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**SWEDEN & NEW ZEALAND: A COMPARATIVE
ANALYSIS OF AN ALTERNATIVE TO THE
*EMPLOYMENT CONTRACTS ACT 1991***

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Philosophy in Social Policy at Massey University.

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ABSTRACT

The Employment Contracts Act 1991 (ECA) was extremely controversial when it was introduced and it remains so to this day. In fact, the future of the ECA is very uncertain. Pressures are coming to bear upon it and it is possible that key aspects will be amended, or the Act repealed, in the near future.

This thesis analyses the current industrial relations frameworks in Sweden and New Zealand. An alternative to the ECA is sought with a view to alleviating what is clearly a very imbalanced and inequitable framework. The emphasis throughout has been placed upon the social policy consequences of the application of the market-liberal/classical economic model of perfect competition to the real world.

This analysis indicates that the most notable 'achievement' of the ECA (and the application of the perfectly competitive model to real world labour market problems), in all likelihood, lies in reinforcing greater income inequality (increasing wage dispersion or widening income gaps), particularly between those in strong versus weak labour market positions. Further, it does not provide, but reduces opportunity for many and, in fact, will not achieve much that it was claimed it would, without increasing income inequality. Further, it will be argued that an ECA style framework is likely to exacerbate unemployment, particularly amongst those who comprise the secondary labour market, even in a growing economy.

Any country, it seems, which applies the perfectly competitive model will suffer such an increase in inequality. Sweden is no exception. The rising level of unemployment, coupled with more 'performance oriented' pay schemes are examples of the increasing segmentation which is taking place within the Swedish labour market. However, it will be argued that the degree to which income inequality increases is very dependent upon the level of decentralisation/individualisation, and general marketisation, that takes place. A range of factors (all discussed in the body of this thesis) is important. Of key importance here is the level of collective bargaining that is retained. Without the ability to organise and act

collectively workers are in a very weak bargaining position relative to their employer, particularly when unemployment is high.

For much of its alleged 'success', the ECA, it will be argued, relies on the coercive elements of high unemployment and employment uncertainty coupled with an imbalance of power favouring employers. Generally, should skill shortages continue and/or unemployment drop substantially, this 'success' is likely to be undermined. Increased strikes (and lockouts) may well result. Rises in such activity are already apparent.

Finally, this thesis concludes by arguing for a system of contracting which provides for a greater degree of collective bargaining. Impediments to the effective operation of such a system are indicated. Two such impediments that are discussed are the low level of union density and voluntary unionism. Further, this thesis indicates that a constant testing of the ECA framework will occur before many New Zealand workers will be able to effectively protect their interests via some form of collective bargaining.

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ABBREVIATIONS

DoL	Department of Labour.
EC (or EU)	European Community (or European Union).
ECA	Employment Contracts Act 1991.
EEO	Equal Employment Opportunities.
EFTA	European Free Trade Association.
ERNZ	Employment Reports of New Zealand.
GATT	General Agreement on Tariffs and Trade.
GDP	Gross Domestic Product.
GNP	Gross National Product.
ICAA	Industrial Conciliation and Arbitration Act 1894.
ILO	International Labour Organisation.
Kommunal	Swedish Municipal Workers' Union.
KTK	Federation of Salaried Local Government Employees.
LO	Swedish Trade Union Confederation.
LRA	Labour Relations Act 1987.
MMP	Mixed Member Proportional Representation.
MRP	marginal revenue product.

Metall	Swedish Metalworkers' Union.
NAFTA	North American Free Trade Agreement.
NAIRU	non-accelerating-inflation rate of unemployment.
n.d.	no date.
NZCTU	New Zealand Council of Trade Unions.
NZHR	New Zealand House of Representatives.
NZIER	New Zealand Institute of Economic Research.
NZILR	New Zealand Industrial Law Reports.
OECD	Organisation for Economic Co-operation and Development.
PTK	Federation of Salaried Employees in Industry and Services.
s	section.
ss	sections.
SACO	Swedish Confederation of Professional Associations (Central).
SACO-K	SACO division for Salaried Local Government Employees.
SACO-S	SACO division for State Employees.
SAF	Swedish Employers' Confederation.
SAV	National Agency for Government Employers.
SF	Swedish State Employers' Union.
SIF	Swedish Union of Clerical and Technical Employees.
TCO	Central Organisation of Salaried Employees.

TCO-S	TCO division for State Employees.
TUEA	Trade Union Education Authority.
UN	United Nations.

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CHAPTER ONE
INTRODUCTION

The industrial relations systems in Sweden and New Zealand have come under immense pressure in recent years. These pressures have emphasised a free market approach to resolving economic issues generally and, more specifically, industrial relations issues. Throughout this thesis, the social policy consequences of this approach are emphasised with regard to the industrial relations systems of both countries. Of particular importance is the potential for such an approach to increase income inequality within the workforce. This is particularly important because of the associated social consequences of increasing inequality, but also because New Zealand's experience may provide some lessons for Sweden - which is pursuing a similar policy trend to that which New Zealand has followed since 1984.

In this thesis I argue that there is a positive alternative to the 'more market' approach aimed at 'freeing up the economy'. Specifically, the thesis contrasts the Employment Contracts Act 1991 (ECA) with the Swedish system of industrial relations. Certain key themes are explored. These include: the provision of statutory minima; the existence of equity and social justice; the degree to which inequality (particularly of income) is encouraged; finally, the underlying free market principles.

The first part of this chapter describes, in general terms, the changes that have taken place in New Zealand and Sweden in the period under review. In the second part of this chapter I discuss the framework of analysis which underpins this study. Finally, I give a brief introduction to the structure of the thesis.

New Zealand and Sweden Introduced

In comparing the industrial relations systems in both countries, the period from 1982 to the present is emphasised - earlier periods are considered for the purposes of background information, but only briefly.

It should be noted that an industrial relations system may be described as a system of rules, procedures and institutions which aim to regulate and resolve conflict. For a more detailed discussion on how an industrial relations system may be described see Deeks et al. (1994: 21-29).

The period from 1982 has been emphasised as it was from this point that Swedish employers increased their criticism of centralised collective bargaining and actively sought alternatives to a centralised framework of bargaining. In 1990, the economic policy focus shifted toward containing inflation; and the 1990s are characterised by the demise of

centralised collective bargaining and the corporatist approach¹ to labour market policy. Further, a Commission of Inquiry was appointed in late 1991 with the responsibility for conducting a thorough review of industrial relations legislation (Swedish Institute, 1992d)².

In New Zealand the election of the Fourth Labour Government in 1984 brought about a dramatic shift in the focus of economic and social policy which has been continued by subsequent governments. While the Labour Relations Act 1987 (LRA) shifted away from a relatively centralised wage fixing system, this process was seen as unfinished business as far as the National Party was concerned. In 1991 this shift culminated in the ECA being enacted by the National Government of the day - despite the 1990 election result, which can be seen as a rejection of the policies of the previous six years (Vowles and Aimer, 1993). With the advent of Mixed Member Proportional Representation (MMP), in New Zealand, many of these policies may well change. There is already evidence (Anderson, 1994a and 1994b; ILO, 1994) that the present New Zealand industrial relations framework (the ECA) is unlikely to remain unaltered for much longer. In conjunction with this, it is worth noting that earlier this year MP Steve Maharey's private members bill, which, in part, proposed repealing the ECA, was narrowly defeated in parliament (45 for and 47 against) (see *The Dominion*, 1994d).

Sweden was chosen for this thesis for two reasons. First, it was chosen because a study of this type has not been done and secondly because of the increasing pressures which Sweden's welfare state has come under since the early 1980s - pressures which are similar to those which New Zealand has faced over the same period. The comparative method utilised in this thesis, and discussed in the next chapter, facilitates an evaluation of these pressures and their likely policy outcomes in the context of the industrial relations environment. This pressure has led to the encouragement of enterprise bargaining; decentralisation and individualisation of that bargaining and pressure for the removal of unions from the industrial relations process as much as possible. For example, Pestoff (1992: 233), writing of the Swedish experience, states that:

Swedish business wants to substitute concerted economic/social policy practices with market forces and to replace the politics of compromise with the politics of confrontation ...

¹ It should be noted that while the concept of corporatism is still debated, it is generally viewed as a process of policy concertation involving the integration of the State and key interest groups. Further discussion of corporatism can be found in Lehmbruch (1974, 1977 and 1979), Schmitter (1974, 1977 and 1981) and Streeck (1984), for example.

² Andersson (Personal Correspondence) notes that as of August 1994, this is still underway. While some minor changes have been introduced, the Commission is yet to complete its task. No further information was available at the time of completion.

SAF [Swedish Employers' Confederation] repeatedly demands that all forms of industrial negotiations and regulations be replaced by market forces.

The support of New Zealand employers has been sought in advocating a decentralised, market-driven system for Sweden (Harris, 1993a). A delegation of Swedish employers visited New Zealand in February 1994 at which time, in a Radio New Zealand interview, Goran Tunhammer, Chief Executive of the SAF, confirmed SAF's support for the types of policies followed here (Tunhammer, 1994). In particular, he acknowledged the Reserve Bank Act and the ECA as being of central importance to the overall types of changes that had occurred in New Zealand and those which the SAF would like to foster in Sweden. Further, he indicated the need for economic pain to achieve the gains of the free market economy, implying that all would share in the economic gains.

At the beginning of the reform process, Douglas (1984: 25) stated that "there will be pain for some and benefits for others, but it is essential to focus on the overall strategy". New Zealanders were told that the pain of this strategy would bring gains in the long-run; that the nation would develop into a much stronger and more competitive economy with higher levels of employment (Douglas, 1984). The promised higher levels of employment have not eventuated. After ten years of this approach the levels of unemployment are higher now than they were in 1984. While unemployment has been declining recently, there does not appear to be much prospect of unemployment declining to 1984 levels in the foreseeable future (this is discussed in more detail later in this thesis). Additionally, it will be argued that unless employers decide to share some of the productivity gains with their employees or government alters its welfare policy substantially, income gaps are likely to continue widening in the near future.

It should be noted that some of the policy goals have been achieved. Specifically, productivity has improved and inflation has dropped to the point where it is now between 1-2 percent, per annum. Nevertheless, as will be described later, these 'improvements' appear to have been achieved arguably without real benefit to many New Zealanders. One of the major costs of these policies seems to be an institutionalisation of high levels of unemployment coupled with a lowering of the standard of living for many New Zealanders. Such outcomes are already evident in Sweden. For example, rising unemployment is already in evidence there.

The restructuring of economic and social policy that has taken place in New Zealand since 1984, aimed to improve the country's competitiveness; reduce public debt; improve productivity (and efficiency); and facilitate growth and employment (see, for example, Douglas, 1984; Treasury, 1984; Harris and Levine, 1992: 199-206). Recent changes in Sweden

have the same fundamental emphases (OECD, 1990, 1992a and 1994a; Swedish Institute, 1991b).

The policies that have been pursued by both the National and Labour governments, since 1984, have had some common elements. These policies broadly emphasise a minimal role for the State in the economy and in the provision of welfare; a removal (or reduction) of restraints on trade and prices; an overall emphasis on reducing inflation and the use of tight monetary policy as the main policy tool (Treasury, 1993, 1990, 1987 and 1984; Douglas, 1984; Bolger, 1990; Sinclair, 1991). This policy approach may be described as *laissez-faire* monetarism. Since the late 1980s particularly, Sweden has pursued a similar macroeconomic strategy. The Swedish Government has adopted flatter tax rates, shifting their emphasis to consumption taxes; reduced benefits; and altered the emphasis in economic policy from one of full employment to one of price stability (OECD, 1990, 1992a and 1994a; Swedish Institute, 1991b).

This process of restructuring is based upon the belief that a free market system is the only option available to New Zealand and Sweden, in order to overcome the economic and social difficulties of recent years. This view can be challenged from a number of perspectives. For example, Lane (1991) indicates how poorly the free market achieves social goals. Additionally, Brosnan and Rea (1991) indicate how real world economic factors may impede the optimal market allocation of labour resources and thus enhance income (and social) inequality. These and other issues are discussed in more detail later in this thesis.

Sweden and New Zealand are similar in a number of respects. Both are small countries with highly export oriented economies. For example, in 1990 exports comprised 21.7 and 25.2 percent of GDP for New Zealand and Sweden respectively (OECD, 1994a)³. New Zealand's performance on the broad economic aggregates of inflation, unemployment and GNP growth depict similar trends (OECD, 1994b, in Appendices). Further, both countries, historically, at least, have shared a reputation as providing an alternative to the *laissez-faire*, free market economy (Davidson, 1989). However, there are significant differences. Sweden is highly industrialised, exporting a wide range of value added products (Swedish Institute, 1991b; Kjellberg, 1992; OECD, 1994a) while New Zealand is still heavily dependant upon its primary sector for its wealth (OECD, 1993; Statistics New Zealand, 1993a, 1994b, 1994e).

The industrial relations system in Sweden is similar, in some respects, to that which now exists in New Zealand. Nevertheless, there are many differences. The main differences

³ The valuations of GDP that these percentages are based on are in terms of current prices and exchange rates expressed in American Dollars.

that exist between the current New Zealand and Swedish system is that of strong union representation and a legislative emphasis (and predominance) of collective bargaining. The future of the union movement (and the present legislative framework) in Sweden is uncertain given the increasing pressure from employers for change; the recent economic policy shift and the changes that were made under the conservative coalition government (comprising the Moderates, the Centre Party, the Liberal Party and the Christian Democrats). However, as discussed later, the September, 1994, Swedish elections have seen the conservative coalition government rejected in favour of the Social Democrats; a Party with traditional links to the union movement.

In Sweden, the continuation of collective bargaining, strong unions, extensive labour market policies, and an historical commitment to full employment combines a number of factors which may well militate against the extremes of policies (and outcomes) that New Zealand has experienced. However, this assumes a degree of commitment to these factors which may not last in the face of continuing pressure from employers, further internationalisation of the Swedish economy and continuing structural change.

FRAMEWORK FOR ANALYSIS

In seeking an alternative to the ECA, and challenging the 'more market' approach that it embodies, there are certain assumptions underpinning this thesis. This part of the introduction aims to make these assumptions as explicit as possible. Before commencing this discussion, however, it should be noted that at the time of completion the International Labour Organisation (ILO) had just released its final report on ECA. The reference ILO (1994) refers to the interim ILO report and the associated comments throughout this thesis are based upon this report.

A fundamental assumption underpinning this thesis is that the basic principles of an industrial relations framework are not being adhered to. The interim ILO report (for details see ILO, 1994; NZCTU, 1994b; Anderson, 1994b), which responds to the New Zealand Council of Trade Unions (NZCTU) complaint, alleging that the ECA violates ILO Conventions 87 and 98 (NZCTU, 1993a and 1993b; ILO, 1994), tends to support this view.

Later in this thesis I also consider the evidence that in the short time that the ECA has been in place, it has had a dramatic, and negative, effect upon the wages and conditions of employment of many workers. It has, in effect, reinforced greater income inequality (and

labour market segmentation⁴) - trends which became apparent in the mid 1980s and which were exacerbated with the 1987-88 tax cuts and the 1991 benefit cuts.

The discussion in the following chapters indicates that the emphasis on enhancing efficiency (and production) is narrowly conceived, and does not take full account of the costs of unemployment and underemployment (as described in NZCTU (1994c) this refers to part-time, casualised work). In this thesis the wider consequences of such policy are explored.

A number of other aspects feature in the analysis in this thesis. It is to these that I now turn.

Social policy has been defined as:

the rationale underlying the development and reproduction of social institutions that determine the distribution of resources, status and power between different groups in society. Social policy determines the creation, distribution and reproduction of social welfare (and diswelfare). (Walker, 1984: 39-40. Emphasis in original)

Therefore, when analysing the industrial relations systems in Sweden and New Zealand emphasis will be given to the rationale underlying the various systems. Whose welfare (and diswelfare) is increased will be highlighted. In particular patterns in the distribution of income within society that accompany particular policy prescriptions will be studied.

Any system of industrial relations can be recognised as having three prime aims:

- (1) to facilitate, on fair and equitable terms, the interests of workers and employers, as best as is possible;
- (2) to protect workers from exploitation by legal, covert or overt means; and
- (3) to facilitate the resolution of conflicts fairly; as quickly as possible and with as little disruption to the parties concerned.

⁴ This refers to the division of the labour market into primary and secondary sectors, with the former doing well and the latter poorly. The primary labour market is characterised by relative employment stability; good opportunities for occupational advancement; good working conditions; often the presence of a strong union; and high wage rates (McConnell and Brue, 1989; Ehrenberg and Smith, 1991). The secondary labour market displays the opposite characteristics: employment tends to be unstable; opportunities for advancement are poor or nonexistent; working conditions are poor; unions are weak or nonexistent; and wages tend to be low (McConnell and Brue, 1989; Ehrenberg and Smith, 1991). Finally, those in the secondary labour market tend to bear the burden of unemployment.

Furthermore, in reference to the legal framework of industrial relations, Anderson and Walsh (1993: 164) state that:

Any system of labour law in a democratic society should, to the greatest extent possible, protect three fundamental rights of workers - the right to organise collectively, the right to bargain and the right to strike.

As a member of the ILO, New Zealand is considered bound by ILO Conventions 87 and 98, although these have never been ratified by New Zealand. Convention 87 covers Freedom of Association and Protection of the Right to Organise; Convention 98 covers the Application of the Principles of the Right to Organise and to Bargain Collectively (refer UN, 1994 and ILO, 1992).

When introducing the ECA, the then Minister of Labour, the Rt. Hon. Bill Birch, indicated that with the passage of the ECA it would be possible to ratify these Conventions. But, in fact, ratification has not yet occurred. The NZCTU has argued that the ECA breaks those Conventions and subsequently complained to the ILO. The interim ILO report indicates that to ratify these Conventions the Government will, at least, have to amend the ECA in a number of areas (NZCTU, 1993a, 1994b; ILO, 1994; Anderson, 1994b).

For the purposes of this thesis, the three aims, in conjunction with ILO Conventions 87 and 98 serve as a benchmark for evaluating industrial relations systems. In examining the New Zealand industrial relations system consideration will be given to the extent to which the ECA meets these goals.

The discussion so far has presented some background material and commented upon a number of aspects which underpin the analysis in this thesis. For ease of discussion the thesis has been divided into a total of six chapters (including this introduction). Chapter Two discusses the methodology. Chapter Three discusses the ECA and its effects. Chapter Four discusses the legislative framework in Sweden; the developments that are taking place there and draws a number of parallels with New Zealand. Chapter Five presents a critique and comparison of the theoretical underpinnings of the ECA. It is argued that there are common influences and developments in Sweden and New Zealand. Finally, Chapter Six concludes by arguing for collective bargaining and presents an alternative to the ECA.

CHAPTER TWO

THE COMPARATIVE METHODOLOGY

Recent developments in Sweden involve moves to reform industrial relations policy in that country along enterprise based lines, similar to those embodied in New Zealand's Employment Contracts Act 1991 (ECA). An objective of this thesis is to examine the approaches to industrial relations policy in these two countries given the moves in Sweden to apply more market forces. In studying the two frameworks the thesis draws on the comparative method. This chapter discusses the features of comparative policy study, which is a prominent methodology in the discipline of social policy (Dierkes et al., 1987; Castles, 1989; DeSario, 1989; Shaver, 1990; Harrop, 1992). The discussion commences with a brief overview of the comparative methodology. A discussion of the strengths and weaknesses of the methodology is then entered into and is followed by a brief summary of some of the different approaches which may inform comparative policy analysis. Finally, a brief introduction to the way in which this method is utilised for studying the Swedish and New Zealand industrial relations systems within this thesis is provided.

METHODOLOGICAL DISCUSSION

A Brief Overview

In the field of social policy, comparative methodology is a specific approach used to analyse social policy options. It involves the description and explanation of differences and similarities within and between countries. Heidenheimer et al. (1990: 3. Emphasis added), state that this type of analysis asks "*how, why and to what effect* different governments pursue particular courses of action or inaction" - that is, how, why and in what ways do the actions or inactions of different governments impact upon societal welfare and diswelfare.

Over time a range of techniques has been used to make comparisons of policy frameworks, often cross-nationally. Comparative analysis uses material from more than one discipline (Heidenheimer et al., 1990) and tends to rely on available primary data subjecting it to secondary analysis.

Harrop (1992: 5) states that most comparative studies "fall into one of three categories: case studies ..., statistical studies (based on many cases), or focused comparisons (based on a few cases)". Further, while case studies are not comparative in themselves they provide much of the data for comparative analysis (Harrop, 1992). Statistical studies typically seek to explain why countries vary in their patterns and degree of public expenditure (Harrop, 1992). Focused studies fall between the previous two types, compare a small number of countries or sectors and generally compare one sector in two countries (Harrop, 1992).

Harrop (1992: 8) notes that focused studies:

remain sensitive to the details of particular countries and policies while retaining some ability to test explanations. But their explanatory power is limited. If two countries have a similar policy, the explanation almost certainly lies in some other similarity between them - of which there will be a large number. However, in practice comparison of even a small number of countries and/or sectors does seem to enhance understanding, whatever the methodologists may say about the limitations of such a sample. Focused comparison is therefore a useful technique, and one which is as suited to student projects as to professional monographs.

This thesis can best be described as a focused study although it does not seek to make a comparison by holding variables constant.

Strengths & Weaknesses

Comparative social policy analysis, like all methods of analysis, has a number of strengths and weaknesses. The strengths of this methodology are as follows. It facilitates the acquisition of similar¹ types of knowledge to the classical experimental method. It also assists in theory building and testing. Further, it helps determine the relevance of different theory structures and policy approaches to different social environments. It helps to increase our understanding of likely policy outcomes i.e. it facilitates prediction - from both similar and different policy regimes within (i.e. over time) and between countries. Our understanding of similar/different types of policy implementation and formation processes is improved. It helps countries avoid making the same mistakes as others and it provides alternative policy options. By increasing understanding of the policy options, processes and outcomes, individual and community participation in the development of social policy specifically, and policy generally, may increase. It enhances our understanding of the increasingly interdependent nature of the world in which we live. Performing cross-national studies enables us to identify "fashions" (Higgins, 1981: 14), that is, we can determine trends between countries and over different time periods. Finally, it "encourages a distinction between the general and the specific" (Higgins, 1981: 12) thus facilitating generalisation.

¹ I use the word *similar* because of the difficulty in effecting a situation in the 'real world' exactly like that which would occur in an experimental situation in the natural sciences. Social scientists cannot perform experiments on a societal level to obtain this type of knowledge, nor can they control all exogenous variables when assessing policy, hence comparing similar/differing real world situations assists in acquiring *similar* knowledge. It should be noted that this creates the need for the researcher to use their own judgement to a larger degree than would seem to be the case in a natural sciences experimental situation.

The weaknesses of this methodology may, generally, be encapsulated under two broad headings. First, isolating variables from the large number of issues that impinge upon a given question or problem is very difficult. Second, the availability and comparability of data is often limited for a range of reasons (political and cultural factors being two examples). The following discussion expands on these issues in relation to this study.

When observing phenomena on a societal level, it is impossible to perform experiments in the classical mould in which extraneous variables are controlled. The best method for obtaining information of a similar nature is that of comparative analysis. The 'real world' provides a variety of societies/countries which can be compared to determine the likely effect of various policies. However, ultimately the researcher(s) must use their own judgement in assessing: the information in front of them to determine cause and effect relationships; which variables are unimportant to the results; and how much to narrow and specify the focus of the study. Thus, the researcher(s) must make a variety of assumptions (for example, *ceteris paribus* - holding variables constant). These assumptions should be stated clearly as a normal part of any piece of research as they are an important aspect in determining the outcomes of the research and its veracity. Any critiques of studies can then clearly focus upon the underlying assumptions to correct any errors and improve upon the knowledge base.

Data that is important to the study of some phenomena may not be gathered in some countries or it may be gathered in such a haphazard manner as to be virtually useless. Some countries may restrict access to data by their own citizens and foreign nationals making effective national and cross-national comparisons extremely difficult. Additionally, data series within countries may be stopped or changed in such a way as to make comparisons over time more difficult. Any such difficulties should be explicitly stated in comparative policy studies.

