionisation) obviously accelerated with neoliberalism, some positive trends also began at that stage, and vice versa during the third way. However, in general terms the negative changes for workers were much more dramatic post-ECA as opposed to post-1999 under Labour's third way regime. A relevant example is the major decline in collective bargaining coverage of New Zealand's workforce under the ECA, in comparison to the minimal decrease in such coverage under the ERA. So although positive gains for workers during the third way era have not been significant, negative changes during this same period have overall either been halted, or have also been negligible, and mostly a continuation of earlier trends that started in the 1990s.

## **ANALYSIS AND DISCUSSION**

### **INTRODUCTION**

This chapter begins with a comparison of policy-making under the neoliberalist and third way regimes in New Zealand. The local outcomes in employment relations under both approaches are also analysed, focusing on decentralisation, labour market flexibility, worker representation and union decline, and workforce skill and education development. These local trends are compared against international trends in employment relations, again noting similarities and differences in outcomes. Discussion then moves back to a more comprehensive yet detailed analysis of outcomes for workers in New Zealand. This analysis initially compares and contrasts the ratification of ILO conventions, then outcomes connected to basic labour goals, workplace goals, and economic and social goals, leading up to the final conclusion.

### **NEOLIBERALISM AND THE THIRD WAY: COMPARING LOCAL AND INTERNATIONAL APPROACHES**

#### **Similarities and differences in New Zealand's policy approaches**

Various similarities and differences exist in the neoliberalist and third way approaches employed within New Zealand. The neoliberalist approach in New Zealand was supported by both Labour and National governments, but introduced by Labour. On Labour's eventual return to power in 1999, the third way approach was then launched. However, this occurred without the support of National and the business community, as happened with neoliberalism. The third way was promoted as a means of addressing the shortfalls of the free market, while maintaining its benefits. As discussed earlier in Chapter six, the third way's core features involve reaction to a changed reality; a pragmatic style and facilitative or enabling role for government; reciprocal obligations for both beneficiary and government; and a community orientated/partnerships approach (Bronn, 2001: 2). Employment policy reflecting the majority of these features and introduced under New Zealand Labour's third way includes the Modern Apprenticeship Scheme (*ibid.*) and the Employment Relations Act.

So New Zealand's third way falls somewhere between laissez-faire capitalism and statist regulation (NZPA, 1999b), while neoliberalism is aligned solely with the laissez-faire free

market emphasis. The Labour neoliberals initially focused on changes to economic policy, an approach which was reinforced by the National Government before launching into a full-scale attack on social policy. In contrast to Labour under neoliberalism, the Labour-Alliance Coalition focused first on changes to social policy. In its second year, the Coalition's emphasis shifted to economic policy which aimed at increasing economic growth and reducing inequality.

While both the neoliberalist and third way regimes aim at an efficient labour market as an aid to economic growth, requiring labour market flexibility and competitiveness, the neoliberals used a coercive approach whereas the third way supporters rely on a more collaborative approach. Hence the first emphasised individualism and managerial prerogative, while the latter focuses on collectivism and a more equitable share of power and opportunities. The problem for workers is that the increase in employer control under neoliberalism generally delivered employer goals which have been difficult to reverse, while the increase in opportunities under the third way has done little to either undo managerial prerogative or to advance worker goals. The third way focus on providing opportunities rather than ensuring outcomes has largely been unable to reverse the employer gains that were achieved at the expense of workers during the neoliberalist era.

#### **Similarities and differences between New Zealand and international approaches**

Although the policy directions and initiatives introduced in New Zealand under the neoliberalist and third way regimes generally reflect the versions used internationally, there are differences. In particular, these involve the actual extent of such policy changes, and the way in which they were initiated. In New Zealand, a supposedly left-wing party first introduced neoliberalism, in comparison to places such as the U.S.A. and Britain, where neoliberalism was ushered in by right-wing and especially conservative parties. Naturally enough, Labour's involvement in neoliberalism had more of a surprise element in New Zealand, compared to the more predictable involvement of conservative supporters overseas. This was especially so as neoliberalism's introduction occurred here without voter mandate from Labour supporters.

The scope and implementation of New Zealand's neoliberalist approach was also much more radical than that taken internationally. The extent of the neoliberalist policy changes made in New Zealand was probably the most comprehensive and extreme worldwide. Radical economic and social reforms meant that New Zealand moved from one of the most protected economies in the OECD (Kelsey, 1998) to one of the most open and unprotected economies in a short space of time. The approach used by both left and right-wing governments in New Zealand to

implement neoliberalist policy was also extreme. The blitzkreig style of policy-making meant that profound change to major aspects of the economic and social framework could be implemented rapidly (Easton, 1997). Conversely, New Zealand's approach to the third way is more pragmatic and diluted than the British approach, perhaps as a concession to the Labour-Alliance Coalition, or perhaps to retain voters, as an admission by Labour that its earlier defection to neoliberalism had been a step in the "wrong" direction for Labour supporters. So while New Zealand's adoption of neoliberalism was more radical and far-reaching than the approaches used internationally, the third way approach here employs a less domineering style than that used overseas. While this means that a softer line is taken on the implementation of tough economic policy under the third way, the earlier economic and social reforms that occurred in New Zealand during the neoliberal era are also more likely to remain intact. The robust approach adopted by New Zealand to neoliberalism, and the diluted version of the third way means that policy-making here has had a rightwards shift. Labour is now centre-right rather than centre-left.

## NEOLIBERALISM AND THE THIRD WAY: COMPARING LOCAL OUTCOMES IN EMPLOYMENT RELATIONS

### Decentralisation

The decentralisation and deregulation of New Zealand's labour market was initiated by the Labour Government in the late 1980s. This move to enterprise-based bargaining accelerated rapidly under the National Government which followed in 1990, with the ECA effectively leading to a growth in IECs and the collapse of multi-employer bargaining by the mid-1990s. Conversely, under the third way approach, multi-employer bargaining was promoted through the ERA. Although the coverage of employees by multi-employer agreements subsequently increased, this has been minimal.

The difference between the neoliberalist and third way approaches to decentralisation in New Zealand focuses more on what they enable, rather than ensure. Neoliberalism actively promoted decentralisation by prohibiting multi-employer bargaining and promoting an individualist approach, while the third way enables a more centralised approach by promoting multi-employer bargaining and a collectivist approach. However, neither ensures actual outcomes through their particular approach. Rather than involving standards that provide a legal minimum, implementation of the ERA's "new" provisions still rely heavily on workers to individually or collectively enforce these provisions, and on the interpretation of these

provisions by the employment institutions. The outcomes also rely largely on the inclination and power of the parties to the employment relationship: employers and workers, and the representatives of both. Although the power imbalance within this relationship has been redressed somewhat by the ERA, employees as well as employers now seem to prefer a decentralised bargaining approach. The indication is that enterprise-based and individualised bargaining is here to stay, which in turn ensures the maintenance of a decentralised approach to New Zealand's labour relations system, even under the third way.

### Labour market flexibility

The neoliberalist regime was largely responsible for the growth of labour market flexibility within New Zealand. Flexibility initially grew in the labour supply and in pay and conditions under the Labour Government. However, the ECA's emphasis on individualism and contractualism resulted in much greater labour market flexibility under the ensuing National Government. This included flexibility in the type and terms of employment contracts, with greater job and pay flexibility resulting in reduced pay and conditions for workers. Increased flexibility in working time arrangements in particular enabled these changes to employment conditions (Harbridge et al., 2000). Flexibility in the labour supply and process accelerated, with increased casualisation of the workforce (Hince and Harbridge, 1994). Marginalisation was worst for workers already having reduced bargaining power.

Labour market flexibility increased under the neoliberalist regime in several areas. These included the labour supply and process, and the types and terms of employment contracts (contractual, job and pay flexibility, including working time flexibility). Under the third way approach, low and falling unemployment has reduced the opportunity for flexibility in the labour supply and process. The ERA itself also discourages temporary employment unless for genuine reasons. However, while the ERA apparently aims at reducing workforce casualisation, the Waterfront Workers dispute in Nelson indicates that the use of casual labour in a very public scenario still remains possible under the ERA. The implication is then that casualisation of the workforce also continues behind the scenes. So flexibility in the labour supply and process continues, but to a much lesser degree. The ERA has also tightened up on the criteria and process for effecting collective and individual employment agreements, providing extra protection for both employee groups. But again, the evidence of free-riding and non-inclusive bargaining post-ERA indicates that contractual flexibility also continues under the ERA, although also to a lesser extent than under the ECA. So while the erosion of terms and

conditions has largely halted under the ERA, the lack of actual improvement in this area could be seen as evidence that while not increasing, labour market flexibility continues to some degree in the labour supply and process, and in the types and terms of employment agreements.

Although further deterioration has stopped under the third way regime, there has not been a noticeable buy-back of the employment terms and conditions lost during the 1990s (Thickett et al., 2002). Some gains appear a little dubious anyway, for example the increases in averages wage rates are offset somewhat by the minimal or nil increase in real wages. With any improvements in employment terms and conditions reliant on union strength and economic factors, these are likely to be modest (Harbridge et al., 2001). Where improvement to employment terms and conditions has occurred, employment policy has not been the only catalyst. Increasing wage rates have also been due to rising inflation and falling unemployment, rather than the ERA alone (*ibid.*). In some cases, labour market flexibility has enabled the further deterioration of employment conditions. While working time provisions have generally not improved, some have declined further (Thickett et al., 2002). So flexibility in working time provisions continues, and in some cases has worsened under the third way.

Other employment trends that became established under the ECA seem set to continue under the ERA, such as labour market segmentation, and pay and job flexibility. Despite the ERA's emphasis on the use of fixed terms contracts for genuinely temporary employment, casualisation remains an issue for the workforce, although admittedly a lesser one. Shorter contractual terms under the ERA could contribute to ongoing labour market flexibility, with judicial decisions tending to reinforce the direction of employment law that emerged under the ECA. So regardless of the third way attempt to rebalance the employment relationship by promoting fair dealing, the mindset and practice of the neoliberal years are proving difficult to change. Improvements for workers under the third way have been peripheral rather than substantial. The inherent power imbalance within the employment relationship ensures that the power for decision-making will usually tip in favour of employers, even under the more generous regime of the third way, unless the state ensures access for all workers to improvements by setting minimum standards of conduct and practice. With the current mindset still favouring business requirements above all else, even under Labour's diluted version of the third way, employer needs continue to take precedence over those of workers. This includes labour market flexibility, itself enabled by the lack of specifics in New Zealand's third way employment policy.

The position ceded to business in New Zealand has had a major effect on unions and worker representation. The ECA impacted particularly on the structures and process of bargaining, and on the powers of unions, employers and employees (Deeks et al., 1994). With the move to single employer, enterprise-based bargaining, managerial prerogative and employer control within the employment relationship increased dramatically. This was at the expense of workers, whose bargaining power reduced correspondingly in an already inequitable scenario. Extensive limits on the rights to strike also added to this shift in power within labour relations (Anderson, 1999). Union decline was the immediate result of this deregulation and decentralisation of New Zealand's labour relations system. As multi-employer bargaining collapsed in the 1990s, the use of IECs, free-riding and non-inclusive bargaining grew. Levels of union density and membership then fell drastically, along with the number of unions. Union membership was also affected from the 1980s by rising unemployment and difficulties in organising the growing secondary market (Deeks et al., 1994). The shift of employment growth from larger to smaller workplaces was another factor in declining union membership (Crawford et al., 1999), and the lack of cohesion within and between unions added to union difficulties. Survival strategies included the development of large "super unions" and small "boutique" unions (*ibid.*), with unions focusing mainly on the larger worksites as opposed to the smaller firms (Oxenbridge, 1999). Other changes to worker representation included employer-initiated unions and staff associations.