Further, policy analysts must be careful when generalising conclusions across national borders. Cultural norms may vary greatly restricting the ability to generalise in this manner. In conjunction with this, the meaning/perception of concepts often varies across borders, sometimes quite subtly. When undertaking cross-national studies researchers need to be aware of these differences and should clearly define concepts pointing out any differences that may exist between the countries that are being studied.

The narrowing of studies is a very difficult issue to resolve. While breadth of scope is required so too is clarity of focus and purpose. Castles (1989) notes that earlier studies tended to be historical in nature and were overly specific and overly determined. His basic

argument here centres on the fact that studies of this type tend to ignore many factors that are of relevance to the policies being assessed. He also claims that such studies, although they may attempt to generalise their findings, do not facilitate much generalisation. Most, including Castles (1989) and Heidenheimer et al. (1990), support the need for a clear focus in a study. A clear focus helps to make the study in question manageable.

Ultimately, the ability of the comparative methodology to assist countries in avoiding the mistakes of others is dependant upon the receptivity of policy makers to certain views and the advice of policy analysts. Additionally, cross-national differences and the contextual origins of policies are important in determining the efficacy of policies cross-nationally (for example, see MacPherson, 1987). Hence, comparative social policy analysis would seem to require that policy analysts indicate any differences that they feel may exist that would affect the operation of the policy in a different environment.

Approaches

When undertaking comparative social policy research, a number of different approaches may inform the analysis and may be used to explain how and why policies developed as they did in various countries. This is a summary of some of these approaches; it is not exhaustive and nor are these categorisations mutually exclusive or standardised. Often, for example, authors appear to describe similar concepts differently.

Ginsberg (1992) states that there are three approaches to social policy analysis: the idealist, the sociological and the economic. The idealist view posits that the welfare state, and by implication social policy, has been formed by a clash of ideologies from which has emerged a consensus. The sociological approach essentially sees social policy as dealing with the problems of order, social integration and social discipline in industrialised societies. The economic approach sees social policy as subservient to economic policy and economic issues.

On the other hand, Heidenheimer et al. (1990) state that there are six approaches that have informed policy analysis during the last three decades. These approaches are: socioeconomic theories; the cultural values approach; the party government framework; the political class struggle model; the neo-corporatist framework; and finally the institutional-political process. The socioeconomic theories approach essentially argues that different countries approach the issues of economic development and social modernisation with similar policies (Heidenheimer et al., 1990). As time progressed it became clear that the development within different countries did not follow strictly similar paths and a number of new approaches arose in response to the criticisms of the

socioeconomic models. The cultural values approach emphasises the importance of cultural values and history in the development of institutions, ideas and policy responses in nations. The party government framework argues that policy responses are a function of the governments that are in control at a given time. The political class struggle model, a variant upon the previous model, emphasises the struggle between workers and capitalists. The neo-corporatist approach focuses upon the linkages between the various interest groups in society and their association with government via institutionalised bargaining. The institutional-political concept argues that policies are a result, essentially, of internal government and political pressure. This contrasts, it seems, with the models noted earlier that tend to emphasise external forces.

Finally, Adams and Winston (1980: 8) state that:

the literature on comparative policy analysis has focused primarily on the central question whether government policies are better explained by features of the political system or by the economic and social environment in which government operates.

That is, whether policies primarily result from internal (political forces) or external factors (a nation's wealth).

The predominant factors that are considered in establishing policy can be divided into two very broad groups as Adams and Winston (1980) have done, that is, internal and external factors. However, it should be emphasised that any categorisations are inevitably going to be relatively arbitrary and that none of them can stand alone as a complete explanation of the policy process in any country. There are linkages between many factors and the policies that result (for example, the political processes and systems in a country are, in part, a function of the culture of that country). It seems clear that there are many different variables which may be focused upon in an attempt to explain the formation and implementation of policies. It also seems clear that as time has gone on policy analysts performing comparative studies have moved away from seeking single-factor answers to questions and are attempting to seek more diverse multi-factor answers (Heidenheimer, et al., 1990).

This study comprises a focused comparison of the Swedish and New Zealand industrial relations systems. It seeks to go beyond an empiricist approach and highlights the theoretical underpinnings of the developments in New Zealand and Sweden, comparing and critiquing the changes on the basis of empirical evidence. The comparative methodology

has been utilised within this thesis to assess the more normative aspects of the developments in both countries in relation to their respective industrial relations frameworks and thus indicate what that implies for equality and equity within an industrial relations environment. From this an alternative to the ECA has been proposed which aims to encourage greater equity within New Zealand's industrial relations system.

This study uses publicly available statistics, legislative documents, research by others, empirical data such as employment case law and submissions, and, anecdotal information such as media reports. Further, policy statements such as the Treasury's (1984, 1987, 1990 and 1993) briefing documents to incoming Governments, the Reserve Bank's *Monetary Policy Statement* and the Swedish Employers' Confederation's (SAF's) *Free Markets and Free Choice: SAF's vision for the nineties*, are also examined. Further, a range of data covering such aspects as union density, unemployment and inflation are utilised throughout this study. To account for the weaknesses of many of the individual data sources several different sources (or measures of a given phenomena) have been used, where possible.

Chapter Three commences this comparison with a discussion of the current New Zealand industrial relations system.

CHAPTER THREE

**THE CURRENT NEW ZEALAND INDUSTRIAL RELATIONS
SYSTEM**

This chapter discusses the Employment Contracts Act 1991 (ECA) and its impact and effect on stake holders within the New Zealand workplace. It commences with a brief overview of the developments leading up to the ECA. Following this, the Act and the modifications that it makes to the industrial relations framework are discussed. Finally, an overview of the impact of the ECA is presented.

Briefly, the overall effect of the ECA has been to increase variation in wages and conditions of employment within the labour market (that is, increase labour market segmentation) with those in strong bargaining positions being able to 'negotiate' agreements to their advantage.

AN OVERVIEW AND ANALYSIS OF DEVELOPMENTS LEADING TO THE ECA

While the industrial relations system had been greatly modified since the inception of the Industrial Conciliation and Arbitration Act 1894 (ICAA), until 1991 the main principles essentially remained unchanged (Brosnan et al., 1990). In introducing the Employment Contracts Bill into the House, the then Minister of Labour, the Hon. Bill Birch (1990: 478) stated that "the purpose of the Bill is to establish an entirely new framework for industrial relations in New Zealand". The ECA reformed the industrial relations system as no other piece of legislation had done since the ICAA.

The industrial relations system prior to the ECA was one in which employers, employees and the State all played a part. This system accepted the need for unions and primarily recognised collective interests. According to Walsh (1992), the system of industrial relations prior to the ECA also recognised the need for trade-offs between competing policy goals such as equity, efficiency and industrial stability.

Three concepts - conciliation, arbitration and collective bargaining - were central in facilitating the settlement of disputes, prior to the ECA.

Prior to the ECA collective bargaining involved an employer, or employers negotiating with a union or unions, who represented the interests of a group of employees. Brosnan et al., (1990: 179) state that "for almost all workers in New Zealand, collective bargaining is the only significant opportunity to influence their employment conditions".

Conciliation involved the settling of disputes between union and employer representatives in formal discussions in the presence of an independent chairperson. Either party may have called for the dispute to be settled in this manner. Typically unions created disputes of interest and were the applicant before the councils. This process of conciliation, prior to the ECA, had been around in some form since the advent of the ICAA.

If a dispute was not resolved by conciliation, the next step was arbitration. Arbitration, in part, involved the State stepping in and forcing an agreement. Up to 1984 the arbitration process had been compulsory for employers and voluntary for unions. The introduction of the Industrial Relations Amendment Act 1984 made the arbitration process voluntary for both parties.

The removal of compulsory arbitration by Labour in 1984 hinted that further substantial labour market reforms were to come (Walsh, 1992). The Labour Party's 1984 election manifesto, as described in Harris and Levine (1992: 179), provides an indication of the type of framework that they would support:

Labour is committed to negotiating a new system for determining prices and incomes with the trade union movement and employers. Immediately upon becoming government, Labour will initiate a conference of sector and interest groups to consider and reach agreement on the precise features of a prices and incomes policy.

The incomes policy will:

- (a) Establish permanent and formal machinery for income determination, including major participation from trade unions, employers and government. Full economic information will be provided to all parties.
- (b) Provide for annual wage adjustments aimed at maintaining real disposable incomes - taking into account changes in taxation, increases in productivity and the social wage provided by way of government assistance for such matters as health benefits.
- (c) Allow for collective bargaining, within guide-lines between employers and trade unions.

Thus, when the Labour Relations Act 1987 (LRA) was introduced, the tradition of the ICAA: protection of the weak and assistance with the development of unions in return for controls on industrial action continued. According to Boxall (1987: 5), the key themes of the LRA were "equity, flexibility and sanctity". Equity in the LRA was facilitated by continuing to recognise unions. Such recognition takes account of the natural conflict that exists between the interests of the employee and employer as well as their unequal power

positions (Boxall, 1987). Flexibility was stimulated by encouraging unions and employers to negotiate agreements that were more suited to the circumstances of particular firms and industries. Greater sanctity of agreements was encouraged in two ways, first by making the parties to an agreement responsible for enforcing it; and second by requiring that agreements could not be revised prior to their expiry date unless "a genuine new matter has arisen" (Boxall, 1987: 5).

It took sustained pressure from organisations such as the Treasury, the New Zealand Employers' Federation and the New Zealand Business Roundtable, as well as the election of a National Government in 1990, before the ECA - and the "bargaining system organised around market power" that Walsh (1992: 59) talked about - came into full effect. The Treasury (1984: 239) argued that:

The medium term objective of any reform to the system of wage fixing should be to engender greater flexibility ...

Clearly, the concept of flexibility is pivotal to the labour market/industrial relations reforms, and for the Treasury the effects of greater flexibility are described thus:

Greater flexibility may mean that the real wage for some groups in the labour market will fall, at least in the short run. At the same time, market conditions for a particular skill, occupation or industry may drive up the real wage for other groups. There is no single price for labour. The labour market is a structure of submarkets each relating to a particular skill or occupational group. Because each of these submarkets may at any point face unique supply and demand conditions, there is no reason why their respective wages should move at the same rate or even in the same direction. *The resulting wage differentials are fundamental to the market processes* which allocate the available supply of labour among skills, occupations and activities ...

Greater flexibility may lead to wage outcomes for some people which are incompatible with the community's objectives in relation to an equitable distribution of incomes and social justice. (Treasury, 1984: 240. Emphasis added)

Given the evidence presented later in this chapter, this last statement is unquestionably correct. Despite this, and despite briefly acknowledging that:

Fundamental reform, associated with changes in benefit policies which improve incentives to work, may put downward pressure on real wages for some workers (Treasury, 1990: 157),

The Treasury (1990: 157) argued for pushing the "responsibilities for labour relations down to the level of individual workers and enterprises".

As a further example the type flexibility that was desired, the President of the Employers' Federation argued that no minimum conditions of employment were necessary because they prevented reinvestment (New Zealand Employers' Federation, 1989).

The controversy which currently surrounds the ECA - the conflict between the goals of equity and efficiency - reflects the debate that occurred at the time of the Employment Contracts Bill's introduction. For example, in submissions on the Employment Contracts Bill, organisations such as the New Zealand Business Roundtable and the New Zealand Employers' Federation encouraged and promoted change on the basis of increased labour market flexibility, the potential for improvement in cooperation, productivity and growth (and employment). On the other hand, unions, some academics, many church, and other community organisations, and workers protested against the Bill (lobbying government and marching in the streets). The Act was seen by these people as threatening unions and working conditions and increasing division within the workforce (and society generally). The following, from an article by W. P. Reeves, encapsulates many of the fears expressed by these individuals and groups:

The private owner of the means of production ... is not typically a philanthropist, certainly not to his own employees from whom he is interested in extracting the highest effort for the least payment in order to maximise his profits or otherwise meet the competition which today, in government's passion for free trade, can mean competing with dumped goods from low-wage economies. The disposition of employers, therefore, will be to hold wages to a minimum, and Mr Birch proposes to facilitate this by virtually dismembering the union movement. (Reeves, 1991: 6)

These protests had little effect and the Act passed into law on May 15, 1991.

The ECA gives primacy to promoting labour market efficiency - subordinating other policy goals (equity, for example). For equity (or fairness) to exist within an industrial relations framework, a balance of power, as alluded to by Boxall (1987) and Brosnan et al. (1990) above, needs to exist between employee and employer. If one party has a disproportionate industrial strength, settlements can be obtained with little or no negotiation. Imposition of

a settlement by the stronger party (the employer) is then likely to take place with little or no consideration for the concerns of the other party (the employee). This is neither fair, reasonable or equitable and may well be detrimental to efficiency goals (discussed further later in this chapter, and in chapters five and six).

The ECA emphasises individual rights and freedoms; it does not recognise unions, preferring to refer to those who represent workers by the generic term 'employee organisations'. Further, it can be argued that the role of the State has been reduced to one of: (a) providing, via the Act, a system that is characterised by voluntarism; and (b) continuing to maintain law and order within this system via the institutions of the Employment Tribunal and the Employment Court.

It is important to emphasise that while the ECA substantially breaks with traditional industrial relations policy, it is by no means a legislative aberration. The ECA is a consistent application of a policy trend which, since 1984, has aimed to reduce State involvement within markets and increase the capacity for market forces to operate as freely as possible. While it is reasonable to assume that it is unlikely that the ECA would have been introduced had Labour been re-elected in 1990, it is also arguable that had Labour not followed the direction that it had since 1984 the introduction of the ECA would have been far more difficult than it was (O'Brien and Wilkes, 1993). O'Brien and Wilkes (1993) argue that there are two key ways in which the changes of the Labour Governments from 1984 paved the way for the changes of the 1990 National Government. First, they argue that the focus on limiting the role of the State, the efficiency of social security delivery and operation, targeting and deficit reduction created the environment in which these concerns dominated social security thinking and understanding (O'Brien and Wilkes, 1993). Secondly, the approach taken by the Labour Government created an environment which meant that Labour was unable to provide an effective resistance to the cuts in benefits, when in opposition (O'Brien and Wilkes, 1993). Further, with regard to Labour's response to National's industrial relations reforms O'Brien and Wilkes (1993: 172) point out that the:

... Labour opposition to this change was stronger than it was in relation to the benefit cuts ... however, the Labour Government's constant stress on individualism, individual choice and freedom could be 'logically' extended to the labour market.

Having sketched the backdrop to National's industrial relations reforms, I now move to examine the legislation.

THE ECA: CONTENT & COMMENTARY

There are seven key parts to the ECA. Part 1 establishes the concept of freedom of association and sets a framework for its application within the labour market. Part 2 sets the labour market bargaining framework. Part 3 establishes the framework for resolving personal grievances. Part 4 establishes employment contract enforcement procedures and the framework for resolving disputes. Part 5 establishes the legality (or illegality) of strikes and lockouts. Part 6 establishes the institutions which will enforce employment contracts and adjudicate in disputes. Finally, Part 7 incorporates a number of miscellaneous provisions.

Before commencing the discussion of the ECA, it should be noted that research on the impact of the ECA is constrained by the Act itself. Section 20(4) of the Act states that "every collective employment contract shall be in writing". Those on individual contracts are required to request a written copy of the employment contract at the time it is entered into (s 19(5)). Regardless of this, employers are obliged to provide employees, "as soon as practicable" (s 19(6) and s 20(5)), with a written copy of their employment contract (individual or collective) upon request. Further, collective contracts involving twenty or more employees are required to have copies lodged with the Secretary of Labour (s 24(1)). However, because there are no enforcement mechanisms or penalties for non-compliance established within the Act, compliance with this section of the Act relies very much on the goodwill of employers¹. Additionally, no such requirements are set for those on contracts (collective or individual) covering less than twenty employees. Effectively this makes thorough research for a large proportion of the New Zealand labour force virtually impossible. It moves the foundation for much of the debate on these issues into the arenas of conjecture and inference, in the short-term, at the very least.

The promotion of labour market efficiency is the aim of the ECA. Other functions² of the Act are subordinate to this purpose and are aimed at reinforcing the efficiency objective. Wider policy goals are seen as subservient to economic issues, in terms of this Act. Subsequent sections of this chapter emphasise the social policy implications of the

¹ Compliance issues are discussed in DoL (1994). The information presented indicates that, in the year to February 1993, compliance declined. The lodgement of large collective employment contracts (those binding twenty or more people) dropped from 37 percent to 29 percent of all such contracts while the proportion of all employees covered by these types of contracts dropped to 60 percent, from 76 percent (DoL, 1994). The measures taken by the Industrial Relations Service to improve this situation - increased publicity and a direct mail-out to certain employers - has seen the "current lodgement rate more than triple" (DoL, 1994: 3. *Emphasis added*). Continued monitoring and action such as this by the Industrial Relations Service would seem necessary if the lodgement rate is to be improved.

² Facilitating adequate mechanisms to prevent exploitation, for example.

approach embodied in the ECA. The examination of the ECA commences with a discussion of efficiency.

Efficiency

As noted, the objective of the ECA is to promote an 'efficient labour market', yet the Act does not specify what is meant by 'efficient'. To date this goal of the ECA has not been discussed in any depth in the literature on the Act. However, it is often alluded to. For example, in a review of cases relating to the ECA, Kiely and Caisley (1993: 67-68) state that "the 'efficiency' referred to is obviously 'economic efficiency' in terms of conservative [neo-classical] economic theory". However, no further clarification is offered.

There seems to be an assumption that the meaning of efficiency is clearly understood. However, different uses of the term exist. Many non-economists and lay people define efficiency in terms of productive efficiency. Additionally, employment case law has emphasised productive efficiency:

The plain ordinary meaning of "efficient" is "productive, with minimum waste or effort" "(of a person) capable; acting effectively". (NZALPA v Mount Cook Group Ltd [1992] 3 ERNZ 355 at p 409)

Even economic conceptions of efficiency vary. Easton (1989b) notes that The MacMillan Dictionary of Modern Economics (3rd ed) emphasises the non-standard use of the term (efficiency) and does not define it.

Interestingly, the submissions on the Employment Contracts Bill, rarely discussed, or defined efficiency. Those that did (for example, Foodtown and Kathy Drysdale) referred to productive efficiency.

Generally, however, the debate leading up to the ECA indicates an emphasis on productive and allocative efficiency. Productive efficiency can be defined as the production of a given output at the lowest possible cost given known technologies and resource prices. Allocative efficiency can be defined as the allocation of existing stocks of resources and technical knowledge to produce the collection of goods and services that buyers value most highly as indicated by their willingness to pay (Easton, 1989b; Greer, 1989).

Efficiency involves a responsiveness to market conditions, in other words, flexibility. Meulders and Wilkin (1987) propose four forms of flexibility generally: wage, numerical, technical-organisational and working time flexibility. Wage flexibility involves the

ability to adapt wages and salaries to an employees performance or to cyclical changes within the economy. Numerical flexibility refers to the adapting of work volumes in response to structural or cyclical changes in demand. Included in this are responses to technological changes. Technical-organisational flexibility involves the ability to adapt managerial and organisational methods to pressures from increased product change and diversity; the pressures of international competition and the opportunities presented by new technology. Working time flexibility involves the organisation of work time and the adaptation of work schedules.

In addition to this, Meulders and Wilkin (1987: 4.) argue that:

With the failure of the economic strategies of the past the objective [of flexibility] is none other than to restore, under the guise of a word with extremely positive connotations (flexibility suggests the opposite of rigidity), the autonomy and freedom of action of the most powerful social partners, to eliminate social achievements, and to place the burden of the cost of the necessary adjustments on the shoulders of the weakest.

It can be argued that this is what has happened under the ECA; the burden of adjustment has fallen upon those in the weakest positions in the labour market. Further, in a review of policies, the Royal Commission on Social Policy (1988) indicates that the trend in New Zealand labour market flexibility has reflected wage flexibility rather than general labour market flexibility. It can also be argued that the ECA, in the short-term, continues this trend. The Act increases wage, numerical and working time flexibility. However, there is nothing inherent within the Act preventing individual firms from pursuing technical-organisational flexibility. Meulders and Wilkin (1987) argue that emphasising wage and numerical flexibility, in particular, creates a very uncertain and unstable employment environment for many workers, particularly those with poor skills. From an equity perspective this represents a disconcerting outcome, as those in the secondary labour market, who are the most vulnerable, are likely to bear a disproportionate burden of negative labour market adjustments (unemployment and declining incomes), thus being increasingly marginalised. Mabbett (1988: 625) states that "... competitive prescriptions for labour market adjustment will be either ineffective or productive of inequality and insecurity".

Because of the shift in bargaining power that has taken place and the emphasis upon the individual in the Act, these conceptions of efficiency (and the associated forms of flexibility) have negative implications for the wages and conditions of employment of many workers. However, those with skills in short supply are likely to see their wages

increase. The declining importance of income relativities implies that the return to training will increase over time. Further, assuming that competition between employers increases, and given the high rate of unemployment in New Zealand at present, continuing downward pressure will be exerted on wages (and conditions of employment), particularly for those with poor skills. Thus the potential for greater income inequality is enhanced.

Those who are likely to benefit from the ECA are those who are relatively advantaged and those who have skills that are in short supply (relative to demand). From this then, those most detrimentally affected by the pursuit of labour market efficiency are likely to be those who comprise the secondary labour market. Easton (1989b: 181) states that:

... far from being distributionally neutral, advocacy of efficiency as a policy objective involves an extremist distributional objective, which is only obscure because the advocates of efficiency fail to mention it.

Easton (1989b) indicates that on its own the efficiency criterion does not accept losses in output for improvements in income distribution. In reality there is a trade-off between efficiency and income equality. Thus, policies which increase national income but reduce the income of the poor will be implemented (Easton, 1989b). Although policies such as the minimum wage would imply that the output loss weighting is not equal to zero, intuitively it may be very close, indicating that only relatively small losses in output are acceptable.

To ascertain the effects of a more flexible labour market it is useful to look at income inequality. It is apparent that income inequality was widening prior to the ECA, as is indicated by Dalziel (1993a), Mowbray (1993), Statistics New Zealand (1993b and 1994a) and Turner (1994). The specific impact of the ECA, with its efficiency focus, on income inequality is thus difficult to determine. However, Maloney (1994) estimates that average real wages after the ECA were 0.5 percent lower than they would have been otherwise. While this change may be viewed as relatively small, rises (or very small declines) in the incomes of those in upper income brackets may work to minimise the changes apparent from assessing average incomes. Thus, it is not possible to provide an absolutely clear picture of the impact of the ECA without looking at its impact on income inequality. Clearly, it is difficult to isolate the impact of the ECA, but there is some evidence which indicates that the ECA is reinforcing the existing trend toward greater income inequality.

Harbridge (1993b) and the Department of Labour (DoL, 1992f and 1993a) surveys indicate that approximately 50 percent of those workers surveyed have had nil wage increases or decreases since the implementation of the ECA. According to Harbridge (1993b: 88) "50 percent of workers under a new collective contract" have experienced such changes.

Similarly, the DoL (1992f) survey reports that 40 percent of employees indicated that their basic hourly pay rates had not changed while 8 percent indicated that it had gone down. The 1993 survey reports that 39 percent of employees who were employed by the same employer in September 1992 indicated that their take home pay had stayed the same while another 15 percent reported a decline in take home pay (DoL, 1993a). Penal rates and overtime have been substantially reduced as a result of the ECA (Walsh, 1992; DoL, 1992f and 1993a; Harbridge, 1993b; Beaumont, 1993). Further, Hammond and Harbridge (1993) and Ryan (1993) indicate the differential impact of the ECA, on women and men, revealing that on an annualised basis, women's average wages have increased by 0.14 percent, while men's average wages have increased by 0.37 percent³. This would seem to negate comments by the Minister of Women's Affairs, Jenny Shipley, that women are doing better under the ECA.

Richardson (1993: 25. Emphasis in original) who, as Minister of Finance, states that:

Overall, *compensation of employees* is expected to increase in real terms over the next three years as average wages increase at around the rate of inflation and as employment increases. Nevertheless, the increase will still be moderate compared to the growth in total income in the economy. This means that business income is likely to continue increasing as a share of total income.

Beaumont (1993) concludes that labour costs have been restrained in real terms and that combining the higher productivity, which is apparent under the ECA, with:

a proportion of employers holding nominal wages to very low increases and the use of grandparenting [taking on new staff under different conditions] there is a good prospect of continued restraint in labour costs over 1993/94. (Beaumont, 1993: 34)

Further, the Treasury (1993: 78-79) states that:

Despite the sustained economic growth now forecast for the next few years, many people may experience only slow wage growth ...

... real wage growth for the low-skilled jobs may be limited for some time.

³ The changes reported are based upon nominal wage movements. Other caveats relating to the interpretation of this data are discussed in Hammond and Harbridge (1993). The methodology upon which these estimates are based can be found in Ansell et al. (1990).

It should be noted that recent media reports reinforce the evidence of a widening gap between men's and women's weekly wages (see Kilroy, 1994b).

However, as indicated earlier, not all of the slow wage growth can be attributed to the ECA as there is evidence that wages and salaries were falling prior to the ECA.

The Labour Cost Index, introduced for the first time in the December 1993 *Key Statistics*, provides an initial view of wage rate changes since the ECA. This index is much wider than that which it replaces, incorporating non-wage costs. It indicates that labour costs have been rising slowly, in nominal terms. Further, it indicates that those areas where increases have been most apparent are in areas where there are labour shortages. Nevertheless, there do appear to be some contradictions within the data (for example, professional engineers receiving relatively low increases). Additionally, this index provides an initial picture of labour cost changes across industry sectors since the advent of the ECA, indicating that the various sectors are likely to experience differential results. This would indicate that a range of firm and industry specific factors are important in determining wages and salaries within the various sectors. These factors may explain why some occupational groups, such as professional engineers, are, in fact, obtaining relatively low increases.

Maloney's (1994) analysis indicates that wage increases are most apparent in those sectors where medium to low union density exists. As well as firm and industry specific factors, this may be explained by the strategies of some unions which are taking a long-term view to wage negotiations and do not simply aim to get the highest short-term, market driven, wage increase (for example, see New Zealand Engineering Union Inc. (1994)). Such strategies may trade-off relatively low wage increases for improvements in non-wage conditions of employment (see New Zealand Engineering Union Inc., 1994). These results would tend to reinforce existing trends toward greater income inequality, in this instance, between union and non-union employees.

The New Zealand Institute of Economic Research (NZIER) (1994b: 39. Emphasis added) states that "labour productivity gains⁴ achieved over recent years *are not ...* being rewarded through higher wage settlements" and expects future growth in real wages, over their forecast period, to result from wage increases for those with skills that are in high demand. While there is likely to be strong demand for skilled labour, more firms are expected to reduce the size of their unskilled labour force. The June 1994 predictions (NZIER, 1994c) tend to reinforce those of March (NZIER, 1994b). These latest predictions (NZIER, 1994c) indicate that income inequality is expected to continue widening with the unskilled, in particular, likely to suffer - they will not have any growth in real wages. Additionally, unit labour costs are expected to continue declining as wage increases lag behind productivity increases (NZIER, 1994c).

⁴ It was not made clear whether the productivity gains referred to were calculated in terms of physical output or the dollar value of that output.

The economic efficiencies underpinning the ECA seem to reinforce reductions in welfare for those with the lowest incomes and skills, for example. The evidence just presented indicates there are three broad distributional effects at work. First, one acts to increase income inequality between various industries/sectors of the economy. Secondly, another increases income inequality between wage and salary earners. Thirdly, another transfers income from wage and salary earners to those who obtain non-wage sources of income (dividends for example) from profits. This then amounts to a reverse Robin Hood effect, transferring income from the poor (in an absolute and relative sense) to the most affluent in the labour market.

In the short-term, at least, it would appear that the efficiency gains of the ECA are obtained at the expense of income equality. However, further research is required if the impact of the ECA is to be clarified in terms of its effect on wages and conditions of employment, particularly in the long-term.

Freedom of Association

The section of the Act providing for freedom of association is underpinned by the neo-classical economic conception of freedom. This conception of freedom has been outlined by Hayek (1960) and embodies freedom *from* any formal barriers/constraints. Such a conception of freedom involves the removal of statutory controls or other formal barriers which interfere with an individual's choice. These include such things as compulsory union membership, collective bargaining and award coverage (Von Prondzynski, 1987). All compel the worker to engage in a certain kind of bargaining and prevent the individual worker from negotiating directly and individually. This contrasts with the so-called positive conception of freedom which views freedom not only as the freedom *from* constraints but the freedom *to* develop to one's fullest individual potential amongst other free individuals (Geoghegan, 1984; Von Prondzynski, 1987). This conception of freedom would encourage the use of measures which actively enhance the ability of individuals to pursue their life goals and protect their interests. The support of unions and collective bargaining can be regarded as two such measures (Von Prondzynski, 1987).

Although unions are not specifically acknowledged by the ECA, the voluntary unionism provisions introduced under the Industrial Relations Amendment Act 1983 are effectively re-established in this part of the Act. Section 5(a) states that:

Employees have the freedom to choose whether or not to associate with other employees for the purpose of advancing the employees' collective employment interests.

Subsequent sections reinforce this provision by:

- (i) stating that membership (or non-membership) of an employees' organisation shall not be specified within an employment contract - that such an association is at the behest of the individual employee;
- (ii) stating that nothing in an employment contract will confer preference on any person because of their membership or non-membership of an employee organisation (either in terms of obtaining/retaining employment or in terms of conditions of employment); and
- (iii) prohibiting the exertion of undue influence on people to become, to remain or to cease to be a member of an employees' organisation.

As has been acknowledged by Foulkes (1992) and others, this part of the Act reinforces the freedom to disassociate rather than associate. It does not actively encourage people to join unions to bargain collectively but simply reinforces the removal of actual or perceived constraints upon the individual's choice of bargaining agent and membership of a union. Nevertheless, discrimination on the basis of union or non-union membership is made illegal and the legislation, according to Geare (1991: 5. Emphasis in original), will theoretically be "as harsh on an employer who *discourages* union membership as on workers or officials who *encourage* it". However, if employers are unsympathetic towards unions, they may, as noted in *Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783, bring subtle, but effective pressure to not bargain collectively or join a union. Recent research indicates that there has been a substantial shift from collective to individual contracts as a result of the ECA (Harbridge, 1993a and 1993b; DoL 1992f and 1993a). Further, the New Zealand House of Representatives (NZHR, 1993a: 10. Emphasis added) reports that:

The committee was confronted with quite a substantial amount of evidence that suggested that some employers were either in breach of certain provisions in the Act, or certainly in breach of the spirit of the Act allowing for freedom of association. ...

... care is needed to ensure that employees' rights under this section are not effectively eroded, and that employers' should respect the intention of the Act. *The committee recommends that the Government keep this issue under active review.*

According to the Department of Labour survey (DoL, 1993a), 45 percent of employment contracts are individual contracts. This survey reports that 2 percent of public sector employees and 3 percent of private sector employees on such contracts utilised unions as

their bargaining agents. This compares to 90 percent of public sector employees and 67 percent of private sector employees on collective employment contracts utilising unions (DoL, 1993a). Interestingly, this same Department of Labour survey indicates that trade union representation in private sector collective employment contract negotiations rose in 1992-1993 compared to the 1991-1992 level (up from 61 percent to 67 percent). However, multi-employer agreements, collective bargaining (see DoL, 1992f and 1993a; Harbridge, 1992) and union density (Harbridge and Hince, 1994) have all declined substantially since the ECA was enacted. These latter changes are reported in detail later in this thesis.

Status of Unions

It should be noted that the term 'union' or 'trade union' does not appear in the Act. Sections governing the operation of unions are conspicuously absent from the ECA. Unions were effectively deregistered by the ECA and have had to become incorporated societies. This change has meant that unions do not have to meet regulations governing internal democracy (as under the LRA) and that they have lost their tax exempt status (Walsh, 1992).

It should be noted that the ECA is not the only statute applying to unions and that certain rights and protections still exist for unions. The Incorporated Societies Act 1908 confers on unions the right, for example, to fund their operations (incorporated societies must not be profit oriented); reclaim unpaid debts and to enter into contracts. Additionally, the Trade Unions Act 1908 protects unions from having their activities considered illegal simply because they may be involved in a strike, a go slow or a work-to-rule (or some other similar activity which restricts business activity). Specifically, the Trade Unions Act 1908 states:

The purpose of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. (s 4)

The ECA places unions in the category of employee organisations, giving them the same status as any individual, group or organisation that represents employees. As Walsh (1992: 64-65) says:

They are bargaining agents, pure and simple, no different from a law firm or private consultant, confined to 'advancing collective employment interests', as opposed to the broader social, political and economic objectives unions have historically set for themselves.

Bargaining

Part two of the Act establishes the framework within which employment contract negotiations will take place.

Section 9 facilitates the negotiation of employment contracts directly between employee and employer, or their chosen representative, or between an employer and a group of employees. Additionally, s 9(b) states that:

Appropriate arrangements to govern the employment relationship may be provided by an individual employment contract or a collective employment contract, *with the type of contract and the contents of the contract being, in each case, a matter for negotiation.*

The Act provides that both the nature of a contract (individual or collective) and everything within an employment contract is able to be freely negotiated. While anything *may be discussed* in an employment contract negotiation, there are certain limitations as to what may be incorporated in an employment contract. There are certain minimum conditions which are non-negotiable. Although there is no legal requirement to specify these minimum conditions within an employment contract, they cannot legally be curtailed by an employment contract. These statutory minima are:

- (a) The Minimum Wages Act 1983 provides a wage floor for workers over the age of 20. In March 1994 wage floor is presently set at \$245.00 for a forty-hour week. Further, the Government agreed to implement a minimum youth rate of \$3.68 an hour or \$147.20 for a forty-hour week. This came into effect as of March 31, 1994.
- (b) The Wages Protection Act 1983 indicates the appropriate manner in which an employer must pay wages and make deductions from wages. Payment in kind is illegal, for example.
- (c) The Holidays Act 1981 facilitates minimum leave and holiday entitlements. This Act allows a worker 11 paid statutory holidays per year. Further, this Act states that after each year of employment each worker is entitled to three weeks paid annual leave. Finally, after six months employment, five days paid special leave for sickness or bereavement purposes is allowed for. Special leave for sickness purposes can be utilised by the worker to cover absences from work due to the personal illness of the worker, their spouse or a dependent. It should be noted that NZHR (1993a: 11) has recommended that legislation governing holiday and leave provisions be reviewed "ensuring it is consistent with the needs of the 1990s, and a more flexible labour market". Vasil (1994c) reports that a review of this Act by the Department

of Labour has commenced. Finally, it should also be noted that employment case law has established that where a statutory holiday falls on a normal workday employees *must be granted and must take* the day off or be granted a day off in lieu, should the statutory holiday be worked; the day in lieu cannot be exchanged for some other form of compensation (a salary payment for example) (*Ashcroft v Ansett New Zealand Ltd* [1993] 2 ERNZ 891; also see *Air New Zealand Ltd v New Zealand Association of Marine and Power Engineers Incorporated* [1994] 1 ERNZ 186). However, as no formula for calculating the payment for a day off in lieu is provided within this Act, this is left to the provisions of each employment contract (*Ports of Auckland Ltd v New Zealand Waterfront Workers Union* [1993] 2 ERNZ 988). Finally, *Ashcroft v Ansett New Zealand Ltd* [1993] 2 ERNZ 891, held that lieu days can be accumulated over several years by an employee.

- (d) The Equal Pay Act 1972 makes it illegal to pay different rates of pay for the same work on the basis of gender.
- (e) The Human Rights Act 1993 came into effect on February 1, 1994. This Act makes it illegal to discriminate against workers, in their hiring, firing, training or promotion, on the basis of: gender, sexual orientation, marital status, family status, employment status, disability (including having disease organisms in one's body which can cause illness), religious belief, political opinion, age, race, colour, religion or country of birth.
- (f) The Parental Leave and Employment Protection Act 1987 provides for unpaid parental leave and prohibits pregnancy being used as grounds for dismissal. Parental leave is available to males and females and, on the basis of extended leave, entitles an employee to have their job kept open for a year while they remain at home to care for a child. Further, the Act makes provision for fourteen weeks maternity leave and two weeks paternity leave.
- (g) The Volunteers Employment Protection Act 1973 facilitates the taking of unpaid leave for military service.
- (h) The Health and Safety in Employment Act 1992, which came into effect on April 1, 1993, repeals earlier legislation and establishes a general framework for preventing "harm to employees at work" (s 5(1)).

Further, the ECA requires that all employment contracts contain procedures for dealing with personal grievances. Where one is not included a standard procedure is provided within the Act. Interestingly, these procedures have been extended to cover all workers, whether they are on an individual or collective contract. The LRA required an employee to be a member of a union before such procedures were available to them. This extension of coverage represents a progressive move and improves, on the one hand, the rights of the most vulnerable in the labour force (for example, part-time, non-unionised employees). On

the other hand, the rights of the most advantaged - those on individual contracts earning high incomes - are also improved by this move. It should also be noted that while there are no specific appeal procedures provided within the Act for such issues, s 95(1) states that "any party to any proceedings before the Tribunal who is dissatisfied with any decision of the Tribunal ... may appeal to the Court against that decision".

Finally, the ECA contains a procedure for solving disputes resulting from the interpretation, application or operation of an employment contract. The Act also requires that wages and time records must be maintained by an employer and that these, along with a written copy of the employment contract, must be made available to the employee on request.

Because statutory employment rights are so universally accepted, Walsh (1991a: 10) states "that they fill an important function". These statutory minima provide a base level of protection for workers - a base which is greatly inferior to that which is available to workers in most other OECD countries (Brosnan and Rea, 1991; Walsh, 1991a and 1992). Additionally, Brosnan and Rea (1991: 150. Parenthesis added) state that:

Although the new legislation expands the floor rights (statutory minima), the net effect has been to make things worse. By replacing awards with collective contracts, and significantly increasing the difficulty of collective action by workers, the new legislation has effectively removed a whole level of basic protections at the level of industries and occupations ... This, combined with reduced social welfare provisions, has removed the protections which many workers once enjoyed.

Cases have been taken to the Employment Court which reveal the breaching of these statutory provisions, even though they are guaranteed by law. For example, in *Ashcroft v Ansett New Zealand Ltd* [1993] 2 ERNZ 891 and *Air New Zealand Ltd v New Zealand Association of Marine and Power Engineers Incorporated* [1994] 1 ERNZ 186 statutory holiday provisions were breached. Such breaches may indicate a lack of knowledge on the part of the employees' bargaining agent (or the employer); a trend towards not specifying such conditions in an employment contract; or a deliberate attempt by the employer to downgrade conditions of employment.

One of the criticisms of the ECA is the absence of any mechanism requiring the parties to bargain in good faith. Assuming that the strong will dominate in the negotiation process⁵ (Geare, 1991; Anderson, 1991; Walsh, 1992; Harbridge, 1993a and 1993b), the result is that

⁵ Note: Employees may have greater bargaining power and dominate the negotiation process if they belong to strong union organisations or if they have skills that are in short supply.

employees have little choice in negotiations, unless their employer negotiates in good faith, which they are not legally obliged to do. This limits the amount of discussion and negotiation which takes place.

Kiely and Caisley (1993: 68) state:

Negotiations for employment contracts proceed on the same basis as negotiations for any other contracts, such as negotiations for an overdraft at the bank, or negotiations for a lease with the landlord. There is no obligation to conduct these negotiations in good faith, nor any obligation to adopt a neutral stance. Employers can adopt a 'take it or leave it' approach to negotiations, and the Court will not inquire as to the reasonableness of the employer's attitude.

Additionally, McBride (Personal Correspondence, July 8, 1993) states that:

The Employment Tribunal and the Employment Court have generally adopted a 'hands off' approach to negotiation of employment contracts ... The parties' negotiating stance is generally no concern of the Court or the Tribunal ... The main, and possibly only, exception to that rule is s 57.

Section 57 allows the Employment Court to 'inquire as to the reasonableness' of the contract, only if it was obtained by "harsh and oppressive behaviour or by undue influence or by duress" (s 57(a)) or if conditions within the contract were "harsh or oppressive when entered into" (s 57(b)). More importantly, however, s 57(7) prohibits "relief in respect of any employment contract under the law relating to unfair or unconscionable bargains". Hughes (Quoted in Walsh, 1992: 69) states that:

The law thus excluded is a body of common law (judge-made) principles which considers contractual enforcement in terms of bargaining power. The ordinary courts have developed a doctrine of fairness - or 'unconscionability' - relating to issues such as relative bargaining power, "one-sided" contracts, unfair standard form contracts and lack of independent advice, all subsumed under the general question whether the stronger party to a contract has taken advantage of the weaker ...

An employment contract can be varied by the Employment Court - not the Employment Tribunal - only if it is "satisfied beyond a reasonable doubt" (s 104(2)) that it should be altered. Further, all other pertinent measures to obtain redress must be deemed "inappropriate or inadequate" (s 104(2)). Only once these criteria have been met can the Court order the necessary contractual variations. McBride (Personal Correspondence, July 8,

1993) makes the point that there appears to be a "high threshold [*sic*]" before a contract can be altered, given that at the time of writing only two cases had been brought before the Employment Court under this section of the Act. Further to this, a review of the Employment Reports of New Zealand indicates that, to date, only one reported case has held that undue influence existed (*Mineworkers Union of New Zealand v Dunollie Coal Mine Ltd* [1994] 1 ERNZ 78). Additionally, *Eketone v Alliance Textiles (NZ) Ltd* indicates the difficulties in proving undue influence and the contradictions associated with it. In reading the material associated with this case Cooke states that:

employers are not bound to be union-neutral. Subject to s 8 and s 12 ... they are free to express views against unionism. As to s 8, whether an employer has gone too far is a question of fact and degree, as questions of unconscionability are apt to be in other fields of law. (*Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783 at p 786)

Further, Justice Gault states that:

... s 8 imposes prohibitions against the direct or indirect exertion of undue influence with the intent to interfere with the freedom of choice as to membership of an employees' association.

I have found nothing in the international instruments [Conventions 87 and 98] referred to requiring any broader prohibition. Indeed, any move to preclude all attempts to influence a person's choice would risk conflict with another fundamental right - the freedom of expression (s 14 Bill of Rights Act). ...

Undue influence is a concept well known in the law, somewhat flexible of meaning according to the context. It aptly focuses upon improper exploitation of inequality between people in their dealings which equity and conscience will not condone. I see no reason to give it any different meaning in the Employment Contracts Act.

It cannot be doubted that certain employees are vulnerable to influence from strong employers and might readily submit to influence exerted directly or in subtle ways. It is important to ensure that in such cases their freedom to choose is assured and is not interfered with by undue influence. This is best done by dealing with particular circumstances as they arise ... This is a more sensitive instrument for achieving the proper balance between the competing rights than the imposition of a legal presumption of undue influence in all cases. (*Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783 at pp 795-796)

The interim ILO report in response to the NZCTU's complaint (ILO, 1994, paragraph 741 (f)) would appear to place Justice Gault's decision in question. While Justice Gault views the freedom of association clauses within the ECA as consistent with ILO Conventions 87 and 98, as indicated later in this chapter, the onus is on the *individual* parties to an employment contract taking any action to redress any wrongs. Given that there is no need for an employer to remain union-neutral when bargaining, as indicated above, the choice of bargaining agent could, according to the interim ILO report (ILO, 1994, paragraph 741 (f)), be unduly influenced. In conjunction with this, the high level of unemployment, and the greater degree of individual bargaining, increases the likelihood of the use of subtle (and some not so subtle) employer pressure (see, for example, *Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783 and *Mineworkers Union of New Zealand Incorporated v Dunollie Coal Mines Ltd* [1994] 1 ERNZ 78). This clearly strengthens the 'negotiating position' of the employer while weakening that of the employee, particularly those in the secondary labour market. Thus the 'take it or leave it' approach is able to be adopted by some employers (see for example Barber, 1991b and 1992a; *National Distribution Union, n.d.*; NZHR, 1993b).

Each person involved in the negotiation process has the right to choose who their bargaining agent will be, although this choice is restricted under s 11 of the Act. This section prohibits any person who, within the previous ten years, has been convicted of an offence punishable by a period of imprisonment of five years, or more, from being a bargaining agent. However, a person who has been to court for, but *not convicted* of an offence punishable in this manner; or a person so convicted but 11, or more, years ago (and who may have only recently been released from prison); or someone convicted of an offence punishable by a period of imprisonment of less than five years, may become a bargaining agent.

This section was not included in the first reading of the Bill but was added at the second reading after speculation about the potential for 'gangster' style industrial relations to develop (*New Zealand Herald*, 1991a, 1991b; Dearnaley, 1991).

The Act requires that when a bargaining agent is used, the bargaining agent obtains confirmation of their right to represent a given employee, employees or employer in the negotiation process. However, the Act does not specify any procedures for obtaining this authorisation, nor does it specify what constitutes suitable authorisation. With regard to unions, Walsh (1992: 65) states that:

some ... have interpreted this to mean that they must secure individually signed authorisations from members for each set of negotiations. Others have moved to amend their rules so that membership is deemed to constitute authorisation to negotiate. If the former interpretation prevails, large unions will be required to expend huge resources annually securing authorisations. This will sap their industrial capacity and reduce membership levels even further. It will have the effect of denying some workers their preferred choice of bargaining agent.

Butterworths (1993) states that most authorities to represent are individual in nature with most unions obtaining their authority to represent by including it on the union membership form. The measures established by the ECA concerning authority to represent a party are considered "excessive and in contradiction with freedom of association principles" (ILO, 1994, paragraph 741 (i)), constituting an "impediment to the right of a workers' organisation to represent its members" (ILO, 1994, paragraph 741 (i)).

Nevertheless, Harbridge (1993a) notes that once authorisation has been established, the appropriate bargaining agent must recognise that authority. However, they are not compelled to enter into negotiations or to reach an agreement. Walsh (1992: 65) states that:

Employers can also decline to negotiate with certain agents. It remains a curious anomaly in the Act that, although it goes to remarkable lengths to ensure that bargaining agents are properly authorised and accountable to their constituents, there is no guarantee that the other party will in fact bargain with the duly authorised agent.

Case law indicates that while an employer may choose not to negotiate, appropriately authorised bargaining agent(s) cannot be ignored, if an employer wishes to negotiate (*Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783). Further, in the *Service Workers Union v Southern Pacific Hotel Corporation (NZ) Ltd* [1993] 2 ERNZ 513 at p 515 (*Italics in original; Emphasis added*), the Employment Court held that:

The *Alliance Textiles* case made it plain that **recognition** of the representative **must take the form of negotiating with the representative** if that is the employee's wish.

Mineworkers Union of New Zealand v Dunollie Coal Mine Ltd [1994] 1 ERNZ 78, reinforces the above. This would allay the fear expressed by the ILO (1994, paragraph 741 (c)), that New Zealand case law was accepting of employers bypassing the appropriately authorised representative and going directly to the individual employee.

Coverage

The Act provides for access by bargaining agents to the workplace for the purpose of gaining authority to represent an employee or employees in contract negotiations, providing the employer is agreeable (s 13). Walsh (1992: 65. Parenthesis added) states that giving employers the right to deny access in this way facilitates the manipulation of "the range of (bargaining) alternatives available to workers". Having said this, ILO (1994, paragraph 741 (j)) finds access rights "sufficiently guaranteed by the Act".

Section 16 requires bargaining agents to determine, before negotiations take place, procedures for ratifying settlements that may be reached. The Act does not specify any procedures for ratifying settlements, nor does it indicate what constitutes suitable ratification. Both are left to the discretion of the bargaining agents.

In addition to this, s 18(2) states that:

Nothing within this Act requires any employer to become involved in any negotiations for a collective employment contract to which it is proposed that any other employer be a party.