However, this decline in unionism has not only stopped, but reversed under the ERA, with increases in union numbers and membership beginning even before the ERA took effect. Whether or not recent increases in union membership will become substantial depends on the ability of unions to overcome the challenges facing them. These include being able to achieve an increase in collective bargaining that brings significant improvement to employment conditions; end employer resistance that undermines union activity; achieve an increase in multi-employer bargaining; end free-riding; and promote union concentration and size (Harbridge et al., 2002). Although the ERA does nothing to increase union concentration or reduce free-riding, it does legitimise unions and reinstate protections that promote collective bargaining (*ibid.*). However, these alone are unlikely to result in high levels of union growth (*ibid.*). This growth will most likely result with the extension of collective bargaining arrangements, in particular industry wide multi-employer bargaining (*ibid.*). Despite the ERA's promotion of worker-based unions, evidence suggests that earlier patterns of worker

representation are in general continuing, including management-initiated unions and staff-based associations operating as breakaways from established unions. So the current issues facing unions, and which also prevent their growth, remain very similar to those challenges that unions faced under the ECA.

The underlying rationale behind New Zealand's current employment policy promoted by the third way is also similar yet different to the earlier neoliberalist approach. While unions and collective bargaining were seen as a hindrance to labour market flexibility and increased productivity under the neoliberalist regime, the third way takes a more positive stance. Apart from being a civil good in itself, collectivism is also seen as necessary to ensure increased productivity. Economic growth remains the primary goal under both regimes, but the promotion of collective bargaining comes a close second under the third way. Unions have gained as a result of this policy change. The ERA provides greater recognition of the role of unions, their representation rights and registration, and workplace access for employment and union business purposes (Harbridge et al., 2002). To some degree this redresses the power imbalance that favours employers over employees within the employment relationship, by providing a way of increasing union strength through union organising and collective bargaining (especially multi-employer bargaining). However, the ability of workers and unions to take advantage of these opportunities is affected not only by the inclination of the employers and employees involved, but also their resources and current strength. In both cases, employers still have the upper hand, and effectively, the final say. Achieving favourable outcomes for workers under the ERA also rests on the abilities and resources of the employment parties themselves, in actually specifying and implementing the more major and potentially useful ERA provisions, such as good faith bargaining.

Far from guaranteeing improvements to workers through their terms and conditions of employment, the third way policy merely provides the opportunities, and leaves the actual outcome to employers and workers themselves. And although collectivism is promoted, the individualist approach to employment-related matters is not only protected as well, but actually strengthened under the third way. The ECA's voluntary unionism has also been retained. In these ways, the third way approach is very similar to the neoliberalist regime. The third way is providing just enough to keep its party faithful satisfied, with the business community retaining sufficient control to ensure the leeway demanded to maintain business confidence. So while the third way takes a much more positive approach to unions and collective bargaining by promoting both, the provision of organising and bargaining opportunities that rely heavily on union strength are unlikely to result in large increases in union membership and multi-employer

bargaining arrangements. Linked to this, significant improvements for workers to their employment terms and conditions also seem highly improbable at this stage.

### Workforce skill and education development

In the 1980s, while a more skilled workforce was evident in the larger private companies, SOEs and the public sector, the remaining workers were mostly unskilled (Deeks et al., 1994). The apprenticeships scheme was available for employees, and work training programmes were promoted for the unemployed. When the responsibility for apprenticeship training shifted from the state to industry in the 1990s, the numbers of apprentices plummeted (Kelsey, 1998). Polytechnic training courses were cut and government training courses became less popular (*ibid.*). Bulk funding was introduced into public sector education, and the student loans scheme began at tertiary level. Full-time involvement at tertiary level remained low by international standards (Deeks et al., 1994), and the ratio of university staff to students fell during the 1990s (Rasmussen and McIntosh, 2001a: 252). So during the Labour years of the neoliberal approach, training and education for both the employed and unemployed received more emphasis, in comparison to the 1990s under the National-led Government, when greater reliance was placed on individual rather than state resources for education.

Conversely, training and education has received much more attention under the third way regime. The launch of the modern apprenticeships scheme focused on key industry sectors with skill shortages, such as manufacturing. Skill shortages have now become a major problem, especially in the provinces, and are restricting economic growth. Unskilled labour has also become harder to find. The “brain drain” phenomenon is another legacy of the neoliberalist era, with emigration involving white-collar workers and trades people, and older as well as younger workers. The secondary and tertiary sectors have been affected, along with public sector employees: police, social and health workers. The resulting staff shortages have increased workloads and stress for remaining staff, with pay and conditions also inadequate compared to workers overseas. Government funding for tertiary education has declined, student numbers are falling, and on-going training and education for workers is minimal.

While education was a greater priority for Labour during the neoliberal years, it obviously became less so under the National cutbacks of the 1990s. With the emphasis moving to a user-pays philosophy, greater reliance was on the individual’s resources as opposed to state provision of education. The results of these earlier cutbacks have become evident through the current issues surrounding education and training. Shortages in skilled and unskilled labour are restricting economic growth, the brain drain is adding to problems, excessive workloads and

stress included, all of which are compounded by the low pay and conditions workers receive in this country. Where the neoliberalist approach removed work-based training, the third way have reinstated this. But while the third way proponents have highlighted education and training as a priority, along with the importance of the knowledge industry, related policies have done little to address the outstanding issues in the primary, secondary and tertiary education sectors. Although many of these problems are an unfortunate inheritance from the 1990s, some are of the third way's own making. The minimal pay and conditions of teachers and tertiary staff have not been adequately addressed by the third way. Instead the government has kept these to a minimum and used one-off payments to entice teachers back to New Zealand, or to relocate teachers locally. So while the third way has certainly looked at assisting with the immediate skill shortages in industry through the apprenticeships scheme, much is still required at an even more basic level. In the meantime, the third way regime seem to have adopted a low wage, yet high skill approach to workers in the education sector, in contrast to their calls for a high skill, high pay road to development.

#### NEOLIBERALISM AND THE THIRD WAY:

#### COMPARING LOCAL AND INTERNATIONAL TRENDS IN EMPLOYMENT RELATIONS

##### Decentralisation

Common patterns in labour and employment relations that are now evident in advanced industrial states include the decentralisation of industrial relations and strategic decision-making to the enterprise level (Locke et al., 1995). The shift from national or industry level negotiations to worksite-based bargaining over the terms and conditions of employment means that managers are the moving force behind changes to employment practices (*ibid.*). This devolution of decision-making power to individual enterprises has effectively resulted in a huge increase in managerial prerogative at the worksite level. The international move towards decentralisation of industrial relations is also evident as a trend in New Zealand, under both the neoliberalist and third way regimes. Although instigated in New Zealand through the LRA, decentralisation really took hold when the ECA was used to deregulate New Zealand's labour relations system. The removal of the previous awards system resulted in the collapse of multi-employer bargaining, and the inevitable shift to enterprise-based collective bargaining along with the use of IECs. So while the third way aims at promoting collective bargaining, and again enables multi-employer bargaining, it would seem too little too late. Although the ERA provides some re-regulation towards this, it also leaves the specifics of related provisions to the employment parties themselves, as well as protecting and strengthening individual bargaining. While the ERA affords some opportunity for the re-centralisation of New Zealand's labour relations, it

does not provide the means for unions to achieve this. Instead this depends on union strength and resources. Subsequently the growth in multi-employer bargaining since the ERA has been minimal, and is not expected to increase much. So in practice, the third way approach maintains a decentralised labour relations system within New Zealand, while in theory it promotes a less centralised and more collectivised system as a possibility for unions and workers. Alternatively, the neoliberalist approach here has wholeheartedly adopted and promoted a decentralised system of labour relations in theory and in practice, also arguing that there was no alternative. Either way, the actual outcome has followed the international trend of decentralisation, and now seems unlikely to change in any major way in New Zealand.

### Labour market flexibility

Another international trend in employment relations that occurred together with decentralisation was the increase in labour market flexibility, enabled by changes to employment-related policy at government level, but introduced within workplaces at management level. Greater flexibility is evident internationally in work organisation and the deployment of labour, with flexible work hours and job arrangements (Locke et al., 1995). Government deregulation of labour relations allowed greater managerial prerogative, which then resulted in a massive increase in part-time, temporary and special youth employment contracts (*ibid.*). These developments in external labour market practices were linked to changes within the workplace, which aimed at increasing the discretionary efforts of employees through the delegation and coordination of decision-making (*ibid.*). As discussed above, the deregulation of New Zealand's labour relations system occurred through the ECA, with the resulting increase in managerial prerogative reinforced both by the decentralisation of labour relations to enterprise level, and by the resulting emphasis on individual bargaining at that level. Under this neoliberalist approach, flexibility grew in the labour supply and process, and the type and terms of employment contracts, involving contractual, job and pay flexibility. Increased flexibility in working time arrangements enabled the major changes made to employment conditions (Harbridge et al., 2000). While the increase to casualisation of the workforce is debateable, the terms and conditions of employment certainly deteriorated post-ECA.

Under the third way regime, opportunities for labour market flexibility have decreased, partly due to employment growth linked with falling unemployment, and partly because of employment policy which discourages workforce casualisation and promotes collectivism. However, contractual flexibility continues, along with flexibility in working time provisions. Labour market flexibility remains available in setting employment terms and conditions, and

also to some degree in the labour supply and process. Still, the stabilisation of employment terms and conditions that started during the 1990s continues under the third way, with some related improvement. So while the neoliberalist approach certainly magnified the international trend of increasing labour market flexibility and all that that entails, the third way approach works somewhat against this trend. All the same, the earlier homage paid to business under the neoliberalist regime continues under the third way, albeit in a diluted form, but still evident in the lack of specifics in the ERA. Providing opportunities which leave the outcomes to the employment parties themselves, rather than providing minimum standard legislation, is a sure way of ensuring that labour market flexibility continues in New Zealand.

### Worker representation and union decline

Another common international pattern that occurred in tandem with management resurgence was union decline (Locke et al., 1995). Union membership fell, and developments that challenged the established unions included new forms of worker representation, such as new unions or employee associations (*ibid.*). The neoliberalist era certainly followed this pattern. Falling union membership in New Zealand was most evident in the years immediately after the ECA's introduction. The huge drop that followed in union membership and density was a direct result of the increase in managerial prerogative that occurred with the move to enterprise-based bargaining. Centralised multi-employer collective bargaining was replaced with some site-based collective bargaining, but largely with individual employment contracts. Free-riding and non-inclusive bargaining added to union decline in New Zealand, along with far-reaching limits on striking rights. Changes to worker representation included the development of super and boutique unions, as well as staff associations, employer-initiated unions, and breakaway unions set up in competition to existing unions. Under the third way, these recent developments in worker representation have continued, although to a lesser degree with the ERA requiring registered unions to represent workers in collective bargaining. The increase in union membership under the third way has reversed the previous trend in de-unionisation. However, despite the ERA's promotion of multi-employer collective bargaining, related increases have been minimal. This implies that union membership levels will also remain low, and that labour relations will certainly remain mostly decentralised to the enterprise level. So while the ERA has certainly stopped the de-unionisation trend, the expectation is that this will not lead to large increases in union membership, nor to a reversal of New Zealand's emphasis on individual bargaining at the enterprise level. Although the third way approach also runs against the international trend of union decline, in comparison to the instigation and promotion of

deunionisation under neoliberalism, the reversal of this trend is likely to be insignificant in comparison to the previous losses in union membership and power during the 1990s.