This section further undermines the principle of collective bargaining. Although it does not make multi-employer agreements and industry wide bargaining illegal, or impossible, they are greatly impeded. The illegality of strike activity supporting multi-employer agreements; the logistics of reaching such agreements; high unemployment; the relative weakness of employees and the move against collective agreements and awards, means that the union movement will find it "impossible to approach that level of coverage" (Walsh, 1992: 68)⁶ enjoyed under the LRA and that settlements akin to the award system are effectively precluded.

Recent research indicates a substantial drop in multi-employer agreements. Beaumont and Jolly (1993: 31) state that in 1989/90 awards "accounted for 93 percent of private sector workers on collective settlements". Harbridge's (1992) research indicates that 15 percent of employees are covered by multi-employer agreements. The Heylen Teesdale Meuli survey indicates that as of August/September 1992, 21 percent of employees felt that they were covered by a multi-employer agreement while enterprises responded by indicating that 8 percent of their employees were covered by multi-employer agreements (DoL, 1992f). This discrepancy may possibly be explained by an ignorance of actual contract details. Additionally, the Employee Survey Results in DoL (1993a) indicate that across all sectors,

⁶ This assessment is reinforced by recent union density figures quoted in Chapter Four.

multi-employer agreements account for 17 percent of contracts, as at September 1993. Harbridge (1993a and 1993b) indicates that enterprise bargaining is now the norm; that 45 percent of workers previously covered by a collective settlement have lost that coverage; and that over 80 percent of those collective contracts that have been negotiated were done so under the auspices of unions. DoL (1993a) research, discussed earlier, supports Harbridge's estimates of union coverage amongst those on collective contracts.

Freedom of Contract and the Right to Strike

The Act allows workers and employers to choose one of two types of employment contract - collective and/or individual. First I will briefly discuss the nature of the bargaining process, in the context of the current employment environment.

Walsh (1992) notes that the ECA presents the relationship between an employee and their employer as equal. In reality an individual is negotiating with a collective, the firm, which has far greater resources available to it than the individual (Walsh, 1992). The present high level of unemployment distorts the relationship even further in favour of the employer because there is generally a large number of people seeking employment. Evidence indicates that contracts, collective and individual, are often imposed on employees (Walsh, 1992; Harbridge, 1993b).

Individual employment contracts may be 'negotiated' where there is an applicable collective employment contract in force. However, such a contract cannot be inferior to the collective contract and the collective contract still binds the employee. It may improve or add to the conditions of employment but cannot reduce those conditions negotiated under the collective agreement. This protection is limited in that it only affects those who are covered by a collective contract.

Some debate has ensued over the applicability of such contracts. Ken Douglas has argued that individual employment contracts cannot be inconsistent with collective contracts in the given *workplace* (O'Connor, 1991. *Emphasis added*). Birch (1991), on the other hand, has argued this section of the Act only relates to those employees who were already covered by a collective employment contract and did not relate to those who may be employed in the same firm but were not covered by the collective contract.

Ultimately this section of the Act has led to increased variation in conditions of employment within the workplace, even though a collective contract may apply. In theory there is nothing to prevent people performing the same tasks from being paid differently.

When a collective contract expires, those on that contract revert to an individual contract 'based on' the collective contract until a new contract is negotiated. These cannot be inferior to those of the collective contract, as Employment Court rulings attest (Macfie, 1991e; *Prendergast v Associated Stevedores Ltd* [1992] 1 ERNZ 737). However, this can be circumvented.

Strikes and lockouts are deemed illegal if they occur during the tenure of an existing collective contract; where they relate to freedom of association, personal grievance or dispute issues; where they are in an essential industry and appropriate notice has not been given; where they relate to whether or not a collective contract will bind more than one employer; or where they take place in contravention of an order of the Employment Court. Section 71 makes an exception to these conditions, deeming strikes and lockouts legal if those involved have reasonable cause to believe that the strike or lockout is justified on the grounds of health or safety - the burden of proof being on those involved in the strike or effecting the lockout. Interestingly, striking in protest against the ECA (or a possible replacement) is thus illegal under this framework.

The ILO (1994, paragraph 741 (k)), in its interim report on the ECA, considers that the ban on striking for multi-employer agreements breaches the principles of freedom of association. Further, the ILO (1994, paragraph 741 (m)) also views the inability of trade unions to strike, particularly on economic and social policy issues, as also breaching freedom of association.

Generally, strikes and lockouts are considered legal only when they *relate to the* "negotiation of a collective employment contract" (s 60(d-ii) and s 64(b)). This has been upheld by Employment Court decisions (for example see *Hawtin v Skellerup Industrial Ltd* [1992] 2 ERNZ 500). Further, strikes (and lockouts) relating to individual employment contracts are essentially illegal under this framework (see Butterworths, 1993). This clearly has limiting implications for the rate of strike activity.

Institutions, Enforcement of Employment Contracts and Related Issues

Under the LRA three key institutions existed. The Mediation Service provided dispute mediation. The Arbitration Commission essentially had the jurisdiction to register awards and agreements, as well as hear and determine disputes of interest. Finally, the Labour Court was responsible for hearing and determining all legal matters associated with industrial relations legislation. The ECA abolished these institutions and established two new ones: the Employment Tribunal and the Employment Court.

The Employment Tribunal is responsible for providing mediation and adjudication services with respect to personal grievance and dispute issues arising from an employment contract. It is also responsible for issuing compliance orders under s 55 of the Act; adjudicating to recover wages or other money; adjudicating on breaches of employment contracts, matters arising from the construction of an employment contract or matters associated with the construction of the ECA which occur in the course of proceedings brought before the Tribunal.

The Employment Court, in part, is responsible for hearing appeals resulting from Employment Tribunal rulings; hearing and determining actions for the recovery of penalties for the breach of provisions of the Act; hearing and determining questions of law referred to it by the Tribunal; hearing and determining matters relating to employment contracts properly brought before it; hearing and determining questions associated with the construction of the ECA arising from any proceedings before the Employment Court; ordering compliance orders under s 56 of the Act; and hearing and determining applications for an injunction.

The use of these facilities and the enforcement of the conditions within an employment contract are "the responsibility of the parties to employment contracts, and the individuals bound by them" (s 43(d)). This means that even if an employment contract is illegal and nobody brings the matter before the Tribunal the contract will operate as if it were a legal document (see McBride (Personal Correspondence, July 14, 1993)). Even statutory minima may be negated through a combination of inaction, ignorance and employer pressure.

Although the ECA attempts, in one sense, to remove the State from an active role in the industrial relations framework, it also expands State protection of the workforce via the Tribunal and the Court. Every employee in New Zealand now has:

access to compulsory State arbitration [adjudication] to resolve any dispute [in the form of a personal grievance] that arises in connection with their employment relationship. (Walsh, 1993: 188)

Under the LRA only those covered by collective agreements and registered awards had this right. However, one must ask how effective the access to arbitration really is given the demands placed upon the Employment Court and Employment Tribunal; the high level of unemployment; the shift in power brought about by the ECA; and the movements away from collective bargaining. Every employee may not be able to avail themselves of this protection. It should be noted that the funding allocation for industrial relations institutions, which comprises the Employment Court, the Employment Tribunal and the Higher Salaries Commission, was increased in the June 30, 1994 Budget (see NZHR, 1994).

Recently, lobbying has taken place which seeks to do away with a specialist Employment Court, making its functions the responsibility of the High Court. A discussion of the issues surrounding this lobbying is presented in Mackey (1993).

THE IMPACT OF THE ECA: A SUMMARY

Many of the original criticisms of the Act (see for example, Brosnan and Rea, 1991; Easton, 1991; Walsh, 1991b; Sayers, 1991 and Harbridge, 1993a) focused on the effects of an increasingly segmented labour market, which, it has been argued, would be the result of the operation of the ECA.

The material presented earlier in this chapter, and research by Harbridge (1993a and 1993b), provides evidence that an increasing degree of labour market segmentation has occurred. Harbridge (1993b) argues that 'strong' worker groups have been able to negotiate wage increases. However, nearly half of those surveyed did not receive any change in wages. A wider range of settlements is more evident under the ECA than was the case under the LRA (Harbridge, 1993b). Penal rates and overtime still exist but changes have occurred in the way in which these are paid (Walsh, 1992; Harbridge, 1993b; Beaumont, 1993). Further, penal rates have been substantially reduced since the ECA (Walsh, 1992; DoL, 1992f and 1993a; Harbridge, 1993b; Beaumont, 1993). Generally labour costs have been 'restrained' as a result of the ECA (Beaumont, 1993). The degree to which income inequality has increased *specifically as a result of the ECA* is unclear. The evidence presented here indicates that those most affected by declining incomes are likely to be those in the lowest income brackets. Maloney (1994) suggests that the decline of 0.5 percent in real average wages can be completely attributed to the ECA.

There has been a decline in collective bargaining (DoL, 1992f and 1993a; Beaumont and Jolly, 1993; Harbridge, 1993a) and the general level of strikes, lockouts and workdays lost (ILO, 1993; Beaumont, 1993; Statistics New Zealand, 1994b; 1994c) since the ECA was enacted.

Further, according to Kiely and Caisley (1993), the Tribunal and the Court continue to enforce the Act in line with its purpose. However, they have become backlogged and are "unduly legalistic" (Harbridge, 1992: 12).

Beaumont (1993: 33) states that:

... there has been rapid growth in productivity during the economic recovery beginning in late 1991, with unofficial estimates of productivity growth of 5 percent in the year after the ECA was introduced.

The productivity gains espoused by supporters of the Act are doubtful and/or misleading for a number of reasons. According to Dalziel and Lattimore (1991: 22-23 and 58), for example, productivity growth declined by 0.03 percent in 1988, rising by 3.31 percent in 1989 and 2.88 percent in 1990. Therefore, because productivity was increasing prior to the ECA (Dalziel and Lattimore, 1991; Harbridge and Moulder, 1992), it must be acknowledged that the Act's role in subsequent increases is unclear. Additionally, a full cost-benefit analysis of the overall effects of the ECA may well place the productivity gains in some doubt, particularly when all of the social costs associated with the efficiency gains are considered. Further, NZIER research, as indicated earlier, shows that productivity gains are being retained by employers; they are not being shared in the form of higher wages. Should the economy continue to improve, it is likely that long-term productivity gains will decline as pressure increases for higher wages (and improved conditions of employment). Finally, there are a number of inherent labour market impediments to improving productivity which are likely to restrict long-term gains. All of these factors combine to place the productivity gains associated with the ECA in some doubt.

One of the reasons given for the ECA, by its supporters, was its potential to improve relations between employees and their employer. It was expected that the ECA would enhance co-operation and reduce strike activity. Strikes have declined under the ECA. However, the degree to which co-operation has improved, as a result of the ECA, is unclear. The decline in strike activity is not unexpected, given the illegality of individual strike activity, the high level of unemployment, the associated increase in employment uncertainty and the cuts in benefits. An Act like this is heavily reliant for its 'peace treaty' component upon the high level of employment uncertainty being maintained. Should the economic recovery and employment increases continue, and this uncertainty decline or disappear, employee turnover and strike activity can be expected to rise as dissatisfied employees take action to improve their circumstances. Further, the NZIER (1994a) indicates that job turnover has increased and Statistics New Zealand (1994d) indicates that after dropping noticeably to sixty five complete strikes in 1991 (down from 126 in 1990), strike activity rose marginally in 1993 to forty nine complete strikes (up from forty one in 1992). Additionally, Statistics New Zealand (1994e) indicates that in the year ended February 1994, sixty seven work stoppages took place, up from fifty for the same period ending February 1993.

Increased productivity and efficiency from flexibility is expected to generate employment growth. It is argued that there is no such direct and necessary outcome. However, even if there was, there is no guarantee that welfare will be greatly enhanced. It is not sufficient to seek simply a reduction in unemployment. It is necessary to ask what type of employment and associated working/living conditions are being created. Statistics New Zealand (1994e) shows that growth in part-time employment substantially exceeds that of full-time employment. Clearly, employment growth is of a certain kind - part-time, casualised labour. Moreover, the income trends suggest that there is a dual labour market with those in the secondary labour market increasingly marginalised.

Despite being a major transformation of the employment relationship there is continuing pressure from proponents of labour market flexibility for further deregulation (for example see, Brook, 1991a and 1991b; Barber, 1992d; Brooke, 1993; Mackey, 1993). Even before the ECA was enacted Kerr (1991: 7) remarked that "the Bill does not mark the end of necessary labour market reform" and then proceeded to discuss a number of areas where greater flexibility was necessary, as he saw it - including, implicitly, abolishing/reducing statutory minimum wages.

The Act still maintains many protections for those in the workforce. Yet it does so in a manner which is not conducive to their effective enforcement. The shift in power that is brought about by the Act; the impediments to collective bargaining and multi-employer agreements; the contradictions which exist within the Act; and the resultant weakening of unions effectively dilute many of the protections which exist for workers. Unless employees are able to effectively enforce employment contracts through collective bargaining, segmentation of the labour market seems set to continue.

Having looked at the contemporary industrial relations framework in New Zealand I now turn to the second stage of the comparative analysis in which an alternative industrial relations framework, that of Sweden, is explored.

CHAPTER FOUR

THE SWEDISH SYSTEM IN THE 1990s AND PARALLELS WITH NEW ZEALAND

This chapter provides an outline and analysis of the Swedish industrial relations system and of some of the many forces that have led to the current decline of the 'Swedish Model'. Additionally, comparisons have been made with New Zealand, at relevant points, throughout this chapter.

This discussion commences with a brief introduction to the main interest groups in this system. The legislative framework surrounding the Swedish industrial relations system is then discussed with some comparisons with New Zealand being made. This is followed by a discussion of the developments leading up to the present debate and uncertainty in Swedish industrial relations. Finally, an analysis of the likely outcome of the present conflict is presented.

Briefly, three points should be emphasised. First, it is demonstrated, within the limitations of this thesis, that no system of industrial relations is ever completely free from pressures to change. Second, the Co-Determination Act (the Swedish equivalent of New Zealand's Employment Contracts Act 1991 (ECA)) emphasises collective interests, whereas the ECA emphasises individual interests. Under such a regime the interests of workers are likely to be met to a far greater degree (and income differentials are likely to be narrower) than under an individualistic, ECA style, regime. Third, the future of industrial relations in Sweden is uncertain. What seems certain, however, is that the pressure for an enterprise based industrial relations system will continue.

THE MAIN INTEREST GROUPS

Swedish industry is characterised by a very high rate of voluntary union membership. There are a number of key groups (cartels or confederations) representing the interests of employees and employers. Union density provides an indication of the proportion of the workforce who are union members. The OECD (1991) reported that union density in Sweden was 85.5 percent (as at 1988) and 50.5 percent for New Zealand, as at 1990. The Swedish Institute (1992e) reported that union density peaked in 1986 at 86 percent declining to 81 percent in 1991. Without providing a specific reference period Bratt (1993a and 1993b) reports union membership at 85 percent in Sweden. Nevertheless, the Swedish Trade Union Confederation (LO, 1993a) report that their membership rose to 85.2 percent in 1992 (up from 83.8 percent in 1991). This would seem to reinforce the earlier comments by Bratt. However, Gould (1993) indicates that overall union membership is apparently dropping in Sweden at present - again no specific reference period(s) are provided. Harbridge and Hince (1994) estimate that since May 1991 union density in New Zealand has declined from about

52-63 percent to 43-34 percent, depending on the particular measure used. Additionally, Maloney (1994) indicates that the net effect of the ECA has been to reduce union density by one-third. These figures may not be strictly comparable and some of the latest reported information may be somewhat contradictory, but they, nevertheless, indicate two important points. First, that there are large differences in unionisation between the two countries and, secondly, in the short time that the ECA has been in place, a dramatic decline in the already relatively low level of unionisation has occurred. Interestingly there are no requirements for unions to register (Hammarstrom, 1987), such as existed, in New Zealand, under the Labour Relations Act (LRA), and the legislation that pre-dated it. In Sweden, people are free to form unions to represent their interests, as they wish. Having done so they are automatically covered by industrial relations legislation.

The next section, outlines the main employee and employer organisations.

The Confederations

The Swedish Trade Union Confederation (LO), formed in 1898, currently represents approximately 2.25 million blue-collar workers (almost 90 percent of such employees) and is comprised of twenty three nationwide trade unions. While the LO has lost some of its influence in recent years, it is still the most prominent of the union confederations. In 1970, the Swedish State Employees' Union (SF) was formed - the LO's State sector employees' organisation.

The Swedish Employers' Confederation (SAF) was formed in 1902 and is the dominant employer organisation. It represents approximately 45,000 private-sector companies employing 1.3 million people. Most of its members are small with more than half of them employing five or less workers.

There are a number of other employers' organisations representing co-operatives, government bodies (both national and local) and banks. For example, at the national government level, there is the National Agency for Government Employers (SAV) and at the local level the Swedish Association of Local Authorities (Hammarstrom, 1987). According to Kjellberg (1992), these tend to be far less influential and are less well organised than the SAF.

It should be noted here that in Sweden portfolio responsibilities within Government generally include a Government Minister of Wages. This person is responsible for the employment policies of the State. The permanent head of the Ministry of Wages generally chairs the SAV board, which handles wage negotiations on behalf of the State; the

government of the day is not directly involved in such negotiations (Hammartsrom, 1987). According to Hammarstrom (1987), the trendsetter in wage formation has traditionally been the private sector. The implications of this approach for incomes policy development will be discussed later in this chapter.

The Central Organisation of Salaried Employees (TCO) was formed in 1944 and represents approximately 1.3 million white-collar workers (approximately 75 percent of this type of employee). The State employees' section of the TCO (TCO-S) is the main union organisation in the state sector and was founded in 1967.

The Swedish Confederation of Professional Associations (SACO), formed in 1947, has 25 nationwide union affiliates and represents approximately 342,000 professional employees - most of whom work in the public sector.

In 1976, the SACO Section for Salaried Local Government Employees (SACO-K), and the Federation of Salaried Local Government Employees (KTK), were formed to represent local body, white-collar workers.

In 1973 the Federation of Salaried Employees in Industry and Services (PTK) was formed. Its membership in 1990 was approximately 555,020 (Kjellberg, 1992). It represents white-collar workers in the private sector and was founded by Swedish Union of Clerical and Technical Employees (SIF), in conjunction with a number of other white-collar unions.

The LO and TCO (in part) are organised along industrial lines. However, some of the unions in the TCO and SACO are organised along craft lines. Further, there is a high degree of division within the union structure which reflects the blue and white-collar, public/private sector divisions of the workforce. This separation is significant in light of the conflicts that developed in the 1970s and 1980s between various union groupings. These inter-union conflicts will be discussed in some detail later in this chapter.

Traditionally the primary functions of these organisations have centred on bargaining activities. In recent years - and particularly since the SAF's rejection of collective bargaining - lobbying, idea and opinion formation have become paramount (SAF, 1991; Pestoff, 1992). Leif Blomberg, Chairman of Metall (the Swedish Metalworkers' Union), feels that the "unions must become a countervailing power to SAF's political ambitions" (Quoted in Pestoff, 1992: 239) and that the unions must focus on opinion formation in the 1990s. Pestoff (1992) points out that SAF, over the past fifteen years has allocated 15 percent of its annual expenditure to political activities. He argues that with the recent changes to corporatism in Sweden, "dramatic growth" in this type of expenditure will occur

(Pestoff, 1992: 236). Clearly, there are likely to be further changes in the way in which union confederations, and SAF, function.

THE PRESENT LEGISLATIVE FRAMEWORK

THE CO-DETERMINATION AT WORK ACT

In the 1970s there was much discussion of employee participation in decision-making at the workplace. Three forms of participation were discussed: financial, company and shop floor. This debate, accompanied by a range of changes, primarily aimed at improving the individual's influence over their place of work, led to the enactment in 1976 of the Act of Employee Participation in Decision-Making (or the Co-Determination at Work Act) which took effect on January 1, 1977. This is the main industrial relations statute in force at present (late 1994). As well as establishing the laws governing the powers of co-determination for employees, this Act also regulates issues such as mediation and conciliation in industrial disputes and the rights of association and negotiation.

The Co-Determination Act provides a general statutory framework for conducting the negotiation of collective employment contracts. It provides no substantive detail beyond this framework. In this sense the Co-Determination Act is consistent with the bipartite spirit of the basic agreements, whereby the parties concerned negotiate the details of their own agreements.

The Co-Determination Act is divided into 11 key parts. Part 2 covers the right of people to join employee and employer organisations to represent their interests. Part 3 establishes the right of an employees' organisation to negotiate with an employer (or their organisation) and the parameters in which such negotiations are to take place. Part 4 establishes the rights and parameters for access to company information by employees' organisations. Part 5 provides the statutory framework guiding the formulation of collective agreements. Part 6 establishes the principle of co-determination within the Act. Part 7 establishes decision making rights where the interpretation of an agreement is in question. Part 8 establishes the right of (and restrictions on) the union to veto an employer getting work done without actually employing the person (or persons) required to carry out that work. Part 9 determines the legality (or illegality) of industrial action. Part 10 establishes the State Conciliators' Office and the regulations governing the mediation of disputes. Part 11 establishes the framework for determining damages and sanctions. Part 12 establishes the legal framework within which disputes that are before a Court are to be settled.

The following discussion covers, in some detail, key aspects of this Act.

Co-Determination

Dissatisfaction with employer activities in bringing about changes in the workplace, underpinned the co-determination clause within the Act. Employers strongly resisted co-determination and this aspect of the Act came in for the most discussion (Kjellberg, 1992). Co-determination was seen as a way of providing a greater degree of control and influence to workers over their work environment (Swedish Institute, 1992d; Bratt, 1994). Yet, as with other matters between employee and employer, the Act does not state that co-determination clauses *must* be included in agreements but simply allows for negotiations on such matters and their inclusion in agreements. The Act states that:

Between parties who conclude a collective agreement on wages and general conditions of employment there should, if the employee party so requests, also be concluded a collective agreement on a right of co-determination for the employees in matters which concern the conclusion and termination of contracts of employment, the management and distribution of the work, and the activities of the business in other respects (s 32).

The Act therefore encourages discussions on matters which will enhance employee participation in the decision-making processes of firms; it is not prescriptive. Because of employer resistance, it was not until 1982 and the *Agreement on Efficiency and Participation* (SAF, 1982) between SAF, LO and PTK, that an agreement of this type was concluded.

Right of Association

The rights of employees and employers to belong to and work for appropriate organisations¹ representing their interests is guaranteed under this Act (s 7).

The right to join such organisations is considered "inviolable" (s 8). If violation of this right occurs via a provision in a collective agreement (or some other contract), or a legal action (the termination of a contract, for example), the contractual provision or the legal act will be considered void. Additionally, where a member of an employees' or employers' organisation violates this right, the Act requires the relevant organisation(s) to enforce this right.

¹ It should be noted that the term 'organisation of employees' used in the Co-Determination Act is quite different from the term 'employees' organisation' which is used in the ECA. The former refers to trade union style organisations (s 6 of the Co-Determination Act) whereas the latter refers to any organisation, including unions, which may legally represent employees in contract negotiations and dispute resolution (s 2 of the ECA).

This is quite different from the freedom of association clause in the ECA which, as noted earlier, has been described as the freedom to disassociate, and which has been accompanied by a decline in coverage by collective contracts, multi-employer agreements and union density. Because of the relatively high union density in Sweden the power of trade unions to ensure the membership rights of workers clearly still exists. In New Zealand, however, the reduction of union density suggests that this power has been curtailed.

The Right to Negotiation

Employees and employers are both obliged to negotiate. They are required to follow certain advisory procedures for announcing their desire to negotiate and once negotiations are entered into, to conduct and conclude these negotiations as speedily as possible.

The Act ensures that good faith bargaining takes place, as best as it can, by specifying that "reasoned proposals" (s 15) be put forward for the solution of issues where necessary. It further enforces such bargaining by granting unions the right of access to company information "to the extent that the union needs in order to take care of its members' common interests in relation to the employer" (s 19). Employers are legally obliged to provide this information once it has been requested.

It is interesting to note that in the first instance the confidentiality of any information that is requested is subject to negotiation between the parties concerned. Once an agreement has been reached regarding the confidentiality of requested information, those who receive it are governed by this agreement. If an agreement is not reached the courts may be called upon to guarantee the confidentiality of the information that has been requested.

These types of provisions simply do not exist within the ECA. Additionally, unions (or other employee organisations) are not guaranteed access to company records. This places employee organisations in the New Zealand context in a much weaker bargaining position than their Swedish counterparts. Indeed, it was argued that it was possible for employers to adopt a 'take it or leave it' stance and employees were subsequently powerless to 'choose' the type of employment contract or to negotiate the contents of it.

Collective Agreements

This part of the Act establishes the framework governing collective agreements, the termination of which must be in writing. Unlike the ECA, union organisations are the only ones able to negotiate collective contracts.

A collective agreement is defined in the Co-Determination Act as an:

agreement in writing between an organisation of employers or an employer and an organisation of employees about conditions of employment or otherwise about the relationship between employers and employee (s 23).

A collective contract is considered to be in writing if the contents of an agreement are "recorded in approved minutes or when a proposal for an agreement and acceptance thereof have been recorded in separate documents" (s 23).

The ECA states that a written copy of an employment contract (individual or collective) must be made available, as soon as possible, to the employee once requested. A requirement to place employment contracts in writing, from their inception, exists only where such contracts are collective in nature.

The Co-Determination Act specifies that those who are covered by a collective contract "shall not have power to enter into *any* contract which is not consistent with that collective agreement" (s 27. Emphasis added). Thus any contracts negotiated in addition to an already existing agreement cannot be inferior to the existing agreement. This is similar to the ECA in its regulations covering the negotiation of individual employment contracts in addition to an already existing collective contract. In this instance, the individual or collective nature of the contract is not specified. Implicitly both forms of agreement would appear to be covered by this noninferiority clause.

Where a "gross breach" (s 31) of a collective agreement or the Co-Determination Act occurs and the breach affects the whole agreement, a court may declare that the agreement shall no longer apply to those bound by it. Where a breach of a collective agreement only applies to *some* of the parties to the agreement, the other parties may end their part of the agreement. In conjunction with this, where a court finds a procedure is contrary to a collective agreement, or the Co-Determination Act, it may exempt an organisation, employee or employer, from their obligation(s) under the collective agreement or this Act, if ordering compliance would be oppressive.

It is also relevant to note here that s 4 of the Co-Determination Act states that "An agreement shall be void to the extent that it involves removal or limitation of a right or obligation imposed by this Act".

The ECA states that any person who encourages breaches of an employment contract or any party to an employment contract who breaches that contract is liable to penalty under the

Act (s 52). However, it is left to the parties concerned to pursue any course of redress through the now backlogged, litigious system which has developed around the ECA. New Zealand employees, it seems, are in a comparatively weaker position and less able to obtain redress for such breaches. The still relatively strong position of unions in Sweden is an important counter balance to the power of employers which is missing in New Zealand at the moment.

Priority of Interpretation

Sections 33-37 of the Co-Determination Act specify who is given priority in the interpretation of an agreement or legislation should a dispute arise. This interpretation then holds until the dispute has been settled by the courts. This Act generally gives the employee party priority of interpretation. However, if urgency precludes it, or the employee party's interpretation is incorrect "and that party realises or ought to have realised this" (s 33), the employer does not have to abide by the provisions of the Act specifying employee priority.

Further, the Act states that:

Where, in the opinion of the employer, there exist urgent reasons against a postponement of the disputed work, he may, ... require that the work be performed according to his [her] interpretation in the dispute. The employee shall then be bound to perform the work. Such a duty will not ... lie if the employer's interpretation in the dispute is incorrect and he [she] realises or ought to have realised this, or if the work involves danger to life or health, or if there exist comparable obstacles.

If work is done ... the employer must immediately call for negotiations concerning the dispute. If the dispute cannot be settled by negotiation, he [she] is to file proceedings with a court. (s 34)

These types of provisions do not exist in the ECA. The resolution of disputes are again left in the hands of the individual parties to a contract. Any further action to resolve them is then through the courts.

Arguably, high unemployment (and the associated employment uncertainty) reinforces the power bias within the ECA, in which the employer generally holds greater bargaining power, and assists, though indirectly, in dispute resolution and the lower incidence of industrial action. In any complaints driven process an individual who does not have the necessary skills or resources to pursue a grievance is unlikely to obtain satisfaction. This

situation seems unlikely to occur in Sweden because of the dominance of collective agreements.

Right of Veto

This section of the Act requires employers to initiate negotiations with the appropriate employee organisation(s) before engaging a sub-contractor to perform specified work for them. If, as with other sections of this Act, urgency requires immediate action on behalf of the employer, they may engage the sub-contractor before meeting their duty to negotiate.

The most interesting aspect of this section is that if by engaging a sub-contractor the organisation of employees considers that a law, an existing agreement, or some other already existing arrangement between the employer and the organisation of employees, is likely to be disregarded, the organisation of employees may veto the employers' decision to engage the sub-contractor.

There is no such right embodied in the ECA. The individual nature of the ECA places a different interpretation on the relationship between employee and employer. The protection of a person's rights are not the responsibility of the collective but the individual. The ECA does not prohibit action by an employer which will lead to differential conditions of employment within the workplace for people doing the same type of work. In fact, it facilitates such differentiation.

Peace Obligation

Sections 41-45 of the Act establish criteria for determining the legality (or illegality) of strikes, lockouts and other similar industrial activity. Such activity is deemed illegal if:

- (1) it has not been sanctioned by the organisation to which the employee or employer belongs;
- (2) it is in breach of a peace obligation in a collective contract; or
- (3) the goal of such action is:
 - (a) to bring pressure to bear in a dispute over the validity of a collective agreement, its goes against the agreement or the Act;
 - (b) to effect a change of the agreement;
 - (c) to facilitate a provision which will come into effect when the agreement has ceased to apply; or
 - (d) to support another party who is not allowed to take industrial action.

Before such action can be taken specific procedures (detailed in this section of the Act) must be followed.

The general introduction to this section of the Act indicates that industrial activity on multi-employer agreements and economic and social policy issues, which affect the interests of workers are permitted. All that is required is for the employees' or employers' organisation to sanction such activity in accordance with their rules, and in a manner that is also consistent with current collective agreements (and this Act). The appropriate activity can then proceed. These provisions are far more permissive than the equivalent sections of the ECA. As indicated earlier, the ECA generally makes striking legal only when it relates to the negotiation of a new collective contract. To strike for a multi-employer agreement is, however, illegal under the ECA.

Part of the success of the ECA in 'improving industrial relations' by reducing strike activity is through severely restricting the grounds for lawful strikes. Similarly, it can be argued that high unemployment has a coercive effect, strongly discouraging employees from taking such industrial action.

It is worth highlighting here that an objective of both systems is the resolution of disputes and thereby the maintenance of industrial peace. Each system, however, relies upon different means to achieve this goal. The ECA relies on an individualistic ethic in combination with high unemployment (and thus a relatively weak employee position). The Co-Determination Act on the other hand relies on collective action; a balance of power between employees and employers; and the reaching of negotiated agreements in the truest manner possible.

There is nothing inherent within the ECA which encourages industrial harmony. From this it would seem that New Zealand's record of industrial harmony, could well be challenged in future should the employment situation alter to favour employees. Strike activity and job turnover may well increase as they are the two most likely means by which employees can improve their work environment, especially in the absence of good faith bargaining.

The State Conciliators' Office

Established by the Co-Determination Act, this office is responsible for monitoring disputes and providing mediation services. Those who wish to take industrial action, must advise this office of their intentions, as well as those whom they are taking such action against. It will then appoint a Conciliation Officer who will then mediate the dispute.

If a dispute is not resolved by mediation, the Conciliation Officer may suggest that an arbitrator be selected. The parties concerned and the Conciliation Officer may select an arbitrator.

Similar provisions exist within the ECA. As noted in Chapter Three, "compulsory State arbitration" (Walsh, 1993: 188), or adjudication, of disputes is potentially available to all New Zealand workers through the legal framework established under the ECA. While the achievement of this in practice may be in some doubt, for the reasons indicated in Chapter Three, it nevertheless exists and was expanded by the ECA to include all in the workforce - not just those covered by collective agreements or awards, as was previously the case. Further, mediation of disputes is also available through the Employment Tribunal. Finally, s 69 and s 70 of the ECA establish notification criteria regarding strikes and lockouts in essential services. There is no requirement, however, to advise anyone other than those who are directly involved in the relevant industrial action, and, only those in essential services are covered by the ECA.

Co-Determination Act Summary

The Co-Determination Act contains provisions which are variously similar to and quite different from the ECA. It is similar in that it facilitates a contract based system of employment agreements. It differs from the ECA in that it emphasises collective agreements.

Unlike the ECA, this Act recognises and encourages unions. It gives primacy to collective interests while still enabling, within a negotiated framework, individual interests to be addressed. The overall balance of power within the Co-Determination Act favours employees. Yet there are many counter clauses empowering employers. The ECA, on the other hand, effectively favours employers *without* providing any real counter balances to the power conferred upon them, except that which is available via the Employment Tribunal and Employment Court. There is a much greater balance of power within the Co-Determination Act than that which exists under the ECA.

OTHER PROTECTIONS

A number of other key statutes bear upon the employment relationship in Sweden. This section discusses these. The minima provided by these statutes are guaranteed by law and cannot be negated by a collective agreement. However, as noted in the Chapter One, a Commission of Inquiry into these statutes was established in late 1991.

It is interesting to note that Sweden does not have a statutory minimum wage or an Act protecting the wages of employees as New Zealand does. These matters are left up to the various organisations of employees and employers to determine via negotiated employment contracts.

Some New Zealand employers' groups may argue that this indicates that such legislation is not needed in the New Zealand environment. However, as has been mentioned above, the Swedish industrial relations system is based upon strong voluntary collective action and a balancing of the power relationship between employees and employers. Additionally, wage negotiations in Sweden have included special low-wage subsidies which have had the effect of narrowing income differentials. Although these have come under pressure from employers in recent years, the pay settlement in 1993 between the Swedish Commercial Employees' Union and the Commercial Employers' Association included such compensation (LO, 1993a).

Based upon New Zealand's experience with the ECA, statutory minima, particularly minimum wage legislation, become an increasingly important tool in the protection of employees from exploitation by unscrupulous employers. Where employment contract negotiations devolve to the individual and enterprise level, the loss of ability to protect oneself by collective action, can, in part, be compensated for by legislation. However, such legislative protection is imperfect particularly in a situation where there is a power imbalance in favour of employers; the system of industrial relations is highly individualised; the courts are unable to deal with disputes (and other such actions) quickly; and high unemployment exists. This is the present situation in New Zealand.

Andersson (Personal Correspondence) indicates that a statutory minimum wage is not being considered, at present, in Sweden. Further, he argues that such a minimum would not be likely to be introduced unless there is a directive from the European Community once Sweden has joined the Community. Given the continuing pressure by Swedish employers for an enterprise based system, one can but speculate as to the question of further legislative protection, particularly in the area of minimum wages. Given the dissatisfaction with employer actions in the late 1960s and the resulting increase in legislation, as well as the battle that has raged between employer and employee interest groups throughout the 1980s, it seems unlikely that union organisations will tolerate substantial legislative reductions in their influence.

The Working Hours Act and the Annual Leave Act

Other statutory protections for workers are provided for in the Working Hours Act, which establishes a maximum regular work week of forty hours, and in The Annual Leave Act, which makes allowances for both annual leave and annual leave pay.

The Annual Leave Act covers all employees and has two key underlying concepts. The first is that of the annual leave year which runs from April 1 to March 31 (the year in which leave is taken). The second is that of the qualifying year. This refers to the equivalent period prior to the annual leave year. Five weeks annual leave are provided for at present. This was increased in 1991 by two days; subsequently it was reduced as part of the Government's austerity package in late 1992 (Swedish Institute, 1993a). Annual leave pay essentially brings about a mechanism whereby employees may receive more than full income for their annual leave period. Any employee who has worked for any period during the qualifying year is entitled to annual leave pay. Annual leave pay is calculated at 13 percent of income earned during the qualifying year.

In the year in which a person is first employed by a firm they are entitled to the full annual leave allocation if their employment commenced before August 31. If they are employed after August 31, they are entitled to five days annual leave. Unless otherwise specified in contract negotiations annual leave provisions make allowance for a period of at least four weeks off over the June to August period for workers.

Workers have the right to accumulate seven days' annual leave (with annual leave pay) per year for up to five years. For an employee to accumulate annual leave with annual leave pay, an employee must be entitled to more than twenty days' annual leave pay. An employee may forego this accumulated leave and work, providing the employer is agreeable. Under this situation the employee is entitled to annual leave pay and ordinary wages.

When an employee terminates their employment they are entitled to receive payment - to the value of the full annual leave pay - for any outstanding annual leave qualified for but not taken.

These entitlements are far more generous than those provided for in New Zealand statute. There is no statute which sets a maximum regular work week in New Zealand and the statutory annual leave entitlement is three weeks.

Wage Guarantee Act 1992

This Act makes the State liable for the settlement of an employee's claim for wages (or other remuneration) owing from an employer who has been declared bankrupt in Sweden or any other Nordic country.

Certain restrictions apply to this guarantee; these are detailed within the Act (ss 7-9). While a statutory protection such as this does not exist within New Zealand, there is a provision in the Companies Act 1993 which offers some protection.

The Seventh Schedule to the Companies Act 1993 provides that when a company is declared bankrupt in New Zealand, the liquidator, after having met the expenses incurred by them, must then pay employees' wage and salary claims up to a maximum of six thousand dollars for work done for the company in the four months prior to the liquidation commencing.

Sick Pay Act 1992

This Act provides a framework to compensate employees for lost income due to illness. It allows the payment of sick pay after one month of employment or after a waiting period of 14 calendar days if employed for a shorter period before becoming ill.

Both the employer and the social insurance office bear the responsibility of meeting sick pay compensation. The employer is required to meet only the first 14 days of sick pay compensation for each period of illness.

A variable scale of compensation is used. The first three days of sick pay are paid at 75 percent of the employee's normal income. Sick pay from days 4 to 14 is paid at the rate of 90 percent of the employee's normal income. For days 15 to 90 the social insurance office compensates the employee at a rate of 80 percent of their normal income. From day 91 of illness the social insurance office compensates the employee at a rate of 90 percent of their normal income. (See LO, 1993b; Bratt (1993b); Swedish Institute (1992d).)

Bratt (1993b) notes that as of January 1, 1993, each employee must now pay a specific sickness charge (0.95 percent of the employee's income, at the time the article was written). From April 1, 1993, he notes that a waiting period of one day was introduced for sickness benefits. Effectively, sick pay is thus paid from day two of the illness. Further he notes that the 90 percent benefit available from day 91 was lowered to 80 percent, declining to 70 percent after one year's illness.

Although self-employed people are not covered by this Act, they still receive a sickness benefit from the social insurance office.

This Act far exceeds the statutory minimum that exists in New Zealand (five days, fully paid special leave per annum, which is used not only for sickness but for other reasons (bereavement), and which becomes available to the employee after six months service.

Work Injuries Insurance

Work injuries insurance, in intent, is similar, in part, to New Zealand's Accident Rehabilitation and Compensation Insurance. Work injuries insurance covers all who are employed for injuries received at their place of employment. Work injuries insurance provides coverage of all medical costs and has traditionally provided full compensation for lost income (see Bratt, 1993b and Swedish Institute, 1992d). However, Bratt (1993b) states that as of July 1, 1993 full pay compensation has been abolished, in most cases, with people now being covered to the same levels as those on sickness benefits.

Equal Opportunities Act 1991

This Act has its equivalent in New Zealand statute in the form of the the Human Rights Act 1993; the State Sector Act 1988; the State Sector Amendment Act 1989 and the Equal Pay Act 1972. Swedish and New Zealand statutes provide for the equal treatment of men and women within the workforce. Neither group is to be treated any differently in terms of their hiring, training, promotional opportunities or working conditions by an employer. The Human Rights Act covers areas other than employment where discrimination is illegal (accommodation and the provision of goods and services, for example). The Equal Opportunities Act, however, is restricted to employment.

The Swedish statute is divided into two parts. One establishes rules which require the employer to take active measures to promote equality in the workplace while the other outlaws discrimination on the the basis of gender (Swedish Institute, 1992a). However, certain exceptions apply. These fall into two key parts. Discrimination of this type is permitted, if an employer can show that such discrimination is aimed at promoting equality at work or where the furtherance of ideological or other special interest matters are concerned (Swedish Institute, 1992a). The Human Rights Act 1993 (s 24-35), also makes a number of exceptions - although for different reasons. These range over such issues as religion; employment in the military; work involving national security; the crewing of ships and aircraft; employment of a political nature and age, for example.

Section 58 of the State Sector Act requires all government departments to develop and implement Equal Employment Opportunities (EEO) programmes. Additionally, s 3 (77(d)) of the State Sector Amendment Act places the responsibility for ensuring EEO policies are followed, in the educational services, with the Ministry of Education. Specific procedures are established within this section of the Act for ensuring these policies are developed and implemented.

In general there is no single statute within New Zealand, at present, which aims to facilitate the development and implementation of EEO programmes within the private sector. However, it should be noted that private sector EEO programmes have been resourced through the creation, by the National Government, of the EEO Trust (see Jones, 1994). Nevertheless, in the present industrial relations environment, effective coverage by EEO policies for many within the private sector would seem unlikely (see McGregor, 1994, for example). Finally, it should be noted that the Employment Equity Act 1990 did introduce compulsory private sector EEO. However, the Act was repealed shortly after coming into force.

Unemployment Insurance

In New Zealand, the Income Support Service of the Department of Social Welfare administers these payments on behalf of the Government. The administration of Sweden's unemployment insurance is different and the implications for union membership are interesting and pertinent to the dynamics of Swedish industrial relations.

In Sweden, unemployment insurance has traditionally been administered through unemployment benefit societies that are associated with particular trade unions. Membership of these societies was voluntary and the funding for them came from membership fees and employer contributions (the larger proportion coming from employers). Although voluntary, membership of these societies usually went "along with membership of the appropriate trade union" (Swedish Institute, 1992e: 4).

The implications for trade union membership are interesting. Should the responsibility for administering these funds be removed to the State and administered as an unemployment benefit, an incentive for union membership would seem to be curtailed. Bratt (1994) indicates that as an alternative to the above scheme a general unemployment insurance is being introduced in Sweden. According to Bratt (1993b), employers would prefer that the State wholly administer unemployment insurance. However, unions are against such a change; they consider that this will undermine their ability to obtain members, according to Bratt (1993b).

In addition to unemployment insurance, cash labour market assistance was traditionally available to those not covered by the voluntary scheme (for example, the self-employed). This was fully State funded and complemented the above scheme.

Recently (July 1, 1994) it became compulsory to have unemployment insurance (Swedish Institute, 1993b and 1994). Approximately 95 percent of the funding for this scheme comes from the State (Andersson (Personal Correspondence)). All employees contribute a proportion of their income, up to a specified limit, through a tax rising from one percent of income in 1994 to two percent in 1995 (Swedish Institute, 1993b and 1994). The administration of this new scheme has remained with the unions (Andersson (Personal Correspondence) and Swedish Institute, 1993b and 1994), thus allaying union fears about their ability to obtain members.

It should also be noted here that employees who are temporarily laid-off are entitled to their full wages (and other benefits) from their employer, with the employer receiving a subsidy from the State for the wages paid (Swedish Institute, 1993b). There is no equivalent to this in New Zealand.

An unemployment insurance scheme completely administered by the State would seem to move it more firmly into the hands of politicians and the vagaries of lobby group activities aimed at influencing government policy. In 1993, a bill was passed in the Riksdag (parliament) reducing the unemployment benefit. In commenting on this bill, the Vice President of the LO, Bertil Jonsson, stated:

The decision is cynical, unjust and completely the wrong medicine for Sweden's economy. It is unemployment which should be attacked, not the unemployed! There are no macroeconomic reasons for reducing unemployment benefit. The decision further exacerbates one of the major problems in the Swedish economy, low demand. This is neo-liberal ideology. Those most vulnerable are to pay for right wing policies. (Quoted in LO, 1993a: 8).

As noted in Chapter One, Sweden has experienced a shift in emphasis from income to consumption taxes. Benefits have been reduced and curbing inflation has become the focus of government policy. In conjunction with this, improved economic efficiency and reductions in the size of the public sector are also being sought. Finally, an emphasis has been placed on minimising the role of government and generally enhancing the role of market forces. These policy goals have all been pursued in New Zealand since 1984, with the negative effect of increasing income inequality and increasing relative poverty for the most disadvantaged within the labour force (and society generally).

Security of Employment Act 1974

This statute requires that dismissal of an employee be based on 'objective' grounds. Employees cannot, for example, be dismissed if it is reasonable they be re-employed in another part of the same company. An employee may be summarily dismissed if they have not met their employment obligations. However, the Act establishes procedures which must be followed, specifying that the employer must indicate, to the employee, the steps they need to follow should they wish to claim the dismissal is invalid (or seek compensation). Generally, however, notification of dismissal is dependant upon the employee's age. The period of notification ranges from one month, if under 25, to six months if 45 or over. Additionally, this Act establishes an order of priority in which a company can dismiss people. This is based upon their length of employment - those with longer employment being given priority.

While equivalent protections do not exist within New Zealand statute, employment case law has established, in essence, that an employer must take an objective position in the process of determining whether an employee should be dismissed (see, for example, *New Zealand Food Processing etc IUOW v Unilever New Zealand Ltd* [1990] 1 NZILR 35; *A v Foodstuff (South Island) Ltd* [1993] 1 ERNZ 81; *Macadam v Port Nelson Ltd (No 1)* [1993] 1 ERNZ 279; *Irvines Freightlines v Cross* [1993] 1 ERNZ 424; *Air New Zealand v Sutherland* [1993] 2 ERNZ 11). The minimum requirements for procedural fairness (that is reasonable and fair treatment of an employee), under which this matter arises in employment case law, establishes, in part, that the employer, when reviewing the circumstances and position of the worker, provide:

an unbiased consideration of the worker's explanation in the sense that that consideration must be free from pre-determination and uninfluenced by irrelevant considerations. (see *New Zealand Food Processing etc IUOW v Unilever New Zealand Ltd* [1990] 1 NZILR 35 at p 46 and *Macadam v Port Nelson Ltd (No 1)* [1993] 1 ERNZ 279 at p 295)

Case law thus offers *some* similar protections to the above Swedish statute. However, it is not as broad as the Swedish statute.

The Security of Employment Act was much criticised by employers. For example, Bratt (1994) argues that this Act increased the influence of trade union organisations within the workplace. These criticisms seem to be predicated upon the view that this piece of legislation is 'excessive' in limiting the ability of the employer to remove staff and respond to market forces. As a result, a revised Act was adopted in 1982; the objective was to

facilitate the development of new jobs. This revised statute enables employers to hire people on a six month trial basis.

Union Representative Protection

Under the 1974 Act on the Position of a Trade-Union Representative at the Workplace, elected trade union representatives are guaranteed reasonable paid time off (to be determined in contract negotiations) to attend to union business.

Trade union representatives are protected from dismissal on the basis of their union activities. This Act gives union representatives priority of continued employment in the case of cutbacks, if it is of "special importance to the trade union activity at the workplace" (s 8). In addition to these protections, union representatives have the same protections as other employees under the Security of Employment Act.

Although the ECA makes it illegal to discriminate against an employee on the basis of membership or non-membership of an employees' organisation, the effectiveness of this provision is questionable given the rapid drop in union density, as detailed by Harbridge and Hince (1994). Generally, provisions such as this do not exist within New Zealand statute.

Educational Leave

The 1974 Act On An Employee's Right To Educational Leave came into effect to encourage adult education and trade union studies in the main. The main principle of this Act is that no-one should be denied leave for educational purposes.

Educational leave is normally contingent upon the employee having worked for six months continuously or for a minimum of twelve months over the past two years. However, where the studies involve trade-union matters, the employee has the right to time off, regardless of the the length of time they have been employed.

The length of time an employee can remain on educational leave is not restricted. However, because of inconvenience the employer may face, the Act allows for this leave to be deferred. Deferments greater than six months, require consent of the appropriate trade union organisation. If an employee has not been allowed to start their leave within a specified period of their application having been made, they may then place the matter with the court to gain their leave.