### Workforce training and education

The fourth international trend is a greater investment by both governments and firms in workforce skill development and training (Locke et al., 1995). Linked to this is the growth of performance and/or skill-related payment systems (*ibid.*). While the Labour Government initially emphasised training for the employed and unemployed, the neoliberalist approach that continued during the 1990s reversed this trend. State funding for work-related training was cut, with responsibility transferred to the firms and workers themselves, and public education provided on a user-pays basis. Again this was reversed somewhat under the third way regime, with work-based training in particular receiving increased government funding. The user-pays approach to education was also diluted. However, the third way regime also seems to have adopted a low wage, high skill approach towards those employed in the education sector (along with other state sector employees), with resourcing kept to a minimum, not dissimilar to the approach used by the neoliberalist regime. This has exacerbated the problems inherited by the third way that affect the education and wider state sectors. These include excessive workload and stress, the brain drain to countries overseas, a falling staff-student ratio, shortages in skilled and unskilled workers, a growth in unfilled education vacancies, and inadequate pay and employment conditions. So while the third way certainly espouses the high skill, high pay road to development, they seem to be having difficulty in actually ensuring and delivering this approach regarding the public education sector. As the educational basis for future workers, this sector warrants much more attention, from pre-school through to tertiary levels. Although the emphasis on industry-based training is a good start to increasing worker skills, a much broader and more effective approach requires extra funding to education organisations and the related workers at all levels. After a decade of user-pays philosophy, firms generally seem unwilling to invest in training and education for workers, so the responsibility now falls on the state. This also raises the issue of the development of New Zealand's segmented labour market, which has been obvious since the 1980s and is linked to the growth of performance and/or skill-related pay systems. Although this dual labour market indicates that (private sector) employers are willing to pay extra once workers actually become more highly skilled and educated, it also shows that many workers are missing out on this training and education. The current approach is obviously inadequate to fill this growing problem. While the neoliberalism of the 1990s certainly worked against the international trend of workforce skill development and training, the third way is attempting to move towards this trend. However, to ensure that third way involvement in education and training goes further than lip service, a great deal more state investment in the

skill development and training of workers is required if New Zealand is to follow this more positive international trend.

## NEOLIBERALISM VERSUS THE THIRD WAY: COMPARING OUTCOMES FOR WORKERS IN NEW ZEALAND

### Ratification of ILO Conventions

The ILO conventions currently in force have now reached 157, which also include the 8 fundamental labour conventions. By 1984, New Zealand had already ratified 4 of the 7 existing fundamental ILO Conventions. During both the neoliberalist and third way regimes that followed, these 3 outstanding conventions were not ratified. One of these conventions was the Minimum Age Convention (No.138), aimed at abolishing child labour through a minimum worker age. Although this has not been ratified under the third way, another fundamental ILO Convention passed in 1999 (the Worst Forms of Child Labour Convention, No.182) was ratified by the Labour-Alliance Coalition in 2001. The other 2 outstanding fundamental ILO Conventions covered freedom of association (No.87), and organising and collective bargaining rights (No.98). In this respect, the third way approach was initially as lax as neoliberalism in protecting and promoting rights directly linked to collective bargaining and unionism, despite the ERA's stated emphasis on fairness in these areas. While the Labour-Progressive Coalition does plan to ratify Convention 98 in early 2003, Convention 87 is not on the agenda as yet, largely because it enables sympathy and protest strikes (Wilson, 2002b). So the third way approach in New Zealand still apparently has difficulty in supporting even the minimum rights of unionism. Although it seems more feasible under the third way to pass employment legislation that provides opportunities for an increase in multi-collective bargaining by the parties concerned, if they agree, the ERA also clearly sets out the limits on strike action for both workers and employers. The actual guarantee of additional but basic union rights under the related ILO Convention appears impossible for the third way, despite its Labour roots and its worker/union supporters.

The number of the total ILO Conventions ratified by any one country gives further indication of that country's commitment to basic labour standards and worker rights. The number of ILO Conventions is continually growing, and so the number ratified by a country also indicates how well that country is keeping up with international standards. In 1984, the total number of ILO Conventions actually in force were 132 (including the fundamental conventions discussed above). Of these, New Zealand had ratified 31.1%. By 1999, the number of Conventions had

years of the ECA, slowed towards the end of the 1990s, then increased a little under the ERA (derived from DOL data, 1992-2002). The pattern of unjustified dismissal cases was similar during the neoliberal regime, with an initial and dramatic increase after the ECA's introduction, but this growth tailing off towards the end of the 1990s (*ibid.*). However, under the third way the numbers of unjustified dismissals stabilised, remaining similar to the 1999 level rather than increasing noticeably (*ibid.*). Discrimination and harassment data show a different pattern. Personal grievance cases involving discrimination and sexual harassment were minimal during the 1990s, but had begun increasing noticeably by 1999 (*ibid.*). Rather than reducing, dramatic increases occurred in both areas during the third way period, along with an increase in racial harassment (*ibid.*). So increases in occupational disease were highest during the neoliberalist period, along with rapid growth post-ECA in personal grievances and unjustified dismissals. Alternatively, under the third way increases were greater than under neoliberalism in workplace deaths, and personal grievance cases concerning discrimination and harassment.

Just conditions of work, cultural respect, and protection of family life are also important indicators of fairly basic workplace rights. Statutory entitlement to paid annual leave has remained unchanged during the neoliberal and third way regimes, and tangihanga leave as a right in itself has been absent under both regimes. However, the option for paid parental leave became available in 2002, as opposed to the unpaid version of the previous years. So while the neoliberalist and third way periods were similar in the lack of improvements to paid annual leave and tangihanga leave, the third way regime ensured a major breakthrough by the provision of paid parental leave.

### Economic/security outcomes

Unemployment levels, real wages, benefit payment levels, income inequality and poverty levels all provide some indication of economic security. While unemployment levels began rising noticeably in the 1980s, they peaked shortly after the ECA's introduction during the neoliberalist era. Since then, apart from rising in 1999, unemployment has generally been falling, reaching its lowest level under the third way for 14 years. In comparison, real wages initially fluctuated during the neoliberalist 1990s, then stabilised as a small real wage increase from the mid-1990s. This positive increase dropped by 2002 under the third way, with greater fluctuation in real wages also occurring under this regime. Apart from negative increases in both 1993 and 2000, the overall real wage rate under both regimes was very similar – a negligible increase. Looking at welfare-related income, the monetary levels increased for both the unemployment benefit rate, and for the income benchmark for the community services card for non-beneficiaries. However, when measured in real terms against the average weekly wage,

these levels dropped significantly during the neoliberalist era, and continued to do so under the third way. Income inequality rose during the neoliberalist years, remaining at the same level since the mid-1990s, even under the third way. The poverty levels rose dramatically under the neoliberalist regime, especially in the early 1990s. Although these levels began falling by 1999, they rose again slightly under the third way. So overall, access to employment and job security decreased rapidly during the onset and finale of the neoliberalist years, but increased noticeably under the third way. While real wage increases and economic security for workers were minimal during both the neoliberalist and third way periods, welfare-related income gradually reduced for certain groups of beneficiaries and non-beneficiaries over both periods. This decline in economic security for these groups also effectively meant reduced access to welfare and medical assistance. Economic insecurity was compounded by sharp increases in income inequality and poverty during the early neoliberalist years, with no relief from this under the third way. While the employed generally now seem to be slightly better off in economic terms, those on low incomes (workers and beneficiaries) have become worse off under both neoliberalist and third way regimes.

### Social outcomes

Indicators related to housing, health and education provide some indication of social outcomes for workers under the two regimes recently prevalent in New Zealand. The level of home ownership began reducing under the neoliberalist years, and continued under the third way. Housing affordability (in terms of income versus housing costs) decreased sharply in the early 1990s, continued falling, then rose slightly under the third way. Regarding health outcomes, the infant mortality rate reduced during the neoliberalist years, then stabilised from the late 1990s onwards. Male and female life expectancies have increased over the neoliberalist years, with more recent figures unavailable. However, deaths from poverty-related illnesses remained substantial during the neoliberalist and third way eras. While deaths from tuberculosis reduced, deaths involving meningococcal infection have increased, even under the third way. Government spending on education fluctuated during the neoliberalist years, but rose slightly overall, with similar spending levels under the third way. Education outcomes have generally improved. While the percentage of school leavers with formal qualifications increased rapidly during the 1980s, this increase slowed, then reversed during the mid-1990s. Although school leavers with formal qualifications again began increasing from the late 1990s onwards, this level under the third way still remained below the 1990 level. Conversely, the percentage of the workforce with vocational or university qualifications has increased under the third way, in comparison to levels in the neoliberalist era. So overall, while home ownership has continued to fall under both neoliberalist and third way regimes, housing affordability has risen slightly

under the third way in comparison to the neoliberalist decreases. General health indicators have improved under both regimes, although poverty-related illnesses have either increased or stabilised at high levels during both eras. Government spending on education has risen slightly during both the neoliberalist and third way years. The levels of qualified workers and school leavers workforce continued to increase under the third way, although school leavers with formal qualifications were fewer under the third way than in the earlier neoliberalist years. So while there have been gains and setbacks in housing, health, and education under the third way, the actual outcomes seem more the continuation of trends that started under the neoliberalist approach, as opposed to new developments under the third way.

## CONCLUSION

Labour-led governments introduced both the neoliberalist and third way regimes in New Zealand. The first approach tackled economic and then social policies in a savage onslaught against the welfare state, while the second reversed this policy-making focus and aimed at softening the outcomes of the previous regime. Neoliberalism was introduced largely without voter mandate, while the third way appears to be an attempt to address voter dissatisfaction. In comparison to international developments, local neoliberalist policy-making was more extreme in both style and content, whereas New Zealand's third way presents a more diluted and pragmatic approach than that used overseas.

The focus of local policy-making under both regimes is evident in the subsequent changes to employment relations. Under the neoliberalist approach, the decentralisation and deregulation of New Zealand's employment relations system was rapid and thorough. Labour market flexibility increased, unions declined in power, and the earlier emphasis on workforce skill and education development reduced during the 1990s. Despite the third way's rebalancing of employment legislation, and a halt to the declines in decentralisation and deunionisation, significant reversals in these trends appear unlikely. Labour market flexibility continues as well, but to a lesser degree. Conversely, worker training and education has been boosted under third way policy. In comparison with broader patterns in employment relations, New Zealand's neoliberalist regime mirrors international trends in the first three areas, while the third way is similar regarding the more positive improvements to workforce skill and education.

In comparing outcomes for workers in New Zealand under the neoliberalist and third way approaches, ratification of ILO labour conventions has increased under the third way, although substantial improvements are still necessary to reach international standards. During the neoliberalist years, the outcomes regarding basic labour/workplace/economic goals generally

seemed to worsen pretty dramatically across the board. Alternatively, the third way seems to have performed best for the average working New Zealander, rather than for more vulnerable groups. Under the third way there has been a minimal reversal of the earlier trends in declining union density and collective bargaining coverage, so that those working have more security. Paid parental leave now provides benefits for workers with family. Although major health gains regarding infant mortality and life expectancy occurred under the neoliberal regime, housing is slightly more affordable and the workforce a little better educated under the third way. Still, real wages increases have fallen and workplace deaths increased recently. The third way has also been less successful in assisting children, women, and those on low incomes. Work-related deaths of children have increased, as have the number of sexual harassment and employment-related discrimination cases. The earnings gap between men and women has also grown. Work-testing sanctions for beneficiaries have mushroomed, and the lack of income relativity continues between beneficiaries/low-income earners and those on the average wage. Poverty levels are now increasing along with related illness. So while the third way has acted to halt the more obviously negative outcomes for workers that were initiated under the neoliberalist approach, subsequent changes have tended to benefit the average working New Zealander rather than the more marginalised groups.



## **Chapter ten**

# **CONCLUSIONS AND RECOMMENDATIONS**

### **INTRODUCTION**

In this closing chapter, the conclusions of the study are tied to the original research objectives and questions. What was the primary political-economic response of industrialised countries to globalisation? Are there alternatives? Which economic and social policies have been linked to the three main political-economic responses? How have these responses and policies affected employment relations? What have been the outcomes for New Zealand workers under neoliberalism and the third way? Which of these two political-economic approaches has been most beneficial for local workers?

These questions are addressed below in the conclusions reached on individual research objectives. The contributions of the study are examined, and the limitations of the sample criteria are then discussed. Additional limitations cover goals and measures, the scope of the thesis, and access to relevant statistics. Areas for further research are suggested, along with applications of the research to social policy, prior to the final conclusion.

### **RESEARCH OBJECTIVES**

These aimed to examine the effects of globalisation on political-economic systems in industrialised countries, on employment relations, and ultimately on workers. A comparative approach focused on international and local changes in these areas covering the past two decades or so. The primary aim was to look at which politico-economic response to globalisation has been most beneficial for workers in New Zealand, in terms of outcomes which reflect worker goals.