Once an employee completes their period of education under this Act they are guaranteed the same or an equivalent position with their employer. Protection under the Security of Employment Act also applies to those on educational leave.

This statute has no equivalent in New Zealand's present legislative framework. However, it should be noted that the Union Representatives Education Leave Act 1986 established the Trade Union Education Authority (TUEA) and provided a range of paid educational leave entitlements for union members. The TUEA and the leave provisions were abolished by the Union Representatives Education Leave Act Repeal Act 1992. Thus, unless similar provisions are included in an employment contract, guaranteed leave provisions of this type are no longer available to New Zealand employees.

The Work Environment Act 1978

This Act establishes a framework within which occupational health and safety are promoted. It is the main avenue through which occupational health and safety are promoted in Sweden. The Work Environment Act takes precedence when it comes to protecting people from work-related accidents and illnesses. It should, however, be noted that, in addition to agreements between labour and management, there are a number of other statutes and regulations which also promote health and safety (Swedish Institute, 1991a)².

This Act covers all employees, except maritime workers who are covered by a separate statute. Convicts and students are also covered by this Act. Further, the use of dangerous substances and technical equipment, by those who are self-employed, is also covered by this Act. When employers partake in company work they are also required to comply with the Act.

A key element of this Act is the provision, to employees, of the opportunity to influence their work environment (Swedish Institute, 1991a). The Act thus facilitates unions assisting in the improvement of the work environment. This includes work systems, working hours, and the adaptation of work to human elements (psychosocial and physical). Provisions on how employees and employers should co-operate on matters pertaining to the work environment are also included.

Under this Act, employers bear the main responsibility for the work environment. Nevertheless, in certain situations, safety representatives may stop dangerous work.

² These other avenues of health and safety promotion have not been discussed in any further detail here. For further detail of the Work Environment Act than that which is presented here see: Swedish Institute (1991a) and Ministry of Labour (1992).

The New Zealand equivalent of this Act is the Health and Safety in Employment Act 1992. As with the Work Environment Act, this statute places ultimate responsibility for workplace safety upon the employer. Unlike the Swedish statute, however, it does not facilitate extensive union involvement in improving workplace health and safety.

The Labour Court & Mediation

Established in 1928, the court represents the final, and in many cases the only, avenue for settling disputes. Originally set up to administer the Collective Contracts Act 1928 and to interpret the provisions of collective contracts, the court is now responsible for settling disputes under the current statutory framework. It has heard between 200-300 cases annually since 1974 - previously hearing many fewer cases.

The comparable New Zealand institutions (the Employment Tribunal and the Employment Court) were established by the ECA, effectively replacing all of the institutions that existed under the LRA. These institutions, as with the Swedish court, represent the final avenue for the resolution of many disputes. The following tables depict the Employment Tribunal applications for cases to be heard and the number of decisions made (or rulings on cases) as well as the waiting periods (or delays before a case is heard). It should be noted that this data is not strictly comparable with that obtained on the Swedish system. The figures must therefore be interpreted with some caution. Further, institutional and historical factors are likely to be reflected in these disparate rates of litigation. Regardless of these factors, the general conclusions drawn would seem reasonable.

Each application usually requires more than one decision. Although the number of decisions is usually two per application, this is not always the case. Thus, the number of decisions does not correspond directly to the number of applications. Further, a proportion of the applications are withdrawn, before any action is required by the Employment Tribunal. It should also be emphasised that the data for 1991 only covers the period from May and many of the applications made in 1991 to the Employment Tribunal were not heard until 1992. This is because applications were accepted from May of that year, but the Tribunal did not begin sitting until the end of September (Morris (Personal Correspondence)). Nevertheless, the actual number of decisions made, and applications received by the Employment Tribunal, in each of the areas, has noticeably increased in 1993 over those for 1992 (Morris (Personal Correspondence)). Finally, any rounding of figures, resulting from averaging the data, has been carried out in the standard manner.

Table 4.1: Employment Tribunal: Average Applications & Decisions (per year 1991-1993).

District	Applications	Decisions
Wellington	683	116
Auckland	1236	264
Christchurch	621	142

Source: Morris (Personal Correspondence).

In conjunction with this, the Employment Court in Wellington, Auckland and Christchurch have, respectively, delivered an average of fifty four, ninety one and fifty one decisions.

Table 4.2: Employment Tribunal: Waiting Periods (in months).

District	Mediation	Adjudication
Wellington	4	5.5
Auckland	2	7.5
Christchurch	3	6

Source: Morris (Personal Correspondence).

Compared to the Swedish system, which has heard 200 to 300 cases annually since 1974, the volume of litigious activity would seem to be far greater. Further, the waiting periods experienced for cases to be heard through the Employment Tribunal indicates that this system is under substantial pressures to adequately meet the demands placed upon it.

Sweden has generally maintained a lower number of strikes and lockouts than New Zealand with both countries experiencing a noticeable drop in such activity in 1991.

Table 4.3: Strikes & Lockouts and Working Days Lost (per worker involved).

Year	Strikes & Lockouts		Working Days Lost	
	Sweden	New Zealand	Sweden	New Zealand
1990	126	137	11	7
1991	23	71	9	2
1992	20	51	2	3

Source: ILO (1993).

This would seem to indicate that an individualised system is no panacea for such activity. If anything, the system that Sweden has in place has, as indicated, resulted in generally lower rates of such activity throughout the 1970s to the 1990s, when compared to New Zealand (ILO, 1978; 1985 and 1993). A definitive statement on which system will provide a consistently lower rate of such activity cannot be made with the ECA having only been in place since 1991. Nevertheless, it does seem likely that the Swedish system *may* result in less strikes and lockouts than the system embodied in the ECA. It should be noted here also that cultural, historical, political and institutional factors are likely to influence such activity.

Having outlined the main features of the Swedish institutional and policy framework for industrial relations, I now wish to assess the features of the system.

ANALYSIS

In seeking to understand the nature of the Swedish industrial relations system it should be noted that the foundations lie in a period of intense confrontation. Centralised employer organisations between 1902 to 1909 tended to escalate conflicts by utilising large scale lockouts which negated union advantages at the workplace level and forced the union movement to centralise, passing on greater authority to the LO (Kjellberg, 1992). Nevertheless, in 1906 the LO and SAF signed the December Compromise. In this agreement each formally recognised the rights of the other. The LO recognised the employers' right to freely hire and fire workers; to direct and allocate work and to hire whom they wished - no closed shops were allowed (Swedish Institute, 1992d). In essence, the LO recognised the right of the employer to make decisions governing the production process. The SAF recognised the rights of workers to form organisations and to negotiate (Swedish Institute, 1992d). However, the General Strike of 1909 saw this early co-operation end. Ingham (1974: 52) states that:

The twenty-five years which followed the General Strike ... were marked by intense class conflict which ... resulted in a very high level of strike activity and in which individual unions doggedly and generally unsuccessfully confronted the powerful, centralised employers' association (SAF).

The 1938 Saltsjobaden (or Basic) Agreement between the LO and SAF arose out of this conflict. It was concluded after two years of negotiation and resulted in a great reduction in strike activity. Thereafter, low strike activity was a feature of Swedish industrial

relations for many decades (Ingham, 1974; Hamilton, 1989). Unions and management set out to co-operate with each other with the aim of "improving productivity, and efficiency, in introducing new working methods and technology, and in avoiding strikes" (Hamilton, 1989: 177). The Saltsjobaden Agreement has been referred to as a form of industrial relations "peace treaty" (Swedish Institute, 1992d: 1). It regulated industrial relations setting out, for example, the procedures to be followed in negotiations; placing restrictions on strikes and lockouts; and establishing rules governing dismissals and lay-offs (Keating, n. d.). Further specialised 'basic agreements' were concluded during the 1940s. They covered, for example, issues such as health and safety, vocational training, employer and employee co-operation and representation. One of the most important aspects of all of these agreements was their aim to maintain industrial harmony, an aim which is now embodied in Swedish statute.

Kjellberg (1992: 89-90) argues that:

In the Scandinavian countries, social-democratic hegemony within the labour movements was an essential precondition for the compromises of the 1930s and earlier. Their subsequent reformist strategy has been based on strengthening the position of workers and unions through economic growth, permitting 'full employment' and social reforms. The close links between manual workers' unions and social democratic parties - in Norway and Sweden (until 1991) local branches of LO unions may 'collectively affiliate' their members to the party - have facilitated the acceptance of the measures necessary to implement this strategy.

It should be noted that the 'social-democratic hegemony' that Kjellberg is referring to, with regard to Sweden, is the dominance of the thinking of the Social Democratic Party within the labour movement.

The 1930s saw white-collar workers organising independently of the LO (TCO and SACO being established in the 1940s). Agreements, similar to those above, were struck for these workers in the 1950s. In addition to these developments, centralised collective bargaining was established in the 1950s (Kjellberg, 1992, Swedish Institute, 1992d).

Centralised Collective Bargaining and Incomes Policy

In Kjellberg's (1992) view centralised collective bargaining³ operated for almost thirty years as a successful alternative to government intervention. Employer and union confederations were considered both able and strong enough to settle their own agreements without government influence. Sweden has traditionally had little State influence in incomes policy and has, in fact, attempted to avoid it (Swedish Institute, 1992d). While direct State intervention is not great there is, nevertheless, substantial indirect State intervention by imposing and enforcing a statutory framework that is very extensive.

From the 1950s, a centralised system of agreements supplemented the traditional two-tier system of bargaining by national unions and their workplace organisations - the ground work for this type of collective bargaining system having been established by the aforementioned 'basic agreements' (Kjellberg, 1992). This centralised system required a greater degree of centralisation on the part of the employee and employer organisations. Although decentralisation is being promoted, Swedish unions and employers' confederations still have very highly centralised decision making processes relative to New Zealand.

All employer and union organisations, between 1956 and 1982, followed a similar methodology in their bargaining rounds (Swedish Institute, 1992d). A three stage process was followed encompassing central, federal (industry) and company (workplace) bargaining. The central level saw the appropriate employer and union confederation place recommendations before their member organisations setting the parameters within which collective agreements should be concluded. At the federal level contracts were concluded within each industry sector; and company level bargaining between local unions and the companies themselves settled agreements specific to each enterprise⁴.

This system of collective bargaining is in turn associated with a four-tier structure for union organisation, "the workplace; local union branches; national unions; and union confederations and bargaining cartels" (Kjellberg, 1992: 91). From an international perspective, Kjellberg (1992: 91) argues, the "Nordic union systems are both comparatively centralised and decentralised". With regard to Sweden, the centralised component refers to

³ It is important to note that the concept of 'centralised collective bargaining' in Sweden, is quite different to that which New Zealanders may envision. In Sweden this concept refers to the framework of negotiations, and collective agreements reached, between the employer and union confederations that cover industry and workplace agreements. In New Zealand 'centralised bargaining' is usually thought of as a State centred approach in which the Government plays a key role in determining nation-wide agreements between employee and employer parties.

⁴ It should be noted that unions and companies are not allowed to settle agreements that are inferior to those parameters established in the relevant collective contracts; contracts generally lasted for one to two years; and that where a collective contract is not in force industrial action is allowed.

organisations such as the LO and SAF, whereas the decentralised element refers to the many workplace organisations.

As a result of centralised bargaining, solidaristic wage policy (encouraged by the LO) operated as a type of bipartite, extra-governmental incomes policy (Ahlen, 1988; Kjellberg, 1992). However, since the early 1980s this system has come under increasing pressure, particularly from the SAF.

Full Employment and Wage Solidarity

After World War II, inflation became a prime concern and the Social Democrats' economic policies were criticised (wage and price controls were the main measures used by the government in an attempt to control inflation). The post-war boom, the resulting high labour demand and collective bargaining generally saw workers obtaining favourable industrial agreements. This concern about inflation resulted in the eventual adoption of the Rehn-Meidner strategy by the LO - and subsequently by the Social Democratic Government.

Rehn argued that wage controls lead to problems with unions and was inconsistent with the full employment policy that was then being implemented - and that ultimately it would be ineffective as competition would eventually force wages to rise (Hamilton, 1989). Growth and productivity would not be assisted by price controls as they would lead to resource misallocation (Hamilton, 1989). Additionally, under these conditions, high profits could be earned at the expense of the consuming public (Hamilton, 1989).

Rehn argued that wages should be allowed to rise via collective bargaining in an economy with full employment and that inflation should be slowed by indirect taxation impacting on demand. The resulting increase in revenue could then be used to encourage employment and the narrowing of profit margins would drive out inefficient firms. Any unemployment generated as a result of this approach could be eradicated by active labour market policies, in which the State would intervene to stimulate growth. Geographical and occupational mobility would be maintained through labour retraining and financial assistance with moving expenses (Hamilton, 1989).

It was felt that the Rehn-Meidner approach would avoid conflict between the Government and unions over incomes policy and it would further the egalitarian aims of unions, since it emphasised wage solidarity instead of strong unions (and industries) winning big gains over weaker unions (and industries) (Hamilton, 1989; Keating, n. d.). Meidner emphasised that this approach would tend to drive out those firms which were the least efficient (Hamilton, 1989).

The report entitled *The Trade Union Movement and Full Employment* (prepared mainly by Rehn and Meidner) was adopted by the LO at their 1951 congress as their official policy. The report argued that State regulation must be related to market forces if full employment, economic stability and productivity were to be achieved and that this necessitated a far more systematic handling of labour resources and investment so that adjustments could be co-ordinated (Keating, n.d.). Where capital investment created demands for new labour skills training would be provided; where the eradication of excess labour supplies required capital investment this would be made available (Keating, n.d.).

In 1951 the Social Democrats formed a coalition government with the Agrarians (now called the Centre Party). The Agrarians were opposed to the strategy proposed by Rehn and Meidner and it took till 1955 (and the associated recession of 1955-1957) before the Social Democratic Government was able to introduce aspects of the strategy (Hamilton, 1989). At this time inflation was on the rise. Thus the Government attempted to get the LO to agree to an additional period of wage restraint. The LO refused and argued for the adoption of the Rehn-Meidner strategy. However, it was not until after the 1960 election victory that the Social Democrats had the seats in the Riksdag that enabled them to introduce the major parts of the strategy (Hamilton, 1989).

This incorporated an emphasis on wage solidarity coupled with full employment and control of inflation into Swedish economic (and industrial relations) policy. As with the Saltsjobaden Agreement, the Rehn-Meidner strategy did not come into effect easily. Only after a number of years of opposition did the application of this approach commence - and then only partially. According to Kjellberg (1992), solidaristic wage policy sped up structural change by raising incomes in low-paid industries, while low wage increases occurred in high-paid industries; and geographical and occupational mobility facilitated expanding industries acquiring workers from declining industries and regions.

These developments formed the basis for what has come to be known as 'The Swedish Model', 'The Middle Way' or 'The Third Way', all of which refer to the compromise between the two extremes of a centrally planned economic system and that of *laissez-faire* capitalism. The 1950s and 1960s were characterised by disciplined, centralised, collective wage bargaining; an increasing union influence; an emphasis on full employment; active labour-market policy (primarily emphasising occupational and geographical mobility) and a low rate of strike activity. However, the most unique characteristic of 'The Swedish Model' was the limited degree of State regulation and intervention in the industrial relations system (Kjellberg, 1992). By the late 1960s and early 1970s, all of this began to change. Kjellberg (1992: 97) states that:

Full employment and solidaristic collective bargaining legitimised LO policy in the eyes of union members. At the end of the 1960s, however, dissatisfaction was mounting amongst workers hit by the rapid structural transformation of industry. Employers often failed to inform, let alone consult, union representatives before taking decisions on dismissals and plant closures. The basic agreement had confirmed employer prerogative ... on matters concerning production; this state of affairs was now called in question.

THE PRESSURE FOR CHANGE

The oil shocks of 1973, the subsequent stagflation and the associated recession, coupled with increased foreign competition and high input costs, placed the Swedish economy and its industrial relations system under pressure. There was a shift, in the 1970s, from the use of agreements to legislation to regulate industrial relations issues. There was an increase in the number of union organisations (and bargaining cartels) in the 1970s, and, as a consequence, the LO lost some of its influence. Division and conflict between unions increased in the 1970s. The centralised collective bargaining system began to unravel. Further, the early 1980s saw SAF's view on an appropriate economic and social framework shift. Myrdal (1991: 203), a Director of the SAF, states that:

Today it is considered as SAF's perhaps most essential function to defend the free market economy ... both against open attacks or intervention ... and against measures which are gradually undermining the market. ... This function has become the focal point of SAF, both in the formation of its idea and in its external activities.

Increasingly pressure for an enterprise based industrial relations system was brought to bear.

Collapse of Demand

The collapse of demand that occurred in the early 1970s meant that traditional anti-cyclical measures and labour-market policies could not contain unemployment (Mishra, 1990). In response to these pressures the Swedish Government instituted a number of new measures in conjunction with the traditional policies. Labour-market policy was expanded from one mainly focused on labour mobility to one providing substitute employment in regions with an excess supply of labour (Mishra, 1990). The Government also provided substantial grants to industry, public sector employment was expanded and other measures

such as early retirement were adopted (Mishra, 1990). It was at this time that rapid expansion of the legislative framework also took place.

From Self-Regulation to Legislation

Until the early 1970s industrial relations issues in Sweden were essentially regulated by agreements between employee and employer parties. As a result of employee dissatisfaction and the approach taken by employers to effecting changes within the workplace, discussed previously in this chapter, the LO and TCO called for changes to (and increases in) labour legislation. As a result, between 1973 and 1977, a substantial number of new industrial relations statutes were enacted.

This was a major departure from the previous self-regulation of industrial relations issues. SAF view this shift as altering the balance of power in favour of unions. Both Pestoff (1992) and Kjellberg (1992) note that the dynamics of the industrial relations process were altered as a result of this legislative expansion. Pestoff (1992: 237-238) states that:

This ... changed one of the axioms of the Swedish model - that decisions were to be reached on the basis of consensus and compromise, rather than competition and confrontation. Decisions made under the former style of conflict resolution are subject to strict demands of unanimity, whereas legislative decision-making is subject to majoritarian rules. Consensus and compromise provided both employers and unions with a veto over any changes.

While the legislative expansion of the 1970s may have favoured unions as the SAF argue, by altering the dynamics of the industrial relations process, it may also be argued that this expansion can be seen as a catalyst for many of the changes that have occurred since. This points to a degree of irony in the use of legislation. The expansion of a legislative framework which seeks to improve a given set of rights (in this case those of workers) may, in some cases, prove detrimental to those rights, particularly over a period of time, and particularly as other dynamics (such as the degree of internationalisation) within an economy alter.

Increasing Internationalisation

Small countries such as New Zealand and Sweden rely on trading in the international market-place for much of their wealth. Over the past twenty years, both countries have come under increasing pressure to open their economies and expand their markets. This greater internationalisation has placed pressure upon the industrial relations framework in

Sweden (and New Zealand). While the factors forcing change may differ somewhat, the effect would seem to be the same for many workers: a deterioration of working conditions.

New Zealand was forced to look at broadening its export markets (in terms of geographical location and product type) when the United Kingdom joined the EEC (now commonly known as the European Community or European Union (EC or EU respectively)) and the world recession of the mid 1970s struck. Structural change increased throughout the 1970s and 1980s and has continued (Shirley, 1990a; Birks and Chatterjee, 1992; Kelsey, 1993). This pressure culminated, in part, with the ECA - an Act which is seen by its supporters as increasing our international competitiveness (Myers, 1991).

Sweden came under pressure as a result of the 1973 oil shock, the general world recession, her slow recovery, and the resulting structural problems experienced by many sectors (Swedish Institute, 1993a). The importance of export oriented firms has increased substantially and they now play an influential role in Swedish life (Kjellberg, 1992; Pestoff, 1992). According to Kjellberg (1992), since 1976, SAF leadership has been dominated by large firms with an export interest. Further, the pressures for a more market approach have increased. This pressure is evident in SAF criticisms of centralised collective bargaining, which are discussed in some detail later in this chapter, and the move to join the EC (formally taken by the previous Social Democratic Government in July, 1991).

Trehorning (1993: 88) argues that because of relatively low wages, particularly for the highly skilled, substantial distance from low-wage countries and declining employment, "there are no strong objective reasons for a large-scale labour immigration to Sweden as a result of an EC/EFTA on free labour mobility". Thus, downward pressure on wages and conditions of employment from rising immigration seems unlikely and, if it takes place, is likely to be a long-term phenomenon.

The following indicates the overall effect of increasing internationalisation on policy:

Although Sweden is not (yet) a member of the EC, Swedish firms have been on the cutting edge of European integration and they are helping to internationalise economic transactions. But in the process of doing so they are, of course, internationalising themselves and Swedish politics as well. ... They are less committed to finding specific national formulas and more interested in finding flexible internationally applicable solutions that fit with a number of nation-states where they operate. To the extent that the negotiated economy is a specifically Scandinavian or Nordic phenomenon, it can be expected to lose support

and importance in the near future, as business options for more general market-oriented solutions to the problems they face in several markets. (Pestoff, 1992: 246)

Further, Pestoff (1992) indicates that the process of marketisation and internationalisation of the Swedish economy may go much further, much faster than in other Nordic countries because of the economic and political influence of multi-nationals in Sweden.

There is an increasing interdependence and internationalisation of nation-state economies taking place world wide. The results of the recent General Agreement on Tariffs and Trade (GATT) and North American Free Trade Agreement (NAFTA) rounds, and the 'democratisation' and marketisation of Eastern Bloc countries are recent examples of this. The relinquishing by Sweden of her long-held policy of neutrality by seeking EC membership is another example of this trend.

The increasing internationalisation and interdependence of nation-states make it extremely difficult to resist the impact of these developments at a national level. The pressures brought to bear on centralised collective bargaining in Sweden reflect this.

Centralised Bargaining: Increasing Criticism

As noted earlier, employers have criticised centralised collective bargaining on the basis that:

- (1) It left little room for industry and company specific arrangements that would enable each sector and enterprise to adapt to changes peculiar to their area;
- (2) Special supplements for low-paid employees, incorporated in some centralised agreements, led to pay differentials that were too narrow;
- (3) When the central proposals were seen as a wage floor instead of a ceiling the system became inflationary; and
- (4) In an increasingly interdependent world economy, centralised agreements are less important to maintaining a competitive edge. (SAF, 1990a, 1992b; Myrdal 1991; Bratt, 1994; Kjellberg, 1992; Pestoff, 1992; Swedish Institute, 1992d)

By arguing for greater income differentials, SAF reject the use of centralised agreements as a way of redistributing income in society (Myrdal, 1991); they now clearly reject the solidaristic wage policy of the past. SAF argue (Myrdal, 1991: 202):

... Wages are a reward for work and should above all conform to the need to get work done and to get it done in the most effective way. Actual and future supply and

demand on the labour market as well as the situation of the individual company cannot be disregarded.

In SAF's wage policy, particular emphasis has been placed on wage formation as an instrument for more effective production. This means that wages should be result-oriented in order to motivate and engage employees. To fulfil this task, wages, wage differentials, and wage systems have to be adapted to actual needs and demands within individual companies and at workplaces, as well as to individual requirements. Collective agreements at industry level must therefore be flexible enough to give wide room for adaptation within companies. If this is provided for, decentralised wage formation is fully compatible with collective agreements being negotiated at industry level.

In other words SAF view money as the prime motivator of people at work. They view greater wage differentials favourably, emphasising production. Increased economic and social inequality, an inevitable consequence of increased wage differentials, is considered favourably as a stimulant to output production. In this view people are seen in a similar vein to a piece of plant or equipment: nothing more than a simple factor of production to be motivated and mobilised in the production of goods and services as efficiently as possible. (For additional discussion of SAF's position refer to SAF, 1990a, 1992b and 1992c).