### **POLITICAL-ECONOMIC RESPONSES AND POLICIES**

The extent and even existence of globalisation is highly contested (Kelsey, 1999). However, although the world is far from being a fully integrated, homogenised, TNC-dominated global capitalist economy, it is incontestable that increased co-dependency has occurred between parts

of the world during the last 30 years (Salt et al., 2000). This has involved the opening of trade and financial regimes, the integration of world markets, increased competition, technological innovation, and democratic political reform (ILO, 2000). The latter has occurred together with the end of non-and anti-market economic systems allied to state-planned economies (*ibid.*).

The political-economic response most obviously entwined with globalisation is neoliberalism. Adopted as a panacea to address the alleged shortfalls of social democracy, neoliberalist policies became the focus of governments ranging from left to right across the political spectrum. With doctrinal support provided by the Washington consensus, related economic polices emphasise the liberalisation of trade and finance, inflation control, market price-setting, privatisation, and reduced government (Chomsky, 1999: 19-20) through deregulation and commercialisation. Welfare policies focus on the restructuring of social protection systems (Cheyne et al., 1997: 98), with eligibility criteria becoming more stringent and welfare entitlements pared down to a minimalist safety net protection. Reliance is on the free market to provide well-being, and the associated consumer-driven decisions replace state and community influence (*ibid.*). Under this "more market" approach, social policy is merely a prop to ensure the desired economic outcomes.

The third way presented another response to globalisation, being aimed at "modernising" social democracy. In reality though, the third way simply appears to ameliorate the problems linked to the earlier neoliberalist policies that were followed by most industrialised countries. This approach addresses the inequality resulting from neoliberalist globalisation by relying heavily on the provision of individual opportunity rather than state-generated collective outcomes. Linked to this is the focus on responsibilities as well as rights for citizens, with welfare state reform an obvious outcome as a means of avoiding "welfare dependency". Supply-side policies involve social investment in education and infrastructure, environmental issues take some precedence, and there is a strong commitment to transnational initiatives (Dahrendorf, 1999). However, economic interests come a clear first, with a coercive approach used to ensure individual self-sufficiency. More equitable outcomes for workers under the third way still depend largely on individual initiative due to the lack of state-guaranteed outcomes.

Of the three political-economic responses to globalisation examined in this study, the social partnership approach retains the closest links to social democratic ideology. A collective approach towards policy development is adopted, as opposed to a reliance on individuals to ensure equitable outcomes. Supported by both left and right political factions, state action to redistribute income is seen as legitimate (Cheyne et al., *ibid.*). Centralised agreements that involve the social partners focus on broader socio-economic goals in addition to employment

relations (D'Art and Turner, 2000). While the context of the Irish social partnership agreements has broadened over time from "managing crisis" to "managing growth and rising expectations" (Dobbins, 1999), economic issues have nonetheless taken precedence over social issues throughout the post-1987 period. An open market strategy has been central to Ireland's successful approach to social partnership (Easton, 1999: 54), with social inclusion and fairness only more recently emphasised in their own right once the economy moved towards full employment. To some extent, business goals have been emphasised at the expense of worker and community interests.

#### EMPLOYMENT POLICY UNDER THE POLITICAL-ECONOMIC RESPONSES

Under neoliberal employment-related policy, inflation control takes precedence over employment levels. Unemployment allegedly results from labour market distortions created by government intervention such as minimum standards legislation or the social welfare system (Eichbaum, 1997). Voluntary unemployment can be addressed only by increasing competition between individual workers and greater labour market flexibility (Bertram, 1993).

Third way policy instead aims at a dynamic yet full employment economy, one that generates and sustains high levels of employment (Giddens, 2001: 5-13). Although labour market flexibility and lower benefit floors are still seen as essential, the state is nevertheless expected to regulate and intervene. This involves financial discipline, macroeconomic steering, the stimulation of technological innovation and economic investment, plus investment in education and skills training (*ibid.*). Despite such intervention, the third way emphasises the state role as providing the direction rather than resources (Dahrendorf, 1999). Employment policy therefore tends to provide workers with opportunities for equitable outcomes, rather than ensuring these by improving the minimum standards legislation.

The social partnership approach in Europe provides yet another alternative in employment policy, by combining the priority concerns of employment and competitiveness with greater state intervention. Social pacts offer a way for unions to maintain their involvement in economic and social governance, yet also enable an emphasis on improving the competitiveness of domestic industry as opposed to distributional bargains (Teague, 2001). Ideally the state maintains the real value of social welfare payments and living standards, in return for moderate wage growth that enables international competitiveness (Kelly, 2001: 3). However, common issues in social partnership models have nevertheless involved income distribution, pay determination, and social equity (Dobbins, 2000; D'art and Turner, 2000).

Social partnership represents the most social democratic and "leftwards" response to globalisation of the three political-economic strategies discussed in chapter two. However, in practice there has been a rightwards shift overall in the political framework and in government policymaking within industrialised countries. As the basis for safeguarding capitalism, free market principles remain the central tenet in all of the three political-economic approaches discussed in the study, rather than an emphasis on social democratic principles and social policies. Outcomes in employment relations have obviously been influenced by this political-economic move to the right, and workers in turn have also been affected by these changes.

## RESULTING INTERNATIONAL TRENDS IN EMPLOYMENT RELATIONS

Globalisation has been a major factor in recent changes to employment relations (Locke, 1992). Related developments over the past two decades have tended to show a converging divergence trend in employment relations patterns in OECD nations (Locke et al., 1995; Katz and Darbshire, 2000). National employment relations systems have become more diverse internally, while similarities are emerging in cross-country trends (Teague, 2001). The decentralisation of employment relations has resulted from the deregulation of labour relations systems. National or industry-level bargaining over pay and employment conditions have moved to enterprise-level, and managers have become the catalyst for change in employment relations (Locke et al., 1995: 144-147). Greater flexibility in work organisation and the use of labour have then occurred, with a massive growth in casualisation of the workforce, especially in part-time, temporary and youth employment contracts (*ibid.*). Linked to these changes in external labour market practices were developments within organisations that relied increasingly on discretionary worker participation in the operation of the firm (*ibid.*). This led to greater internal flexibility in work hours and job arrangements, and in worker participative structures as well (*ibid.*). The focus on individual self-reliance is also evident in the greater emphasis on workforce skill development and training. Both firms and government have increasingly contributed to skill development and training for workers, which itself has resulted in a growth in performance and skill-related pay systems (*ibid.*). These changes resulted in a decline in union membership and power, with new forms of unions or employee associations are also challenging established unions.

## NEOLIBERALIST AND THIRD-WAY POLICYMAKING IN NEW ZEALAND

Government policymaking was the means that largely enabled the development of these international trends in employment relations. Under both Labour and National governments,

New Zealand's neoliberalist regime followed the structural adjustment programme proposed by the Washington consensus. This centred on five 'fundamentals': liberalisation of domestic markets and trade; reduction of the size and scope of the state; monetary policy, driven by an overriding goal of price stability; labour market deregulation and deunionisation of the workforce; and fiscal restraint, through broadening the taxation base and cutting state spending and social support (Kelsey, 1998: 85). The neoliberalist focus reigned supreme in New Zealand from 1984 until 1999, when the third way approach was implemented with Labour's return to power.

In New Zealand, the third way lies somewhere between the statist and market philosophies. Specific third way goals initially included economic growth, social equity and environmental responsibility (Parliamentary Debates, 2000: 2925-2926). So while the neoliberalists introduced a minimalist approach which focused first on economic policy, then on social policy, the third way protagonists instead shifted towards a more generous programme which moved from social policy to economic policy. Despite these differences, the primary policy goal under both regimes has been economic growth, and economic and social policies also appear to have been moulded to this end. Although both regimes have reflected international trends evident within industrialised countries, New Zealand's neoliberalist approach was more extreme than those adopted overseas, while the third way has been more muted. Nevertheless, New Zealand's third way policies do appear to support the identification of third way policies with countries recovering from neoliberal rule. Too many concessions are given to that neoliberalist mixture of market liberalism and moral authoritarianism, with Anglo-American society promoted as a desirable model to follow (Giddens, 2001: 1). Labour's third way policy-making in New Zealand appears largely geared towards cautiously softening the more extreme policies of the previous neoliberalist era, rather than introducing sure-fire policies that genuinely benefit workers.

## EMPLOYMENT RELATIONS IN NEW ZEALAND UNDER NEOLIBERALISM AND THE THIRD WAY

### Decentralisation

Policymaking adopted in New Zealand under neoliberalism and the third way has underscored the recent trends in local employment relations. The decentralisation of New Zealand's employment relations that occurred under the neoliberalist approach was clearly in line with international trends. Although initiated by the Labour Government in the 1980s (Deeks et al., 1994), the decentralisation and deregulation of this country's labour market accelerated during

the 1990s under the National Government and the ECA. Multi-employer bargaining collapsed, with the shift to enterprise-based bargaining involving collective negotiations as well as a rapid growth in IECs (Hughes, 1994). While the third way's ERA instead promotes multi-employer bargaining, the coverage of employees by multi-employer agreements has only risen minimally (Thickett et al., 2002: 77). Under both regimes, reliance has been on workers and unions themselves to ensure positive outcomes, which again depend largely on the inclination, power and resources of the employment parties involved. Although the power imbalance within the employment relationship has been addressed to a certain extent under the ERA, workers as well as employers now seem to prefer the current bargaining model. This continued focus on enterprise-based individual bargaining indicates that New Zealand's decentralised approach to employment relations is here to stay (Boxall, 2001), even under a centre-left government.

### Labour market flexibility

Increased labour market flexibility is another international trend that New Zealand seems to have followed. This occurred largely during the neoliberal era, with the shift from collectivism to contractualism that resulted through the ECA's deregulation and decentralisation of New Zealand's labour relations system. Contract's flexibility, together with its general disregard for economic and social outcomes, proved invaluable as the instrument for advancing flexible, deregulated labour markets and individualising the employment relationship as a device for shifting power relationships within labour markets (Anderson, 1999: 205). A corresponding increase in managerial prerogative inevitably resulted from the emphasis on individual bargaining at enterprise level. The subsequent escalation in labour market flexibility included the labour supply and process, plus working time arrangements (Harbridge et al., 2000: 74), along with greater contractual, job and pay flexibility (Deeks et al., 1994: 530). Conversely, the opportunity for labour market flexibility has decreased under the third way approach due to the combination of falling unemployment and employment growth. Employers are less able to exercise managerial prerogative when workers are in demand. A change in the neoliberalist mindset is also afoot, evident in the government's pro-collectivist and anti-casualisation stance, which tends to prohibit labour market flexibility. However, the post-ECA deterioration in working time provisions persists under the ERA (Thickett et al., 2002: 78), indicating continued flexibility of contract. And while the stabilisation of employment terms and conditions that started in the 1990s has increased under the third way (Harbridge et al., 2000: 74), flexibility still remains possible in this area, as well as in the labour supply and process, due to New Zealand's emphasis on individualised enterprise-based bargaining. So despite the third way approach being less supportive of unfettered managerial prerogative, the rebalancing of power in the employment relationship is not such that it has directly precluded labour market

flexibility. In fact individual rights are promoted under the ERA along with collective rights (Boxall, 2001), and the third way regime openly supports business interests. So while labour market flexibility was directly promoted under neoliberalism in New Zealand (Deeks et al., 1994), this flexibility has reduced under the third way more as a secondary policy outcome rather than as a primary goal. Again the third way relies on workers and unions to take up the opportunities provided, rather than strengthening minimum standards legislation to an effective level for all workers.

### Union decline

The growth of managerial prerogative in New Zealand is linked to the local decline in union membership and power, together with the increase in alternative types of worker representation (Deery and Mitchell, 1999). This trend was clearly reflected in New Zealand's neoliberal era, and strongly followed international patterns. Union membership declined dramatically after the deregulation and decentralisation of employment relations that occurred with the ECA's introduction (Anderson, 1999; Deeks et al., 1994; Kelsey, 1997; Oxenbridge, 1999), with the growth in enterprise-based IEC's closely following the increase in managerial prerogative. Free-riding, non-inclusive bargaining (Oxenbridge, 1999), and limits on striking rights (Anderson, 1999) added to union woes. Variants on traditional trade unions developed to provide further challenges, as well as various mutants such as staff associations and employer-initiated unions (Oxenbridge, 1999).

While the near demise of union power in New Zealand under neoliberalism mirrored the international trends, this changed somewhat under the third way. The trend of de-unionisation reversed slightly with the increase in union membership (May et al., 2002). However, such increases are expected to remain insignificant because of the minimal increase in multi-employer bargaining (Thickett et al., 2002), despite the ERA's promotion of this. Although worker representation is also moving back towards the more traditional trade unions due to the registration requirements of the ERA, some of the earlier developments under neoliberalism still exist, such as employer-initiated "unions". Free-riding and non-inclusive bargaining continue (Thickett et al., 2002: 77), collective bargaining coverage is still falling, and sympathy strikes remain illegal. So while union regrowth under the third way goes against international trends, this change is not expected to be sizeable. Challenges to unionism that began under neoliberalism continue to undermine union power in New Zealand today.

## Workforce skill development and training

There has been a growing investment by New Zealand's governments and firms in workforce skill development and training, and an increase in skill and performance related pay systems. This also reflects major international trends to a limited extent. While this trend was initially followed during the neoliberalist period under Labour's reign, it was certainly abandoned under National. The responsibility for work-related training was handed over to firms reluctant to fund this, and public education became less accessible due to the introduction of user-pays policies. With the competitive, individualist approach promoted by the ECA, performance-based pay systems burgeoned within New Zealand during the neoliberalist period, even within the public sector and among workers on collective agreements. Under the third way, this international trend has been more closely followed, at least in terms of work-based training which has received increased state funding. But despite its promotion of a sound education as the basis for a knowledge-based economy, third way cohorts are failing to satisfactorily address education sector issues which in turn provide the basis for workforce skill development and training. Despite espousing the high skill, high pay road to development, the third way is instead maintaining a low wage low skill pathway by withholding adequate funding in the primary, secondary and tertiary education sectors. Post-ERA, employers are still reluctant to fund work-based skill development and training, apparently a hangover from the economic belt-tightening of the ECA/neoliberalist period. The emphasis on skill and performance-based pay systems continues under the third way, with continued pressure on state sector employees (who have not yet succumbed) to adopt this approach. So while on both counts the third way follows international trends more closely than the New Zealand's earlier neoliberalist supporters, the half-hearted approach to improved education and training contradicts the third way's alleged commitment to a knowledge-based economy. Once again, reliance seems to be on individual resourcefulness as opposed to state intervention.

Despite the differences evident in New Zealand's neoliberalist and third way policies, the subsequent trends in employment relations under these political-economic approaches have been remarkably similar. A decentralised form of employment relations has occurred under both approaches, along with increased labour market flexibility. While neoliberalist policies certainly undermined unions and their power, third way policy has (in certain areas only) halted rather than substantially reversed the trend. The same could be said regarding workforce skill development and training. So again, the third way approach has mainly acted to soften the previous trends that began in employment relations under neoliberalism, rather than providing a new pathway. Therefore the difference in employment relations under both approaches appears to be in the strength of each trend as opposed to its direction. While New Zealand's trends in

employment relations under neoliberalism strongly reflect international patterns in three of the four areas discussed, the third way approach reflects international trends more accurately overall, but also in a decidedly more diluted way than under neoliberalism. With New Zealand generally providing a fairly typical example of international trends in employment relations (over both neoliberalist and third way eras), the indication is that countries are clearly influenced by global trends. The variations evident during both eras in turn show that national patterns in employment relations at times do contradict international trends, and that such differences are generally the result of national policy-making, either by deliberate choice or by omission.

#### OUTCOMES FOR NEW ZEALAND WORKERS UNDER NEOLIBERALISM AND THE THIRD WAY

Political-economic models promoted internationally over the past two decades have had a major effect on New Zealand's policy-making outcomes. Economic and social policies formed in New Zealand during the neoliberalist and third way eras have clearly been affected by the neoliberalist principles underlying globalisation. Policymaking has also been shaped by the ensuing and worldwide backlash against neoliberalism that resulted in the third way. Government policies resulting from the adoption of international ideology have in turn shaped New Zealand's trends in employment relations, which have largely followed those evident in OECD nations. The actual outcomes for New Zealand workers are also entwined with local trends in employment relations and government policies, mostly resulting from these factors.

Ratification of ILO Conventions gives a very basic indication of the labour standards provided through New Zealand's employment legislation. Looking at ratification of the fundamental ILO Conventions, New Zealand has fared a little better under the third way than it did under neoliberalism. The freedom of association Convention (98) was recently ratified by New Zealand, and the child labour convention (182) passed in 1999 was ratified earlier by the Labour-Alliance Coalition. However, while third way Labour has trumpeted its support of unions and collective bargaining, current legislation simply fails to meet the requirements of Convention 87 in terms of allowing sympathy and protest strikes. Regarding rights for child workers, Convention 138 has still not been ratified. So both the neoliberalist and third way regimes have reneged on supporting basic rights for child workers and unions. Currently only six of the eight fundamental ILO Conventions have been ratified by New Zealand, a poor record in comparison to most European countries which have ratified all eight conventions.

The total number of ILO Conventions ratified by New Zealand governments provides further indication of a lack of commitment to basic labour standards. At the start of the neoliberalist regime in 1984, New Zealand had ratified 31.1% of the existing Conventions in force, but by 1999 this has fallen to 27.5%. The total percentage of Conventions in force ratified under the third way regime have risen fractionally to 28%, as at mid-2003. So there is little difference between the neoliberalist and third way commitment to ensuring basic labour standards for New Zealand workers. While New Zealand's ratification tally remains closer to a quarter of ILO Conventions currently in force, European countries such as Ireland are comfortably in excess of a third. So by international comparison, again New Zealand is not faring as well regarding the endorsement of labour standards, under both neoliberalism and the third way.

Important ILO Conventions focusing on basic health and safety rights pose additional issues, either not having been ratified by New Zealand, or not being complied with once ratified. This lack of commitment to basic health and safety standards has occurred during both neoliberal and third way eras, and is particularly ironic when both regimes have passed health and safety legislation supposedly geared to meeting related issues. Obviously New Zealand's legislation is still inadequate in terms of meeting the ILO's basic requirements for workers.

The worker goals linked to broader but very relevant worker rights (as in the table discussed earlier) more accurately indicate the actual outcomes for workers. Analysis of outcomes linked to the more basic rights initially focused on the protection and promotion of freedom of association, collective bargaining, and equal rights and opportunities, protection for children, and protection against forced labour. Union density and collective bargaining coverage fared very badly under neoliberalism, but this decline was reversed slightly under the third way. Although the earnings gap between men and women reduced gradually during the neoliberalist era, this has increased slightly in recent years. Occupational disease levels halved for children under the third way, but their work-related deaths have lately doubled. Work-testing sanctions for the unemployed have also risen sharply under the third way.

The criteria used in the study for workplace goals included safe and healthy working conditions, free expression of grievances, protection during termination of employment, just conditions of work, dignity at work, promotion of cultural respect, and protection of family life. Health and safety outcomes have improved under the third way for the less serious indicator (occupational disease), but worsened for the more serious indicator (workplace fatalities). Personal grievance case numbers increased dramatically and were higher under the neoliberal regime than under the third way, as were the indicators for termination of employment, while discrimination and sexual harassment cases have increased under the third way. Although paid statutory annual

leave has remained the same under both regimes, with statutory entitlement to tangihanga leave absent under both, paid parental leave was introduced under the third way approach. So the related indicators for workplace goals have had mixed results in terms of actual outcomes for New Zealand workers under the neoliberalist and third way approaches.

The goals for outcomes indicating economic security were the provision of work, payment of a living wage (fair remuneration), access to adequate social security and medical assistance, and protection against poverty and social exclusion. Unemployment rose noticeably with the introduction of neoliberalism in New Zealand and peaked post-ECA, then continued falling to a 14-year low-point under the third way. Real wages fluctuated during the neoliberalist era, but have fallen overall under the third way. The income gap between the unemployment rate and average wage has increased, as has the difference between the average wage and the weekly income benchmark for non-beneficiaries. Although this increase was most significant during the neoliberalist era, the trend continues under the third way. Income inequality and poverty levels both increased dramatically during the 1990s, but again poverty levels continue to rise slightly under the third way, although income inequality levels have stabilised.

Social goals focused on the protection of health, access to housing, and the provision of and access to vocational training and education. Infant mortality gradually reduced during the 1990s, then stabilised more recently, and life expectancy has also increased. Poverty-related outcomes have varied, with deaths from tuberculosis reducing during the neoliberalist years, while deaths from meningococcal infection have increased markedly in recent years. Home ownership has also gradually decreased during both regimes, while housing affordability decreased sharply in the 1990s, but reversed slightly under the third way. Fluctuations occurred in government spending on education under neoliberalism but rose slightly in recent years, with a similar pattern for school-leavers with formal qualifications. The labour force percentage holding vocational or university qualifications also had a minimal increase under the third way. So while general health indicators improved during the neoliberalist years, and continued under the third way, poverty-related illness seems to have worsened. Education indicators indicate slightly better results for workers under the third way, but while housing has become a little more affordable, home ownership levels continue to fall.

Looking at developments for New Zealand workers in broader terms, the neoliberalist regime certainly initiated a major slide in outcomes, ranging from those that were work-related to wider social and economic factors. While the breadth of that change affected most workers in some way, the worst off were those already most disadvantaged. Under third way policy-making, this deterioration has halted largely in areas that benefit the average New Zealander. Actual

improvements in outcomes are minimal and seem a continuation of earlier neoliberalist trends. Where further deterioration in outcomes continues under the third way, again this is mostly minimal and a continuation of previous developments, but unfortunately again those largely affected are the groups already most disadvantaged in the labour market.

## OUTCOMES VERSUS INITIAL WORKER GOALS

A primary worker goal is a better living standard, based partly on real wage increases. These have not occurred locally in sustainable terms, especially under the third way. Although the guarantee of core labour standards has improved more recently, basic standards such as the ILO conventions on freedom of association, the protection of children, and health and safety have yet to be ratified by New Zealand. Still, hopefully the recent changes to health and safety legislation will address the increase in work-related deaths. The current levels of free-riding and non-inclusive bargaining are issues across all sectors. However, while the previous deterioration in terms and conditions of work has certainly halted under the third way, significant clawbacks seem unlikely, especially in light of ongoing labour market flexibility. Attention to the issues of workload and skill levels is imperative, especially regarding state sector workers. So safety and security in employment standards remain concerns for employees. Worker protection is still inadequate when firms are sold, merged or work contracted out, and protection against excessive workforce casualisation is also required. Apart from remuneration still being inadequate in real terms, working time provisions continue to decline, in particular overtime and the ordinary working week (Thickett et al., 2002). The CTU's campaign on the work-life balance indicates that this remains a major issue for workers, with regulation against excessive work hours and the introduction of family friendly workplace policies still required. Better annual and special leave provisions are necessary, along with limits on the working week and on daily hours of work.

Linked to these basic goals regarding security of employment and income is economic development. New Zealand is still far from being a high-wage, high-skill economy, despite recent economic and employment growth. Although greater employment and income opportunities are now available for workers, these appear to be benefitting people at the top end of the labour market rather than the more marginalised groups. Economic development still needs to be reconnected with social progress, which calls for improved welfare to safeguard workers' interests (TUAC, 1998). Adequate coverage of social protection requires increased funding on public education and workforce skills training. Accessible quality public services in health, housing, and social services are also still absent.

In addition, social dialogue and tripartism is required to achieve these goals, and to guarantee participation and democratic process (ILO, 1999). If the organisations involved in worker representation are to become effective and relevant again, their focus must move beyond the promise and delivery of minimal workplace rights. The reduction of state intervention and provision of basic social rights (education, health, welfare) is an issue for every worker requiring access to such rights. Worker participation in their own organisations will only increase once these issues are targeted, once worker structures provide a more membership-driven and accessible decision-making approach, and once prospective and former workers are also included, i.e., the unemployed and the retired, as well as the related community groups.