As a result of these views, SAF made the decision, in 1990, to no longer take part in centralised negotiations on wages and conditions of employment. Instead SAF argued for a more decentralised, enterprise based system. Such a system, while contract-based, and thus consistent with the Co-Determination Act and the previous bi-partite self-regulatory framework, is still markedly different from that of the ECA in that it is collective in nature. Additionally, given the interdependence of the various agents, it is clearly still a far more centralised and industry oriented method than that applied by the ECA. The position taken by employers *may* be due more to a realisation of what the present political, industrial and social framework in Sweden will tolerate than any real desire on their part to operate in this manner. This demonstrates the role of social and institutional factors in setting parameters for policy prescriptions. Myrdal (1991: 202) states:

... SAF has come to the conclusion that collective agreements at industry level will be necessary for the foreseeable future. First of all, small and medium-sized enterprises need this as a service. Secondly, industry wide agreements are unavoidable in Sweden as a result of the traditional centralised system and the organisational structures it has created. If not only SAF but the industrial federations, too, stepped out of their negotiating role, most individual companies

would meet with insurmountable difficulties, confronted as they would be by highly centralised unions with enormous personnel and financial resources. In this perspective, industry wide agreements are necessary to secure peace in the labour market.

Myrdal (1991) briefly outlines SAF's approach, indicating that all negotiations, from 1991, involving collective agreements on wages, salaries, and general conditions of work will be carried out by industry level organisations only. However, these organisations will co-operate with SAF before and during negotiations with the aim of applying maximum pressure. Additionally, Myrdal (1991: 201) states that SAF will "retain a coordinating role during wage negotiations", but will not act as a negotiating organisation in the traditional sense.

This reduction to a predominantly two-tier negotiating process will, it is hoped, diminish wage-push inflation by providing an "opportunity to reduce wage increases" (Myrdal, 1991: 201). It is through the empowerment of employers relative to employees that the SAF hope to be able to bring greater pressure to bear upon employee negotiating agents, thus reducing wage increases. This type of pressure is, as indicated in Chapter Three, similar to that experienced with the ECA. In New Zealand the position of employees is much worse than their Swedish counterparts who still have strong union organisations to negotiate for them.

In *Free Markets and Free Choice: SAF's vision for the nineties*, SAF (1990a: 5) argue for greater "individualisation". They argue that:

Collective solutions have lost their legitimacy on account of their inability to meet the needs of individuals. People are no longer willing to be treated according to a standard pattern, as if they were cogs in a machine. Government bodies, political associations and organisations which stand for uniformity and a centralist approach lose their authority. ...

... Centrally ordained, uniform, standard solutions are suitable neither for the individual nor for the company. Conditions of employment are increasingly being designed to meet the needs and wishes of the individual company and employee. (SAF, 1990a: 5)

This suggests a preference for industrial relations reforms along the lines of those in New Zealand. The advocates of labour market flexibility, in both countries, decry the role of collective responses yet, ironically, often act collectively to advance their own interests.

The comments by Myrdal (1991) would support this assessment. In the New Zealand context when discussing what is likely to lead to economic success and the development of 'sound policies', Kerr states that such policy is not likely to occur, among other reasons, if the political process cannot withstand "pressures for policies which benefit special interest groups at the expense of the community" (Kerr, 1993: 8). This point is aimed at groups such as trade unions. It ignores the fact that Kerr is the Executive Director of the New Zealand Business Roundtable - possibly one of the most influential special interest groups of the past decade within New Zealand. Further, it also ignores, for example, the fact that the impact of the ECA on the industrial relations framework in New Zealand favours employer interests.

Members of SAF would prefer a system of contract negotiation based solely at enterprise level. As noted earlier, Tunhammer (1994) acknowledged the importance of the ECA, and the Reserve Bank Act, when commenting on the types of changes that SAF would like to encourage in Sweden.

The transition from a centralised bargaining system to a decentralised, enterprise based bargaining system has been erratic and is incomplete. Since 1984 varying degrees of decentralisation have been achieved. The 1984 negotiations were conducted at individual employer association and industry union level; the 1986-87 round was highly centralised (Kjellberg, 1992; Swedish Institute, 1992d). The first settlement, under the auspices of the LO, for 1993, incorporated nationwide (industrial level) agreements on wages and conditions of employment (LO, 1993a). Andersson (Personal Correspondence) confirms that bargaining generally took place at industry level in 1993. This is inconsistent with the employers desire to procure agreements on such matters at an enterprise level. Nevertheless, it is consistent with their acceptance of the need for such an approach, given the institutional framework that exists in Sweden. However, in addition to this, enterprise level bargaining on wages took place in some sectors in the 1993 bargaining round (SAF, 1993a). External and internal pressures on employers have helped facilitate this erratic development. The most obvious reasons for this are: union pressures; Social Democratic Government encouragement of centralised bargaining; and internal (SAF) divisions on policy objectives (mainly between those with an export as opposed to a domestic market focus) (Kjellberg, 1992; Swedish Institute, 1992d).

In conjunction with the increased pressure for a more decentralised system of wage bargaining, interest group participation in State authorities (decision-making bodies) was questioned by SAF. It is to this issue that I now turn.

Withdrawal From State Authorities

SAF in 1985 officially rejected all corporatist aspects of Swedish policy. SAF (1992a) argue that an example of this is the participation of interest groups on the governing boards of State authorities. In 1991 SAF decided to withdraw from participation in decision-making boards and have now withdrawn from all such boards. Issues of principle are the guiding tenet behind this stance, according to SAF (1992a). They detail these as follows:

Corporatism weakens democracy. There must be a clear division of responsibilities between the political system and the organisations.

The State authorities answer to the Government and the Riksdag ... They are thus a part of the political system. Responsibility for the decisions and activities of the authorities must be assumed by the authority itself and, ultimately, by the Government and the Riksdag.

The organisations shall represent their members, not take up their time with the work of government authorities. Political responsibility cannot be demanded of an organisation, only political bodies. The SAF board representatives are sometimes caught in conflicts of loyalty between the wishes of the companies and the interests of the State authority.

Corporatism impairs the necessary development and modernisation of the State authorities. (SAF, 1992a: 2)

Additionally, "internal reasons based on an assessment of how SAF can best represent the interests of the business community" (SAF, 1992a: 2) have led it to this position. Essentially, these 'internal reasons' seem to be based upon the view that SAF can better serve the interests of its members by focusing its resources and energies on lobbying (and allied) activities instead of direct participation in State organisations.

Withdrawal from these bodies has given SAF more freedom to pursue its goals by lobbying and opinion formation in an ideological battle with unions. According to Kjellberg (1992), this freedom is of particular importance given that the State is a target of SAF's criticisms. These bodies were seen by SAF as legitimising and expanding the role of the State (Kjellberg, 1992; SAF, 1992a) and confusing the responsibilities of interest group representatives. Other than providing a stable and predictable macro-environment, SAF now views the State as having no legitimate role in business. In outlining their vision for the future, SAF (1991: 10) state that:

The public sector is concerned solely with public administration and its core functions. Private enterprise produces in a competitive market those services for which the public sector has had a monopoly. Neither the State nor local government owns or runs companies.

These ideas, embodying the privatisation and deregulation of State owned assets, makes the representation on State bodies, in SAF's view, less relevant today.

Further, Myrdal (1991) notes that SAF consider a highly centralised industrial relations system to be incompatible with their views, as illustrated above. SAF's withdrawal from these bodies was thus also aimed at reducing the influence of unions. Kjellberg (1992: 101) argues that the:

dismantling of the corporatist system is aimed at breaking economic and other bonds between unions and the State ... The apparent success of the policy is shown in LO's decision to withdraw from most government bodies in 1992.

Bratt (1994: 11) states that "unions did not wish to leave" these bodies. In addition to SAF's influence, pressure from the nonsocialist government, in the form of a bill before the Riksdag, inevitably came to bear upon this decision (Bratt, 1994; SAF, 1992a). The bill proposed that the representation of interest organisations, on the boards that the SAF had withdrawn from, should come to an end (SAF, 1992a). The Government's proposal was adopted by the Riksdag in June of 1992 (SAF, 1992a).

Inter-Union Conflict

During the 1970s and 1980s there was an increasing level of conflict between various unions (and bargaining cartels). Kjellberg (1992) gives a number of reasons for this, but the key aspects that stand out are:

- (a) The LO no longer held the dominant union position. As noted earlier, the 1970s witnessed the formation of a number of new union 'bargaining cartels' with the new and existing groupings having similar functions to the LO.
- (b) The importance of the public sector grew throughout this period and union power shifted from the competitive predominantly manual, low-wage, LO-SAF sector, to the workers in the more 'protected' sectors of the economy (for example, white-collar public sector unions).

- (c) Throughout the 1970s and 1980s differences between various union blocs developed with regard to an appropriate direction for incomes policy. Further, pay competition between these various blocs intensified. These divisions were based, predominantly along two lines: manual/white-collar and public/private sector. For example, in 1980 the LO and TCO public sector unions coordinated and demanded high wage increases. This conflicted with the proposals of PTK who were willing to accept low wage increases (as was the LO) if they were combined with cuts in the marginal tax rate. The high demands of the public sector unions ultimately forced the LO to demand high wage increases. This in turn led to the 1980 lockout of 750,000 LO members by SAF (which only served to intensify the divisions mentioned).
- (d) There were differing views on tax policies between unions. The LO opposed tax cuts while white-collar unions supported them and all the political parties supported tax cuts as a way of attracting the increasing number of white-collar voters.

Clearly the expansion of the unions along predominantly manual/white-collar, public/private-sector lines has assisted the goals of the SAF by reducing the dominance of the LO and changing the dynamics of the bargaining process yet again. The LO was unable to contain wage demands which further diminished the relevance of centralised collective bargaining in employers' eyes (Kjellberg, 1992).

The result of this is that the solidaristic wage policy which had been based upon the special power relationship that existed between LO and SAF, lost its strength as an alternative to a concerted incomes policy. A corollary of this is that Government intervention increased throughout the 1980s.

Increased Government Intervention

Ahlen (1988) notes that Sweden is looking for new approaches and asks whether Sweden is heading from the bipartite "private voluntary system" toward "a form of negotiated incomes policy" (Ahlen, 1988: 1). She concludes that the success of a negotiated incomes policy is dependant upon who is in Government and whether or not the unions can trust them. The election of a nonsocialist government in 1991 has made union advocacy more difficult. However, it should be noted that the September, 1994 Swedish elections have seen the conservative coalition government rejected in favour of the Social Democrats. It can therefore be expected that there will be adjustments to the policies which Sweden has been following in recent years. The degree to which policy adjustments take place cannot be determined, at this early stage, with any great accuracy. However, given the nature, and history, of the Swedish industrial relations system, it would seem unlikely that a change

in government will affect it in any substantive way. However, SAF is now confronted by a government that has traditional links with the labour movement in Sweden. Thus, it is likely to be more receptive to union arguments.

In the 1980s increasing State influence was reflected in the increased level of intervention by Government in collective bargaining (Kjellberg, 1992). This intervention was aimed at maintaining industrial harmony and economic stability and tended to encourage centralised collective bargaining.

According to Kjellberg (1992), the pay negotiations of 1985 were so highly influenced by Government that the principle of self-regulation was placed in question. As a result of a number of concerns on the part of various union organisations, the 1986-87 round reinstated traditional bipartite collective bargaining. The relatively passive role that the Government played throughout the latter part of the 1980s altered in 1990. In February the Government announced that a two-year wage freeze coupled with a ban on strikes and increased fines for illegal strikes was to come into effect. These policies were seen by many within the union movement as negating basic rights. Subsequently, the Social Democratic Government was forced to resign, although a new Social Democratic Government was able to form (Kjellberg, 1992).

The new (replacement) Social Democratic Government of early 1990, was forced to look for more consensual methods to contain wage-push inflation. This led to the establishment of the Rehnberg Commission which comprised representatives from SAF, TCO, LO, and SACO and resulted in the 'Rehnberg agreement' which established a framework for industry level bargaining over a two-year period. Pay negotiations in 1991 were not permitted at local level and any wage drift would be deducted from rises in 1992. This agreement combined elements of the type of 'negotiated incomes policy' that Ahlen (1988) was referring to.

Finally, in 1993, there was no government involvement in negotiations (Andersson (Personal Correspondence)) except for the mediation of certain disputed agreements.

CONCLUSION

The "finely meshed system to maintain full employment" (Meidner quoted in *Australia Reconstructed* (Department of Trade, 1987: 170)) embodied in 'The Swedish Model' has unravelled. This is as a result of a range of factors. The emphasis is now on fighting inflation, and on decentralisation and efficient, internationally competitive production.

The freeing of markets from factors which are perceived to undermine competition has become paramount in achieving these goals - at least in employers' eyes. It is likely, therefore, that there will be further reforms in Sweden to achieve greater flexibility.

The socially responsible 'societal bargaining' that Korpi (1983) talks about and the attendant negotiated economy is breaking down. Bargaining has devolved toward a two-tier, interim structure. Continuing pressure is being brought to bear to obtain an enterprise based system founded upon similar principles to those which underpin the ECA. It has been argued here that without the requirement to bargain in good faith, such a system leads to exploitation of the weaker party in the bargaining relationship. Nevertheless, substantial protections still remain for workers in Sweden. Despite employer pressure these mechanisms have been maintained, and in some respects extended (the Wage Guarantee Act 1992, for example). Without high union density, strong organised unions and effective collective bargaining, it is possible that these protections would not exist today.

Any further strategies aimed at decentralising the bargaining process to an enterprise level (and effectively weakening unions) are likely to receive intense opposition from unions, particularly the LO, who still favour collective bargaining. Further, the strong institutionalised union and employer organisations; the high relative level of union density; the generally centralised nature of the industrial relations system in Sweden, compared to that of New Zealand; and the long-standing emphasis on full employment are likely to make any future moves towards increased decentralisation more difficult than was the case in New Zealand. The changes that have been mentioned here indicate that the balance of power, at present, lies with the employers who, as Pestoff (1992) says, may be in a position to achieve the 'organisation free' and 'trade union free environment' that they desire by the year 2000. Possibly one of the biggest forces behind this process of change will prove to be the increased internationalisation which Sweden is experiencing, particularly in the form of recent moves to join the EC/EU.

It is clear that for many workers to maintain and improve conditions of employment, collective bargaining is the only strategy. This is of particular relevance in Sweden, given that low-income supplements rely very much upon the strength of collective bargaining there.

Further, I would argue that lowering unemployment and maintaining low inflation may well prove extremely difficult since increasing growth (and the possible associated skill shortages) may well place the low inflation goal under pressure as demand for goods and services rises and higher wages are demanded. This would seem to be of more relevance to Sweden where the high level of collective bargaining means that employees have a real

and substantial degree of negotiating power which they can use when the economy grows to obtain wage increases.

Union density may well decline, possibly substantially. Department of Labour surveys (DoL, 1992f and 1993a), show that the greatest decline in union representation, in New Zealand, has been in the private sector. Productivity may well increase in the short-term but continued long-term gains are questionable. Income differentials are likely to widen, and, as a consequence, so is social inequality - the higher paid may well suffer declines in income but they will not suffer to the extent of low income groups. The New Zealand experience indicates that increasing income inequality will be reinforced should Sweden pursue a decentralised system of bargaining at an enterprise level.

Overall, I would argue, that the effect of applying market forces to the Swedish labour market will result in increased inequality, insecurity and social division, with those comprising the secondary labour market bearing the burden of the negative market adjustments (unemployment and decreases in wages, for example).

Having explored both the Swedish and New Zealand industrial relations frameworks, I now move to analyse the economic rationale underlying the ECA and the pressures for change in Sweden.

CHAPTER FIVE

A COMPARISON AND CRITIQUE OF UNDERLYING PRINCIPLES

The pressures which are being brought to bear in Sweden are similar to those which New Zealand has experienced over the past decade. In this chapter I discuss the theoretical underpinnings of the policy prescriptions influencing industrial relations reforms in New Zealand and Sweden.

This chapter indicates that the free market approach will encourage greater inequality in society. The efficiency desired in the labour market is necessarily accompanied by greater inequality, particularly inequality of income. I will argue that gains in well-being for some are at the expense of others. This is my fundamental criticism of the ECA, and of the types of changes which are being proposed by employers in Sweden.

This discussion commences by outlining the economics of the ECA and the proposed changes in Sweden. This is followed by an analysis of the perfectly competitive model incorporating empirical evidence.

THE ECONOMICS UNDERLYING THE ECA AND THE PROPOSED CHANGES IN SWEDEN

The economic underpinnings of the ECA and the changes in Sweden are those of the perfectly competitive market. They are neo-classical in nature and emphasise flexibility, efficiency (production and allocation efficiency specifically) and the operation of market forces (supply and demand) in a manner as unrestrained as possible. The ECA and the proposed changes in Sweden are effectively supply side in nature and aim to bring about higher levels of output at lower input costs.

Brosnan and Rea (1991: 150) argue that the aim of the ECA is to:

... create wage rates which, because they are responsive to imbalances in the supply and demand of labour, provide more efficient co-ordination of the labour market. Such responsiveness is argued to lead to increased employment and enhanced prospects for the disadvantaged. It is assumed that competition, mediated by a flexible wage, will produce a labour market where workers of comparable productivity are rewarded equally. Within this paradigm, unemployment results from the absence of competition or a properly functioning price mechanism.

Clearly, reform of industrial relations to achieve such flexibility is linked with broader policy goals such as the reform of welfare policies and the control of inflation.

At this point it is helpful to examine more closely the arguments about the perfectly competitive model.

COMPETITIVE LABOUR MARKETS

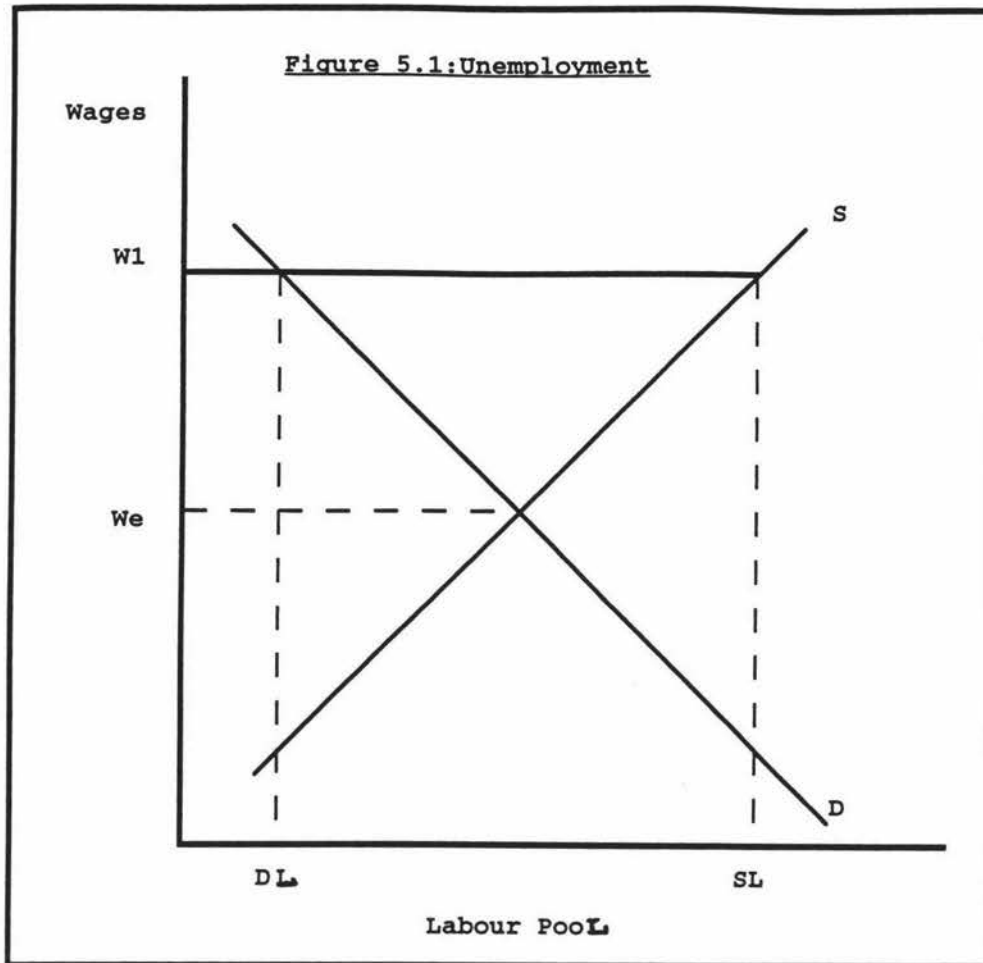
Assumptions

The perfectly competitive view of labour markets is predicated upon five assumptions (see McConnell and Brue, 1989; Sloman, 1991):

- (1) there are a large number of firms competing for a given type of labour to fill jobs which are identical;
- (2) those people supplying their labour to a given job do so independently and have homogeneous skills - there is no differentiation of labour, or attempts to differentiate labour, in any way;
- (3) firms and workers cannot influence the market wage - they are price-takers;
- (4) labour market mobility and knowledge is perfect and costless; and
- (5) all jobs are equally attractive.

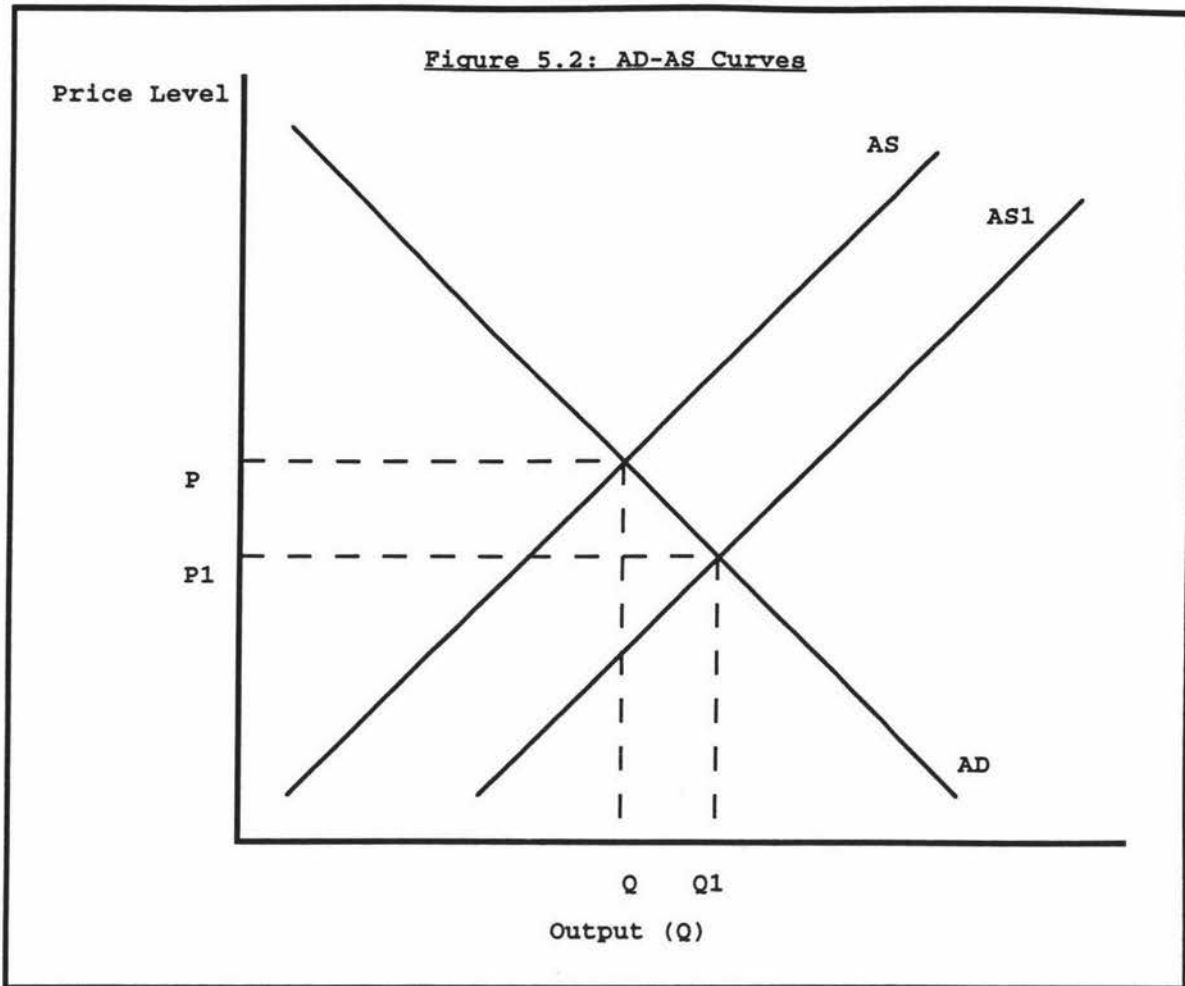
Given this framework there are a number of logical outcomes. The forces of supply and demand determine wages. Workers receive wages that are equal to the marginal revenue product (MRP) resulting from the employment of the last worker hired (that is, the increased value of the output produced by the last worker hired is equal to the wage that they are paid or $MRP=W$). Capital and labour are combined such that costs are minimised, profit maximised and the efficient allocation of resources occurs.