## STRENGTHS AND LIMITATIONS OF THE RESEARCH

### Contributions of the study

Political-economic responses to worldwide changes, and the subsequent policy-making adopted by governments, provided the starting-point for this research on changes to employment relations. However, the primary focus was a comparison of actual outcomes for workers under New Zealand's neoliberalist and third way regimes, rather than being limited to a comparison of policy-making and related consequences under each regime. As well as comparing developments in employment relations during both eras, the analysis of outcomes included the more limited workplace outcomes along with broader economic and social factors. This enabled an assessment of more comprehensive outcomes which deliver practical gains to workers, instead of focusing on procedural opportunities generally provided by narrower employment-related legislation. A more realistic analysis and comparison of relevant outcomes for workers under both regimes was possible, directed towards gauging which regime has in fact been most beneficial for New Zealand's workers.

In comparison to New Zealand's neoliberalist era, the third way regime in general terms has not delivered significantly better outcomes to workers in this country. Apart from the decrease in unemployment and the introduction of paid parental leave, most improvements under the third way are minimal and also appear to be a continuation of earlier trends that started during the neoliberalist years. Conversely, in some important areas the outcomes have deteriorated under the third way approach. These include collective bargaining coverage (under all sectors), workplace deaths for children and adults, the earnings gap between men and women, the number of discrimination and sexual harassment cases being taken, a lower real wage increase, falling income/cutoff levels for access to state assistance in comparison to the increasing average weekly wage, continued increases in poverty levels and poverty-related illness, and the

ongoing reduction in home ownership. While many of the negative outcomes for workers certainly increased dramatically during the neoliberalist era, the third way has addressed these largely by halting the decline rather than reversing the actual outcomes, apart from the worrying outcomes where the decline has continued or even increased. These findings could be relevant for workers in prioritising their goals and in developing strategies for achieving these goals, in particular for using the outcomes as a lobbying tool to promote political change within political parties which are supposedly worker-orientated. They could also be useful for policy analysts in assessing whether worker-focused policies are in fact delivering on their objectives, e.g., the ERA's goal of promoting collective bargaining.

The combination of quantitative and qualitative research methods was another advantage of the study. The use of quantitative data enabled a longitudinal approach which mostly covered the selected outcomes during the periods required, the neoliberalist and third way eras in New Zealand (up to 2002). The worker goals and measures that were initially chosen as the basis for assessing outcomes were adequate to give a broad overview of outcomes linked directly to the workplace, as well as to the wider economic and social factors that are relevant to New Zealand's workers. Findings based on the initial literature search were reinforced by the use of qualitative interviews with key people in New Zealand, to provide a sound basis for the initial selection of worker goals and measures on which to base the research.

#### Limitations of the case study criteria

The thesis requirements naturally limited the sample criteria, and manageability of the material added to this. Subsequently, I limited the case studies on the political-economic approaches to neoliberalism and the third way in New Zealand, rather than including the social partnership strategy within Ireland, as originally intended. Discussion and analysis of this other major political-economic response to world changes is therefore absent from the thesis. Inclusion of this response would also have enabled consideration of an apparently successful alternative to neoliberalism and the third way. The removal of the social partnership/Ireland case study from the thesis in turn meant the removal of large parts of the interviews with key New Zealanders. Apart from the interest factor, these conversations had focused on the relevance and application of the social partnership model to New Zealand. So effectively this meant that comparison and assessment of the possible relevance of parts of the social partnership approach to New Zealand were also omitted.

At the time of finishing this thesis (January 2004), the government promoting the third way approach in New Zealand has been in power for just over four years. As a result, the

quantitative data used for the third way period indicates developments or changes rather than trends during that time. Another three-year period of data-gathering under the third way approach would provide more accurate information on associated outcomes for workers. Still, the majority of significant policy changes and related outcomes were clearly evident within three years of National's neoliberalist takeover in the early 1990s, and these initial signature changes effectively summarised the ongoing trends. Perhaps in hindsight the same will be seen to occur under the third way.

The effectiveness of political rights in this country would also be evident with the comparison of sub-groups within New Zealand. Outcomes under the table of worker goals and measures were limited to workers as a group in New Zealand. As discussed above in chapter three, it would have been appropriate as well to do a parallel analysis on the trends and outcomes for Maori and Pakeha workers in New Zealand. The outcomes of the entire table should ideally also have taken into account the ethnic differences of all workers in New Zealanders, with the inclusion of statistics for every measure to cover New Zealand's major ethnic groups: Pakeha, Maori, Pacific Islanders, Asian. Gender measurements are also necessary, especially within ethnic groups. Wide variations in outcomes between groups (especially in the social protection area) would have indicated deficits in the delivery of social and economic rights, as well as underlying deficits in political rights and civil rights. The choice and comparison of sub-groups on the basis of culture could perhaps also provide some indication of whether cultural rights are being met, according to the extent of variations in social and economic outcomes between groups. Unfortunately it was beyond the scope of the thesis to address these issues.

#### Other limitations

Research design for the thesis presented the first major problem, focusing mainly on the statement of problems and the definition of variables. The primary issue in expressing worker goals was to find goals and measures that at least indicated a mandate from workers themselves, and in a workable form as well, rather than merely a wish-list of unrealistic and unattainable worker goals. I also wanted a focus on worker requirements beyond as well as within the workplace, so again included the broader economic and social goals along with workplace-based goals. To minimise bias in this material, I used a variety of international and local literature sources. Key-figure interviews also involved a variety of New Zealanders, either those heading representative worker organisations or with broad academic experience in labour relations, rather than with randomly-selected individuals with perhaps more subjective viewpoints.

The scope of the thesis was too great, so I focused research mainly on the New Zealand situation, as opposed to the Irish and social partnership factors. The statement of problems initially included a focus on the modes and outcomes of worker representation, which I covered instead in a reduced form under the changes to employment relations. I also concentrated on library-based secondary literature for the majority of data collection rather than on the material gathered through the in-depth interviews with key New Zealanders. The size requirements of the thesis also meant that much of the literature search material (gleaned from other studies on outcomes for workers) that supported the quantitative material had to be deleted.

Difficulties in accessing statistics required for the table of outcomes presented further challenges. Data collection for some statistics (e.g., average weekly earnings) has transferred between New Zealand's government organisations over the years, meaning that the results longer-term provide a guide rather than enabling direct comparison over the entire period. Even within organisations, data collection has changed over the years, again precluding direct comparison in some cases. The lack of continuity continues with random omission of data collection in some years, and with regular data collection for some statistics only occurring during specified years, e.g. census years. Gaining access to certain statistics was difficult, with the majority of data required not being available in the New Zealand Yearbook, especially not over the time period required or in a regular cyclic manner. Although the people concerned were generally very helpful, gaining access to data held within government organisations was not always easy, even requiring use of the Official Information Act. As an "outsider", knowing what was even available or where to access it was difficult - using the correct terminology was essential. Statistics even within one area (e.g. education) seem to be held across a variety of organisations, and basic statistics on the less popular outcomes (e.g., income equality, poverty, the real wage increase) are surprisingly not even held by government organisations. Some data simply does not exist, let alone on a longitudinal basis, and it was necessary to calculate this (e.g., real wage increases, collective bargaining coverage across the individualised and collectivised sectors). So apart from issues linked specifically to comparative and documentary research as outlined earlier on, locating relevant material was an initial and ongoing problem, especially regarding the statistics for the table of goals. It concerns me as a researcher that information such as this is not readily available to the average New Zealander.

### Further research

Based especially on the limitations of the sample criteria, there are several areas that would benefit from further research. Additional data collection on the table of worker goals and measures would be helpful during the third way regime for at least another three years, until the

next election. This data would be useful in indicating whether initial developments under the third way were short-term changes or actual trends indicative of that particular political-economic approach.

Research into the social partnership political-economic approach would be relevant in assessing the major responses to recent changes in industrialised countries. Doing a case study on a country such as Ireland (similar enough to New Zealand to enable comparison) would allow analysis of another alternative to neoliberalism and the third way. Consideration of this approach and the related policy-making, changes to employment relations, and outcomes (under the table of worker goals and measures) would then indicate whether social partnership is indeed more beneficial for workers than either neoliberalism or the third way. The relevance of this model to New Zealand's workers could also be analysed. If so, research could also involve whether partial transfer of the Irish model to New Zealand would be possible.

Also as a bicultural country in New Zealand, would be highly relevant to do a parallel analysis on the trends and outcomes for Maori and Pakeha workers in New Zealand, as discussed above. Broader research on these statistical outcomes for all of the major ethnic groups in New Zealand is also required, along with similar research focus on gender-based outcomes.

More in-depth research on worker representation would also be useful, especially if linked to developments under the three political-economic approaches of neoliberalism, the third way, and social partnership. This could include a comparison of the modes and processes of worker representation that have developed under each approach, and a comparison of the outcomes specifically linked to the various types of worker representation and political-economic approaches.

There is also an obvious need for an ongoing data collection system in New Zealand to cover the broader areas related to outcomes for workers similar to this study. Public release of these statistics on a yearly basis would ensure that they are readily available to the New Zealand's workers, as in the useful Social Report now published annually.

#### APPLICATIONS FOR SOCIAL POLICY

Policy work in worker goals and the shortfalls in related outcomes is essential. A longitudinal study that records the ongoing outcomes for workers in areas related to the table of worker goals and measures would provide a useful record of changes in policy areas affecting workers. As well as including a reassessment of employment policy, this policy analysis would need to

include the wider economic and social policies that also affect the broader outcomes for workers. Analysis of government policies needs to ensure a closer fit between initial policy objectives and actual outcomes (e.g., the current discrepancy between the promotion of collective bargaining and the reduction in same, with free riding actively encouraged even within government departments), and also to create a closer link between worker goals and policy outcomes if this is the government's intention, as is supposedly the case with the current government.

There is a lack of fit between the current third way policies which merely provide opportunities for workers to achieve their goals, and policies which ensure that certain objectives and baselines are definitely met. Policies that provide opportunities rely heavily on the resources and power of workers or their representatives to actually achieve the desired policy objectives. Either greater provision of adequate resources to workers needs to be built into such policies, or a greater use of minimum statutory legislation is essential to ensure that these objectives are met in reality. In both cases, if policy is to be geared towards ensuring definite outcomes as opposed to simply providing opportunities, policy-makers need to be clear as to which objectives are essential goals that all workers should have automatic access to.

Policymakers and workers also need to ensure that workers have an effective voice in the policy-making process. The lack of positive outcomes for workers at present and in the past seems to indicate that this is not the case. Along with employment policy, economic and social policy also needs to be geared towards meeting worker goals in a practical and achievable way. Until workers are adequately represented in the policy-making process, their goals are unlikely to be addressed in a satisfactory way.

## CONCLUSION

Although well-established and revised alternatives exist, the three major political-economic responses resulting from recent world changes have been neoliberalism, the third way, and social partnership. Free market theory is central to all three approaches, and although social partnership still provides a collective corporatist-based strategy that emphasises social cohesion, these responses nevertheless represent a rightwards shift in the political continuum. Related employment policy reflects this. Neoliberalism takes a punitive stance towards the unemployed, relying on increased competition and labour market flexibility to address unemployment. While labour market flexibility still remains central, the third way provides some state regulation, although this is mainly towards meeting business requirements. Social partnership adds

employment to the issue of competitiveness, with social pacts ensuring that unions remain involved in policy-making.

Despite greater variations within countries, similar trends in employment relations have subsequently emerged across various OECD countries. These patterns include the decentralisation of employment relations to enterprise level, increased labour market flexibility, union decline, and a greater focus on workforce skill and education development. Although the first three trends became evident during New Zealand's neoliberalist era, workforce skill development reduced during the 1990s. Under the third way though, the slight reversal of this particular trend more closely reflects international patterns. Despite the third way's promotion of collective bargaining and greater equity in bargaining power, unions are struggling to regain their former strength. While union decline has halted under this policy, a significant reversal in union density and power still seems unlikely. Decentralisation and labour market flexibility also look set to continue under this regime, in line with trends overseas.

Neoliberalist policy-making during the 1990s in particular led to major declines in the pay and conditions of workers. This was largely achieved through the decimation of multi-employer bargaining, which effectively also caused the allied union decline. This deregulation of employment relations to enterprise level increased managerial prerogative and enabled increased labour market flexibility. Growing unemployment and restrictions on worker strikes reinforced employer control over the bargaining process and outcomes. Union density and collective bargaining coverage fell dramatically, and the number of personal grievance cases (especially unjustified dismissals) rose sharply. Real wage increases dropped, income inequality and poverty levels rose (along with poverty-related illness), the gap in income relativities increased between the average wage and certain benefits/low-income benchmarks, home ownership and housing affordability decreased, and the percentage of unqualified school leavers increased. While leave provisions remained unchanged, and work-related deaths and illness fluctuated, there were some positives. The earnings gap between men and women gradually reduced, infant mortality reduced while life expectancy , and government spending on education increase slightly overall.

Although the major deterioration in outcomes for New Zealand workers certainly started during the neoliberalist years, the third way approach as yet does not appear to have delivered significantly better results than those apparent at the end of the 1990s. Most of the recent improvements in outcomes under the third way appear to be a continuation of earlier positive trends, and this also seems to be the case where negative trends have persisted. It would seem that established trends are difficult to undo, or that third way policy is inadequate in addressing

the more negative results. Although some outcomes have certainly worsened under the third way, in the best case scenarios the third way approach seems to have halted earlier declines rather than actually reversing negative outcomes in a substantial way. Where the neoliberalist approach was reasonably indiscriminate in disadvantaging workers across the board (compared to their targeting of beneficiaries), third way policy-making appears to have been most beneficial to the average New Zealander, rather than providing direct assistance to the more marginalised groups.

The overall conclusion is that outcomes for New Zealand workers under both neoliberalist and third way regimes have generally failed to meet worker goals. Current legislation requires changes in order to satisfy even the basic ILO labour conventions on freedom of association, protection of children, and health and safety. The delivery of sustainable real wage increases is still necessary, along with clawbacks in general terms and conditions of employment. Outstanding issues that require attention include unsafe/unhealthy workplaces (including workload issues), free-riding and non-inclusive bargaining, the work-life imbalance, workforce casualisation, inadequate workforce skill and education, and insecurity of employment and income. The development of a high-wage, high-skill economy that is still necessary must be linked to social protection for workers. This in turn requires the development of quality and accessible public services in education, health, housing, and social services. The development and delivery of these improvements requires input from the social partners in the policy-making process. This includes worker representatives. Their organisations in turn require more membership-driven and accessible decision-making processes, along with a wider membership base that includes not only those currently working, but the unemployed and the retired. If worker goals are to be addressed in a satisfactory way in New Zealand's policy-making process, broader social and economic rights must also be included along with those goals specifically linked to the workplace. To achieve this, the inclusion of all sectors of our society will be necessary in developing a genuinely social democratic yet effective approach that shapes rather than submits to free market neoliberalism. Adaptation of the social partnership model to the New Zealand environment certainly seems a worthwhile alternative to both neoliberalism and the third way, one that warrants further exploration in the near future.

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## APPENDIX ONE: Interviews

Gordon Anderson, Victoria University of Wellington, on Thursday 6<sup>th</sup> September, 2001.

Ian Bamber, President of the Public Service Association, on Thursday 11<sup>th</sup> October, 2001.

Sue Bradford, Member of Parliament, on Wednesday 3<sup>rd</sup> October, 2001.

Sonja Davies, on Tuesday 4<sup>th</sup> September, 2001.

Brian Gaynor, economist, on Wednesday 5<sup>th</sup> September, 2001.

Paul Harris, lecturer, University of Waikato, on Tuesday 18<sup>th</sup>, 2001.

John Hughes, lecturer, University of Canterbury, on Thursday 30<sup>th</sup> August, 2001.

Mike Jackson, National Secretary of the National Distribution Union, on Tuesday 4<sup>th</sup> September, 2001.

Syd Jackson, founder of Te Roopu Kaimaihi Maori o Aotearoa, on Wednesday 24<sup>th</sup> October, 2001.

Paul Roth, Associate Professor in Law, Otago University, on Friday 7<sup>th</sup> September, 2001.

Pat Walsh, lecturer, Victoria University of Wellington, on Friday 28<sup>th</sup> September, 2001.

Ross Wilson, President of the New Zealand Combined Trade Unions, on Monday 20<sup>th</sup> August, 2001.



## **APPENDIX TWO: Information sheet**

### **My background**

My name is Anne Harte, and I am doing this research towards my Masters degree thesis as a full-time extramural student through Massey University, expecting to submit the thesis in March 2002. I am researching the various modes of worker representation available in New Zealand, Ireland, and Italy, and the significance of these in achieving core labour standards. The supervisors for my research are Dr Celia Briar and Dr Brennon Wood, and can be contacted through Massey University as follows:

Dr Briar (06) 3505681, ext. 2815

Dr Brennon Wood (06) 3505681, ext. 2626.

You can phone me on (03) 386 0060, or email me at <anneharte@yahoo.com>.

I obtained your name to ask for your possible participation in the project through publications either by or about you. I hope to have an informal conversation with you on aspects of my thesis topic described below. Ideally I anticipate from 30 minutes to an hour for the conversation, with anything longer being totally at your convenience.

I have a Bachelor of Arts (Honours) degree in social policy and a Diploma in Business Studies, both through Masssey University. Past study focused mainly on industrial relations and employment law, and related public policy. Before this I worked in the public sector for thirteen years within health, education, and welfare, and while at Social Welfare I was heavily involved as a PSA union delegate at local and regional levels. I then had almost four years' experience as a case-worker for the Employment Service at the Christchurch Community Law Centre.

### **Masters thesis topic**

The thesis argument focuses on a determination of core labour standards; a description and comparison of the modes of worker representation at enterprise and national levels within the three countries; determination of the measures of core labour standards, plus their critical boundaries, and values for each country; analysis of the relationship between the modes of worker representation and the values of the labour standard measures; and the importance of these modes in achieving the stated core labour standards.

### **Your rights**

I am inviting you to participate in this research project, but you have the right to decline or to take part. If you agree to participate, you can withdraw at any time, or refuse to answer any particular questions at any time. You can also ask any questions about the study at any time during participation, and can have access to a summary of the findings of the study when completed. Any information provided by you is on the understanding that your name will be used only with your permission. If you have any questions about the study or your possible participation, please return the attached form and I will phone you soon. If you agree to participate, I will provide a consent form for you to sign at the start of the interview.

### **Proposed informal conversation process**

The discussion aims at getting your perspective on the topics outlined in the attached letter, and also on locating further information sources (people or documents). I hope to tape-record the conversation for easier and more accurate recall, although will not be transcribing the recording in full. Prior to final write-up and assessment of my thesis, I will send you a copy of all parts of the thesis draft in which quotes or ideas from you appear, so that you have the rights of veto and alteration. During this time, the tape-recording of our conversation will be accessible only to

me, and then destroyed after the thesis is submitted for assessment. All material from the conversation will be confidential to me and my supervisors during the drafting process, but any material you allow me to include in my thesis will be available after publication to the public through the library at Massey University. With your permission, any material used from the conversation will be fully referenced in the thesis, and your participation in this project will also be acknowledged, with your name, position, and organisation noted in the thesis.

## APPENDIX THREE: Consent Form

### ***Worker representation: modes and labour standards***

#### **CONSENT FORM**

I have read the Information Sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I understand I have the right to withdraw from the study at any time and to decline to answer any particular questions.

I agree to provide information to the researcher on the understanding that my name will not be used without my permission.

*(The information will be used only for this research and publications arising from this research project).*

*I agree/do not agree to give permission for my name to be used, subject to the conditions below.*

I agree to provide information to the researcher on the understanding that I have the right of veto before anything is published. I understand that any material then used from this conversation will be fully referenced in publications resulting from the project. I understand that my participation in this research will also be acknowledged, with my name, position and organisation listed in these publications.

*I agree/do not agree to the interview being audio taped.*

I also understand that I have the right to ask for the audio tape to be turned off at any time during the interview.

I agree to participate in this study under the conditions set out in the information sheet, especially those in the "Proposed informal conversation process".

**Signed:**

**Name:**

**Date:**



## **APPENDIX FOUR: Core questions for the taped interviews**

1. Do you think these ECS standards are "core" in the true sense, or would it be more accurate to rename them "basic" standards?
2. Which of these ESC labour standards do you think are the most essential for workers in New Zealand, especially for New Zealand workers/women/Maori/your union members?
3. Do you think any of these standards are more important than the others? If so, could you rank them in order of importance.
4. Do these chosen standards accurately represent the requirements of New Zealand workers/women/Maori/your union members?
5. Are additional or different standards also required by New Zealand workers/women/Maori/your union members in this country?
6. Which type of worker representation do you think is more useful towards setting and achieving basic labour standards for New Zealand workers/women/Maori/your union members in New Zealand: the current type/s of bargaining representation at enterprise level (including union and non-union representation), or a national approach to bargaining, such as tripartite or corporatist bargaining?
7. Do you think that the partial or total transfer of the Irish bargaining model could be useful or feasible at national level in New Zealand towards achieving these basic labour standards? If so, what would need alteration in this model?
8. How feasible or likely would it be to get approval in New Zealand now from unions, employers and the government for this national-based type of (social partnership) bargaining, and for the broader labour/social/economic standards such as the ESC ones?
9. What do you think are the strengths and weaknesses of the Irish model?
10. How is it possible to ensure satisfactory outcomes for New Zealand workers/women/Maori/your union members regarding broader worker goals, when these seem to rely on a coordinated national approach, but instead the reliance here is mostly on the enterprise-based bargaining model?
11. There's a big difference between setting basic and broader employment-related rights, and actually being able to enforce these rights in practice. How is it possible to ensure the implementation or enforcement of such rights, rather than it being just lip service?
12. The Employment Relations Act appears to be better for workers, but does it adequately promote basic labour standards such as collective bargaining in actual practice? (e.g., Do you think union membership will increase much? Will union representation for traditionally disadvantaged and casualised workers change much in reality?)
13. Do you think much will change for New Zealand workers/women/Maori/your union members under this government's employment policy, especially in terms of setting and achieving broader employment-related rights, such as the ESC ones?

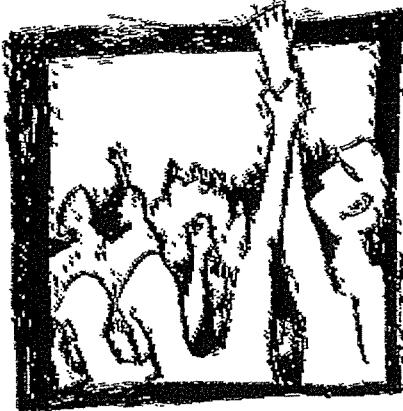


## APPENDIX FIVE: ILO Fundamental International Labour Standards

### Fundamental International Labour Standards on Freedom of Association

*The freedom of association is the most basic of all principles underlying the work of ILO and the activities of those who toil for social justice*

In addition to recognition of the principle of freedom of association in the ILO's Constitution and its Declaration of Philadelphia, two Conventions – adopted in 1948 and 1949 – set out the essential elements of the freedom of association, the right to organise, and the importance of collective bargaining.



#### **Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)**

Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities.

#### **Summary of the provisions**

*Recognition of the right to organize:* The right to organize is to be granted to workers and employers, without distinction whatsoever (Article 2). Only the armed forces and the police may be exempted by national laws or regulations (Article 9).

*Establishment of organizations:* It must be possible for organizations to be established without previous authorization (Article 2).

*Free choice of organization:* Workers and employers are guaranteed the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing (Article 2).

*Functioning of organizations:* Organizations shall be free from interference by the public authorities when drawing up their constitutions and rules, electing their representatives, organizing their administration and activities and formulating their programmes (Article 4).

*Dissolution or suspension:* Organizations shall not be liable to be dissolved or suspended by administrative authority (Article 4).

*Federations and confederations:* Organizations shall have the right to establish and join federations and confederations (Article 5); the guarantees provided in Articles 2, 3 and 4 apply to these higher-grade organizations (Article 6).

*International affiliation:* Organizations, federations and confederations shall have the right to affiliate with international organizations of workers and employers (Article 5).

*Legal personality:* The acquisition of legal personality by organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 (Article 7).

*Organizations and the law:* In exercising the rights provided for in the Convention, workers and employers and their respective organizations shall respect the law of the land; however, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention (Article 8).

## Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote and encourage collective bargaining.

### Summary of the provisions

*Anti-union discrimination:* Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, both at the time of entering employment and during the employment relationship. Such protection shall apply more particularly in respect of acts calculated to –

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours (Article 1).

*Acts of interference:* Workers' and employers' organisations shall be protected against interference by each other or each other's agents or members. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference (Article 2).

*Machinery appropriate to national conditions:* In view of the importance of the procedural aspect in ensuring the effective application of these standards, the Convention makes it an obligation to establish, where necessary, machinery appropriate to national conditions for the purpose of ensuring respect for these two facets of the right to organize (Article 3).

*Collective bargaining:* While Convention No. 98 is mainly concerned with the protection of trade unions, it is also the ILO instrument setting forth its basic principles in respect of collective bargaining: The obligation to promote this practice and the voluntary nature of such bargaining. Article 4 requires measures appropriate to national conditions to be taken, where necessary, to encourage and promote full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

*Public sector:* Unlike Convention No. 87, which applies to workers in both the private and public sectors, without distinction, and accordingly also to public servants, Convention No. 98 does not deal with the position of public servants engaged in the administration of the State (Article 6).

So fundamental is the concept of freedom of association, that ILO member States agreed in 1950 that even non-ratifying States should be susceptible to a special system of supervision for infringement of associational rights.

## International Labour Standards on Forced Labour

*The simplicity of the concept helps make it fundamental: No one shall be forced to work*

Countries which have ratified the Forced Labour Convention undertake "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period." The Committee of Experts, noting global developments and the ascension of human rights amongst the international community's concerns, many years ago understood this obligation to require immediate prohibition and suppression in practice. Hand in hand with this, the Convention has over the years been the most widely ratified of all the Fundamental ILO Conventions. Of the 174 ILO member States 151 had ratified the instrument as of 1 February 2000. One hundred forty five member States have ratified the Abolition of Forced Labour Convention, r adopted in 1957 to abolish forced labours for particular purposes. Over the years the Committee of Experts on the Application of Conventions and Recommendations have noted hundreds of specific cases of progress in the fight against forced labour.



### Forced Labour Convention, 1930 (No. 29)

This Convention requires the suppression of forced or compulsory labour in all its forms. Forced labour is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." For the purposes of the Convention, the term "forced labour" does not include such as obligations as military service; work or service which is part of normal civic obligations; work or service exacted as a consequence of a conviction in a court of law, under certain conditions; work exacted in cases of emergencies such as wars, fires, earthquakes, etc.; and minor communal services as defined. The Convention requires "really adequate" and strictly enforced penal penalties at the national level in cases of illegal exaction of forced or compulsory labour.

### Abolition of Forced Labour Convention, 1957 (No. 105)

This Convention prohibits the use of any form of forced or compulsory labour as a means of:

- political coercion or education, or punishment for the expression of political or ideological views,
- workforce mobilization for purposes of economic development,
- labour discipline,
- punishment for participation in strikes, or
- racial, social, national or religious discrimination.

International labour standards on forced labour promise to remain at the forefront of ILO standards, invoked time and again in the international effort to effectively secure basic human rights in all corners of the globe.

## Summary description of ILO Equality Conventions, Nos. 100 and 111

*In 1944, the ILO's Constitution and mandate was refreshed by the Declaration of Philadelphia. Among other things, it affirmed that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity"*

From the very first, the question of the observance of equality of opportunity and treatment has been one of the fundamental objectives of the ILO. The Constitution, as rendered in 1919, said that this principle is among those that are "of special and urgent importance" that should guide the policy of the ILO, and prescribed that "the standards set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers...." Since then, many international labour standards have been imbued with elements aimed at equality of opportunity, naming a variety of reasons for which distinctions should not be made between people in their work, livelihood, education and training. The Governing Body recognized recently again the continuing essentiality of these principles, in two Fundamental ILO Conventions.



### Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment.

The Convention assigns to each State which ratifies it the fundamental aim of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in respect of employment and occupation.

Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin (or any other motive determined by the State concerned) which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Member States having ratified this Convention undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with this policy, and to enact legislation and promote educational programmes which favour its acceptance and implementation in co-operation with employers' and workers' organizations. This policy shall be pursued and observed in respect of employment under the direct control of a national authority, and of vocational guidance and training, and placement services under the direction of such an authority.

### **Equal Remuneration Convention, 1951 (No. 100)**

Calls for equal pay for men and women for work of equal value.

States having ratified the Convention shall promote and, in so far as is consistent with the methods in operation for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

The Convention shall apply to basic wages or salaries and to any additional emoluments whatsoever, payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of his or her employment. The Convention defines equal remuneration for work of equal value as remuneration established without discrimination based on sex.

This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. One of the means specified for assisting in giving effect to the Convention is the objective appraisal of jobs on the basis of the work to be performed.

The Convention provides that governments shall co-operate with employers' and workers' organizations for the purpose of giving effect to its provisions.

In its supervision of these instruments, the Committee of Experts on the Application of Conventions and Recommendations has recognized that the achievement of favourable conditions for equality of opportunity and treatment in employment and occupation is a continuing endeavour. In their own terms, these two instruments comprehend this. Nevertheless, the road to equality has over the years been punctuated by stark examples of the need for international action against the infringement at the national level of the basic right to equality. Here, the ILO's standards have been of paramount importance as a rallying point.

## **Effective abolition of child labour: Conventions Nos. 138 and 182**

*International labour standards have for 80 years been at the forefront of the fight against child labour. The Convention with the broadest scope has been found to be Fundamental*

The ILO adopted its first Convention on child labour in 1919, the year of its foundation. Since then, nine sectoral Conventions on the minimum age of admission to employment were adopted. Two ILO Conventions on child labour are Fundamental

### **Minimum Age Convention, 1973 (No. 138)**

The States that ratify this Convention undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. One of the principal means to be taken for this purpose is the prohibition of employment or work for children under the duly fixed minimum age.



The Convention sets a number of minimum ages depending on the type of employment or work. The first principle is that the minimum age should not be less than the age for completing compulsory schooling and in no event less than age 15. For countries whose economic and educational facilities are insufficiently developed, the age can be set initially at 14.

The second principle is that a higher minimum age should be set for hazardous work. This age may not be less than 18. The Convention provides that the types of employment or work deemed to be hazardous shall be determined by national laws or regulations or by the competent authority, leaving it to the individual countries to determine the content of these activities.

Finally, in the case of light work, the minimum age can be set at 13 years, or 12 years where the economy and educational facilities are insufficiently developed.

The Convention is supplemented by Recommendation No. 146.

Convention No. 138 was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives. The number of ratifications of this Convention has been growing since the beginning in May 1995 of the Director-General's initiative to achieve universal ratification of the ILO's fundamental Conventions, although it is still fewer than other fundamental Conventions.

## Worst forms of child labour

The ILO member States took a decisive step towards liberating scores of millions of children from slavery and debt bondage, prostitution and pornography, dangerous work and forcible recruitment for armed conflict with the unanimous adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182).

The Convention applies to all persons under the age of 18 and calls for "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency." It defines the worst forms of child labour as:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour;
- forced or compulsory recruitment of children for use in armed conflict;
- use of a child for prostitution, production of pornography or pornographic performances;
- use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and,
- work which is likely to harm the health, safety or morals of children.

The Convention requires ratifying States to "design and implement programmes of action" to eliminate the worst forms of child labour as a priority and "establish or designate appropriate mechanisms" for monitoring implementation of the Convention, in consultation with employers' and workers' organizations. It also says ratifying States should "provide support for the removal of children from the worst forms of child labour and their rehabilitation; ensure access to free basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; and take into account the special situation of girls."

An accompanying Recommendation defines "hazardous work" as "work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery or tools, or which involves heavy loads; work in unhealthy environments which may expose children to hazardous substances, temperatures, noise or vibrations; and work under particularly difficult conditions such as long hours, during the night or where a child is confined to the premises of the employers." The Recommendation urges ratifying States to declare the worst forms of child labour criminal offences and impose penal sanctions on those who would perpetrate them.



## **European Social Charter (revised)**

Strasbourg, 3.V.1996

### **Preamble**

The governments signatory hereto, being members of the Council of Europe, Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

### **Part I**

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international

- organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
  7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
  8. Employed women, in case of maternity, have the right to a special protection.
  9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
  10. Everyone has the right to appropriate facilities for vocational training.
  11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
  12. All workers and their dependents have the right to social security.
  13. Anyone without adequate resources has the right to social and medical assistance.
  14. Everyone has the right to benefit from social welfare services.
  15. Disabled persons have the right to independence, social integration and participation in the life of the community.
  16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
  17. Children and young persons have the right to appropriate social, legal and economic protection.
  18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
  19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
  20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
  21. Workers have the right to be informed and to be consulted within the undertaking.
  22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
  23. Every elderly person has the right to social protection.
  24. All workers have the right to protection in cases of termination of employment.
  25. All workers have the right to protection of their claims in the event of the insolvency of their employer.
  26. All workers have the right to dignity at work.
  27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
  28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
  29. All workers have the right to be informed and consulted in collective redundancy procedures.
  30. Everyone has the right to protection against poverty and social exclusion.
  31. Everyone has the right to housing.

## **Part II**

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

### **Article 1 – The right to work**

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

## **Article 2 – The right to just conditions of work**

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

## **Article 3 – The right to safe and healthy working conditions**

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

## **Article 4 – The right to a fair remuneration**

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

- 5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

## **Article 5 – The right to organise**

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

## **Article 6 – The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

## **Article 7 – The right of children and young persons to protection**

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

## **Article 8 – The right of employed women to protection of maternity**

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

## **Article 9 – The right to vocational guidance**

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

## **Article 10 – The right to vocational training**

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
  - a. adequate and readily available training facilities for adult workers;
  - b. special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
4. to provide or promote, as necessary, special measures for the retraining and reintegration of

- the long-term unemployed;
5. to encourage the full utilisation of the facilities provided by appropriate measures such as:
    - a. reducing or abolishing any fees or charges;
    - b. granting financial assistance in appropriate cases;
    - c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
    - d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

## **Article 11 – The right to protection of health**

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

## **Article 12 – The right to social security**

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
  - a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
  - b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

## **Article 13 – The right to social and medical assistance**

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing

with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

#### **Article 14 – The right to benefit from social welfare services**

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

#### **Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community**

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

#### **Article 16 – The right of the family to social, legal and economic protection**

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

#### **Article 17 – The right of children and young persons to social, legal and economic protection**

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed

1.
  - a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b. to protect children and young persons against negligence, violence or exploitation;
  - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### **Article 18 – The right to engage in a gainful occupation in the territory of other Parties**

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;  
and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

### **Article 19 – The right of migrant workers and their families to protection and assistance**

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
  - a. remuneration and other employment and working conditions;
  - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
  - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than

- that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
  9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
  10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
  11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
  12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

### **Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.

### **Article 21 – The right to information and consultation**

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

### **Article 22 – The right to take part in the determination and improvement of the working conditions and working environment**

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organisation and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organisation of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

## **Article 23 – The right of elderly persons to social protection**

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
  - a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  - b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  - a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  - b. the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

## **Article 24 – The right to protection in cases of termination of employment**

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

## **Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer**

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

## **Article 26 – The right to dignity at work**

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

## **Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment**

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
  - a. to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
  - b. to take account of their needs in terms of conditions of employment and social security;
  - c. to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

## **Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
- b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

## **Article 29 – The right to information and consultation in collective redundancy procedures**

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

## **Article 30 – The right to protection against poverty and social exclusion**

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary.

## **Article 31 – The right to housing**

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

## **Part III**

### **Article A – Undertakings**

1. Subject to the provisions of Article B below, each of the Parties undertakes:
  - a. to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
  - b. to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;
  - c. to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.
2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.
3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.
4. Each Party shall maintain a system of labour inspection appropriate to national conditions.

### **Article B – Links with the European Social Charter and the 1988 Additional Protocol**

1. No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.
2. Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.