In this framework unemployment can only result from market failure. For some reason the market would be unable to clear (adjust to equilibrium) because the wage rate is set too high. This is depicted in Figure 5.1 (below).



At W_1 the number of people available for work (S_L) exceeds the demand for labour (D_L). The result is unemployment equal to the difference between S_L and D_L ($S_L - D_L$).

With flexible wages, implied by a competitive labour market, the wage rate will fall to W_e , eliminating unemployment. As a consequence, the volume of goods and services that can be produced at each price level increases, other things held constant. Thus the aggregate supply curve moves to the right; the general price level drops and output increases (see Figure 5.2 below). Further, the capital/labour ratio falls and profits increase. The latter stimulates investment in subsequent time periods, thereby reducing long-term (structural) unemployment (Meulders and Wilkin, 1987).



According to Walsh and Ryan (1993), the neo-classical view suggests that, free of price (wage) distorting regulations, labour markets facilitate more efficient and equitable outcomes.

The aim of industrial relations reforms in New Zealand and Sweden is to bring about this type of adjustment thus increasing growth, output and investment while also increasing employment. I would argue that there are difficulties in achieving these goals because of certain features of real world labour markets.

The next section provides a discussion the problems that confront such an approach in real world labour markets.

THE LABOUR MARKET: IN THEORY AND PRACTICE

Numerous writers have demonstrated that the requirements of the perfectly competitive model frequently do not hold in reality (see, for example, Keynes, 1936; Moore, 1979; Applebaum, 1979; Kuttner, 1984; Krueger and Summers, 1988; Thaler, 1989; Brosnan and Rea, 1991; Lane, 1991; Sloman, 1991; Davidson, 1991; Arestis, 1992 and Rosenberg, 1993). The following outlines the main criticisms of the assumptions. Monopolies and oligopolies exist, undermining the first assumption. In New Zealand, for example, Telecom and Clear are the major telecommunications employers. The 'independent' nature of the supply of labour is questionable on two counts: (a) people may work with others in searching for a job; and (b) they may be offered jobs as a result of their personal networks instead of open, competitive job search processes. Further, homogeneity of skills does not exist in the labour market. Labour is differentiated greatly - and even when trained at the same institutions people acquire different levels of skill and ability in their chosen field. Additionally, workers' job preferences vary. Firms and workers, to varying degrees, are also able to influence the wage rate. Finally, neither knowledge, or labour market mobility, are perfect or costless. These factors all limit the competition that takes place within the labour market.

The needs, wants and characteristics of the various workers, and those of employers, also limit the competition that takes place in the labour market (Brosnan and Rea, 1991). For example, commitments to family and friends may restrict a worker to a certain geographical area when looking for a job. A strong interest in a particular vocation (particularly one which necessitates acquiring specific skills over a period of time) may well restrict a person's occupational mobility. Entry requirements into a particular occupation and differing employer, job specific labour requirements may also restrict labour market competition.

These types of labour market imperfection lead to the labour market segmentation mentioned earlier in this thesis. Those who are disadvantaged in the labour market are thus relegated to the poorer jobs. The result is that workers may be equally productive and rewarded differently (Brosnan and Rea, 1991).

It is unlikely that the 'logical outcomes' of the model, will, even if achieved, be attained in a manner which reinforces equality - that is, not all will share in the gains. The concept of the 'level playing field' is unlikely to exist. It is more likely that an uneven bargaining terrain exists which confers advantage on some at the expense of others. An industrial relations framework based upon the perfectly competitive model will substantially alter the balance of power in favour of employers and reinforce the inequalities which

ultimately result from a reliance on market forces. Thus, greater inequality is an inherent part of a flexible, free market approach to labour issues. This is a point which the Treasury (1984) have acknowledged, and one which they consider essential to the market allocation of labour resources.

The real world labour market is quite different from that envisioned in the perfectly competitive model. Friedman (1953) argues that this is not important when assessing the validity of a theoretical framework. He states:

The relevant question to ask about the "assumptions" of a theory is not whether they are descriptively "realistic", for they never are, but whether they are sufficiently good approximations for the purpose in hand. And this question can be answered only by seeing whether the theory works, which means whether it yields sufficiently accurate predictions. (Friedman, 1953: 15)

Arestis (1992) argues that post-Keynesians, for example, would emphasise the high degree of abstraction from reality as being a major weakness and question how accurate predictions (and effective policy) can be achieved based upon highly unrealistic assumptions. In critiquing the idealised model of the economy present in the neo-classical framework, Keynes (1936: 3. *Italics in original; Emboldening added*) states that:

I have called this book *The General Theory of Employment, Interest and Money*, placing the emphasis on the prefix *general*. The object of such a title is to contrast the character of my arguments and conclusions with those of the *classical* theory of the subject ... **I shall argue that the postulates of the classical theory are applicable to a special case only and not to the general case, the situation which it assumes being a limiting point of the possible positions of equilibrium. Moreover, the characteristics of the special case assumed by the classical theory happen not to be those of the economic society in which we actually live, with the result that its teaching is misleading and disastrous if we attempt to apply it to the facts of experience.**

The aim of the reform was to make it possible for employers to reward their employees according to their marginal productivity. With the individualised system of bargaining that would likely develop under this new framework, employers' willingness and ability to pay wage increases was to be the key in determining who shared in any future growth that may result.

Equilibrium and Wages

Keynes struggled with the concept of disequilibrium analysis in *The General Theory*. The post-Keynesians have continued Keynes's critique of the concept of equilibrium. The idea that there is some steady state at which there are no inherent forces causing change is inappropriate in the context of uncertain, unidirectional historical time¹ (Moore, 1979). Thus post-Keynesians have abandoned the concept of general equilibrium as being "useless for analysing reality" (Moore, 1979: 121). In its place Marshall's partial equilibrium framework is used with emphasis being placed on the process of disequilibrium adjustment (Moore, 1979). This approach views reality as moving from one state of disequilibrium to another. In other words there are always forces present which cause change and negate the attainment of general equilibrium.

The implications of the perfectly competitive model are that all people of equivalent productivity, and with similar skills, will receive the same income. Any deviations from this level of income will adjust according to demand and supply factors. Evidence on wage adjustments contradict this. Research indicates that firm and industry specific factors impact upon wage determination. It has been found that inter-industry wage differentials are not short-term phenomena but in fact remain over time (Krueger and Summers, 1988; Thaler, 1989; Beaumont and Jolly, 1993). Beaumont and Jolly (1993) note that under centralised bargaining (such as that which existed in Sweden) firm and industry specific factors are less important in determining wages - hence narrower differentials are likely to exist. This implies that while demand and supply factors affect wages they are not the sole factors in their determination. This indicates that people are not rewarded purely on the basis of their productivity and that the allocation of labour market power is an important determinant.

As indicated earlier in this thesis, there has been a substantial reduction in penal rates since the ECA. In addition, many employees have not had an increase in their basic hourly rate or their take home pay for some time (DoL, 1992f and 1993a). In the context of a positive rate of inflation, this means a decline in real wages. These developments indicate the importance of firm and industry specific arrangements in an increasingly decentralised industrial relations system. In Sweden, with the increasing pressure for decentralisation, a greater emphasis has been placed on 'performance oriented' pay schemes (SAF, 1990a, 1992b, 1992c; Myrdal, 1991; Kjellberg, 1992).

¹ Moore (1979) differentiates between logical and historical time. He defines logical time as able to move forward and backward, whereas historical time is characterised by forward movement only.

Advocates of flexibility argue that such arrangements reflect the needs of firms and industry more accurately (Treasury, 1984; SAF, 1990a, 1992b, 1992c). However, they also reflect market imperfections and the imbalanced power relationship that favours employers in a decentralised system, particularly when unemployment is high.

The existence of a single price for a given type of labour of equal productivity across sectors is untrue. However, the Treasury still aims to achieve adjustment to equilibrium within the various submarkets (see the Treasury, 1984). It follows that the application of the competitive model works to reinforce inequality. Again, this is an aspect which the Treasury (1984) has acknowledged. In Sweden, the increasing reliance on market forces to determine incomes raises concerns about the long-term social implications, particularly with respect to those who comprise the secondary labour market.

Unemployment and Inflation

Perfectly competitive labour market theory precludes the phenomenon of long-run unemployment. Any unemployment that occurs is seen as a short-run 'adjustment problem'. Short-run unemployment is viewed as frictional (resulting from people moving between jobs, for example) or voluntary - those who are unwilling to work at the prevailing wage but will supply their labour once wages adjust accordingly. Further, all markets are assumed to adjust to equilibrium fairly quickly in response to the forces of supply and demand.

Williams (1992: 154) states that:

... the basic notion of the wage-price exchange as a market clearing mechanism has no empirical validity, when confronted by the real market.

Friedman's 'natural rate of unemployment' (also known as the non-accelerating-inflation rate of unemployment, NAIRU) addresses the issue of the existence of long-run unemployment. He argues that we can only keep unemployment below a certain level (the 'natural rate') if inflation is consistently rising; always keeping inflationary expectations below actual inflation (Friedman, 1975). The following rationale underpins this argument.

Unanticipated increases in aggregate demand will encourage employers to produce more output at what will be perceived as a market price higher than expected. They will therefore be prepared to employ more workers, anticipating that their increased product price will more than offset any increases in their nominal wage bill. Thus, providing a greater real return to them (the employer) and a perception that real wages are lower. Workers adjust their expectations on the basis of recent changes: for them the increases in

nominal wages may be viewed as an increase in real wages and therefore encourage an increase in the supply of labour. Over time, however, peoples' expectations adjust to meet actual outcomes. The initial result thus disappears, adjusting back to the employment level existing before the unanticipated change occurred. Therefore, the only way for unemployment to remain below the original state is for actual inflation to be constantly rising, remaining ahead of expectations.²

The 'natural rate' does not refer to some static minimum. It relates to that "rate of employment which is consistent with the *existing real conditions* in the labour market" (Friedman, 1975: 24. Emphasis in original). Friedman (1977: 15) states that:

The 'natural rate of unemployment' ... is not a numerical constant but depends on 'real' as opposed to monetary factors - the effectiveness of the labour market, the extent of competition or monopoly, the barriers or encouragements to working in various occupations, and so on.

Over time this 'natural rate' may well increase or decrease due to changing labour market conditions.

This is the neo-classical view of long-run unemployment. It is accepted that unemployment will exist in the form of this 'natural rate'. In the short-run fluctuations about this level are expected, as inflationary expectations and actuality adjust one to the other.

In contrast to this, Krueger and Summers (1988: 281) argue that the "natural rate of unemployment is likely to be inefficiently high" due to the existence of persistent inter-industry wage differentials (and the associated *prima facie* case created for the existence of involuntary unemployment). This, they argue, indicates a need for policies which aim to increase employment.

The discussion here indicates that Friedman's natural rate of unemployment, due to the restructuring that has occurred, is likely to be much higher now than it was in 1984. Further, it implies that rather than being a temporary phenomenon, relatively high levels of unemployment, given market imperfections, are likely to persist into the foreseeable.

Without a minimum wage, neo-classical theory suggests that wages should adjust so that unemployment declines. This means that in the absence of the 'rigidity' of a minimum youth rate, for example, unemployment should clear. However, unemployment amongst

² For further detail on this refer to Friedman (1975 and 1977) also refer to Sloman (1991).

those, till recently, not covered by minimum wage legislation remained stable over 1992 and 1993 at 22.2 percent (Statistics New Zealand, 1994c)³. Neo-classical theory also suggests that the disincentive effect of an unemployment benefit can be used to explain the existence of persistent unemployment. However, these arguments ignore the impact of labour differentiation, inherent labour market imperfections and the differential way in which employers view groups of employees (discussed earlier). This implies that certain groups (unskilled youth, for example) will bear a disproportionate burden of unemployment whether minimum wages or unemployment benefits exist or not.

This suggests a reason why unemployment, amongst certain groups (the unskilled, for example), may remain disproportionately high and why free market mechanisms may exacerbate, rather than ameliorate, that unemployment - even when an economy is growing. It also raises the question of the existence of long-term involuntary unemployment and the need for broader labour market policies aimed at encouraging employment, if we are to avoid an 'inefficiently high' natural rate of unemployment.

Since focusing on deregulating the economy, unemployment in Sweden and New Zealand has risen substantially. Further, it is expected that it will remain relatively high in both countries for the foreseeable future (OECD, 1994b, in Appendices; also see Prime Ministerial Taskforce on Employment (1994a and 1994b)). Additionally, the inflation rate in both countries has declined (OECD, 1994b, in Appendices), although there are signs that in New Zealand, at least, it is under pressure and is likely to rise again (see Howie (1994c) for example). The rise in unemployment, as market forces have been increasingly applied, would seem to reinforce Therborn's (1986) analysis which indicates that higher levels of unemployment will be experienced in countries where an institutionalised commitment to full employment does not exist. As indicated earlier, Sweden has moved away from this commitment only recently. On the other hand, successive New Zealand governments, since 1984, have moved toward making price stability the sole aim of monetary policy (Dalziel, 1993b).

The *Monetary Policy Statement* of the Reserve Bank (1993) indicates the concerns that the bank has with maintaining its inflation goal in the face of declining unemployment, increasing skill shortages and strong demand for goods and services. These are reinforced in Reserve Bank (1994) and Howie (1994c), for example. The Reserve Bank (1993: 24. Emphasis added) states:

³ This data covers a very short period and the adjustment process talked of by free market advocates may take much longer to occur. However, the many impediments to pure competition within the labour market, and Williams's (1992) earlier comment, make this process extremely doubtful. Further, these figures are affected by school retention rates. Any declines should therefore be viewed with this in mind.

The major risks that we can see relate to the pace at which the economy grows, and to the behaviour of wage and price-setters in response. ... *we have assumed* - as in past forecasts - *that recent structural reforms will assist importantly in moderating generalised profit margin and wage pressures* in the face of stronger demand, tightening labour market, and growing skill shortages. *This assumption is relatively optimistic*, in the sense that the effect of the structural reforms is yet to be tested in an environment of continuing, reasonably robust growth; and in the sense that the assumed behaviour represents a favourable departure from what has historically been typical in recovery phases. *Accordingly, the balance of risks is more likely to be towards higher rather than lower-than-forecast inflation in the forecast period.*

... if domestic activity and demand do turn out stronger than assumed, or if wages and prices are more sensitive to the emergence of pressures on resources than assumed, monetary conditions would have to firm accordingly.

Further, the Reserve Bank (1993: 24) state that, if required, a tightening of monetary policy in response to the above pressures, will "slow ... economic activity in the short-term". Finally, the Reserve Bank (1993: 25. *Emphasis added*) considers:

The behaviour of wage and price-setters, in the face of what seems likely to be continuing growth in activity and demand, ... *perhaps the most important single issue* within the forecast period.

This indicates that the major concern of the Reserve Bank is that the economy improve faster than expected. This implies that in the face of these pressures a balancing act - at least in the short-term - may be required between unemployment and inflation, if the Reserve Bank is to maintain its 0-2 percent price stability goal (as measured by the Consumer Price Index). The Reserve Bank would have to act in a manner which will effectively impede economic growth and inhibit a decline in unemployment.

The NZCTU have already taken this issue up with the Reserve Bank (see, for example, NZCTU, 1994a; Harris, 1994). The Reserve Bank Governor has responded publicly to this issue by rejecting the possibility of a trade-off between inflation and unemployment (see, for example, Clayton, 1994; Weir 1994). Further, however, the ANZ considers the Reserve Bank may be 'worried' about money and credit growth and that financial markets may have "underestimated inflationary pressures" (Howie, 1994a: 18).

It should also be noted that the structural changes of recent years *may* allay the inflationary pressures of a growth cycle which have traditionally been experienced in the past (See Howie, 1994b and NZIER, 1994c). This effectively means that wage and salary increases will be kept low, lagging behind productivity gains and possibly behind the rate of inflation (for many, at least). In essence the future effects of the structural changes are unclear.

This discussion suggests that the ECA is likely to exacerbate long-term unemployment amongst those comprising the secondary labour market. In conjunction with this, the need for a broader approach to solving unemployment is indicated. Interestingly, Maloney (1994) estimates that the ECA has been responsible for one-fifth of the post-ECA growth in employment. He states that if recent economic growth can be partially attributed to the ECA, then its contribution to employment growth could be expected to be greater (Maloney, 1994). Finally, concerns are raised about the goal of price stability and the existence of a trade-off between inflation and unemployment by this discussion.

The Utility of Work

A further assumption of neo-classical economic theory is that work is viewed in relation to its opportunity costs. Work is considered a 'disutility' and is seen as inherently unattractive and distasteful, thus providing no intrinsic value whatsoever. The only reason that people work is for the money to pursue the things that they really desire - the things that provide them with utility (collectively described as 'leisure' in the literature). The supplying of one's labour is seen as a trade-off between the disutility of work and the utility of leisure. The marginal utility of money from employment is *the* important motivating factor in getting people to give up their leisure to work - and in maintaining (and increasing) their commitment to their job.

As an explanation of why people work, this view has been questioned. Lane (1991) argues that production holds much intrinsic value and provides potential for development. He argues that it is the intrinsic value of work that stimulates, encourages and enhances the life experience of people, providing them with a major goal of any economic system, happiness and an ability to develop as human beings.

Titmuss (1974) makes the point that people are not purely economic beings; that there is a social framework within which they function and that this framework affects human behaviour. Lane (1991: 7) makes the same point as follows:

Economic behaviour is caused by and has consequences in other features of the social system. We live in systems where any change in one element influences other elements; the moral, psychological, social, and economic aspects of the market experience are so intertwined that specialised prescriptions seem blind to the costs the prescriptions would incur.

Generally, people work for a variety of reasons, including money and intrinsic work factors. While money is important in a cash economy, it must also be acknowledged that once basic material needs and desires have been met it is possible that the key motivator is not money but intrinsic work factors. Lane's (1991) work indicates that the intrinsic elements of work are the prime motivators of people and that the ability to use and develop one's skills are more important in motivating people to produce than is money.

Financial rewards to encourage increases in productivity will be effective only to the extent that money is the motivator for productivity increases. This therefore raises the issue of the need for policies to encourage and facilitate workplace reform.

The following description of workplace reform, in New Zealand, underpins its meaning within this thesis.

... an integrated package of changes involving a number of processes. These may include; the introduction or improved use of technology, improved training opportunities for workers, new approaches to industrial relations with greater involvement in decision-making from workers and their representatives, and new forms of work organisations. (Ryan, 1994: 238)

Growth and Productivity

Implicit within the perfectly competitive, free market approach is the idea that GDP growth and improvements in productivity will be shared by all. This, however, is not necessarily true. The 'size of the cake' is not the only factor in determining the economic and social well-being of a society (or its members). Three aspects are of key importance here - first, the distribution of income; second the level of absolute poverty; and third the attitude of the employer in an individualised system of industrial relations.

Birks (1992: 52.) states that: "Economic growth is not synonymous with improved welfare for society" and then proceeds to give examples of other policy objectives which are considered important within the New Zealand context. Both Sweden and New Zealand, for example, have anti-pollution legislation. A widening gap between rich and poor,

increasing crime, increasing pollution and increasing stress within the workplace may all be associated with increased growth.

Recent work by Chatterjee and Srivastav (1992) indicates that, without increasing GDP, a redistribution of income from the affluent to the poor will bring about significant gains in economic (and social) welfare. Arestis (1992: 241) argues that as well as aiming for full employment:

Governments should also strive to promote a more equal distribution of market power and, thus, income and wealth.

The view that growth does not overcome poverty, but increases absolute poverty is of particular concern (Arestis, 1992). For growth to take place increased use of more advanced technology must occur. This in turn confers advantage upon those with the requisite technical skills (Arestis, 1992). This implies a need for co-ordinated labour market and education programmes so that those without such skills can acquire them and take advantage of such changes to the mutual benefit of themselves and society.

In a highly decentralised and individualised bargaining system such as that which exists in New Zealand, firm and industry factors play a greater role than in a centralised bargaining system. Under such a system the attitude of individual employers to granting pay increases is of greater importance. Hence, should the employer take the view that they wish to keep labour costs as low as possible, regardless of productivity increases, pay increases may well be quite rare, even if growth is occurring and productivity improving. The Treasury (1993) has predicted that even with sustained economic growth, the real incomes of the low-skilled are not likely to rise for some time. Further, as discussed earlier, research indicates that productivity gains are not generally being shared with employees and that wage gaps are likely to continue widening and demand for unskilled labour to decline throughout 1994.

These issues may be encompassed under the 'trickle down effect'. The arguments presented here indicate that without a degree of intervention or an emphasis on equity in policy, trickle down, if it occurs, is likely to be small in terms of income allocation to the poorer, weaker sections of the community.

This further indicates that, to improve the incomes of all groups in society simply focusing on increasing GDP, and relying on trickle down, is not enough. Further, a balance of power in terms of bargaining is required if effective measures are to be put in place that facilitate the allocation of income to low-paid workers in the secondary labour market.

Efficiency & Equity

As discussed earlier, the main aim of the ECA is to 'promote an efficient labour market'. While such a focus has an impact upon the distribution of income, pursuing efficiency in the manner in which the ECA does also raises the question of barriers to achieving production and allocation efficiency. Further, the perfectly competitive, free market model does not recognise these barriers.

The existence of long standing inter-industry wage differentials, discussed earlier, indicates that some sectors are paying people at a rate above the minimum implied by the perfectly competitive model - thus, negating the attainment of productive efficiency. This may be due, for example, to some employers paying what economists term 'efficiency wages'. Effectively the concept of efficiency wages amounts to employers - those who can afford to do so - paying a premium to their employees to reduce inefficiencies and encourage efficiency. There are various reasons given as to why employers might pay higher wages than those dictated by the market; for a discussion of these issues see Krueger and Summers (1988). Allocative efficiency is equally difficult to achieve. Examples of barriers to this goal are the existence of increasing returns to scale; externalities (pollution); the existence of public goods (roads) and imperfect knowledge. Further, according to Lipsey and Lancaster's (1956) theory of second best policy makers may be faced with many difficulties in achieving optimal resource allocation and that, in fact, it may be impossible to achieve in an economy faced with many inherent imperfections. This suggests that the free market will not overcome all allocative inefficiencies. However, such an approach is likely to enhance inequality.

Some may argue that while we will never achieve our efficiency goals because of these imperfections, the closer we get to them the better off we will be. However, given these imperfections, those who are most able to overcome them will do well while those who are unable to do so are likely to be relatively worse off. All of these imperfections undermine the competitive pricing and fully informed decisions required by the free market and facilitate greater economic and social inequality.

Further, Moene and Wallerstein (1992) indicate that enterprise based bargaining may well be less efficient than industry or centralised bargaining. Their work indicates that under an enterprise based system of bargaining factors specific to each firm are more important - mentioned earlier. Further, they indicate that this "sensitivity to local conditions" (Moene and Wallerstein, 1992: 22) is likely to discourage efficiency rather than promote it. They argue that industry-level bargaining forces less efficient firms to close at a much faster rate. Industry-level bargaining they argue reduces the average life of a plant's operation

and thus increases average productivity. These arguments are consistent with those embodied in the Rehn-Meidner strategy discussed in Chapter Four.

Such evidence underscores the difficulties involved in trying to achieve efficiency goals. It indicates that the desired efficiencies of the ECA may not ever be fully achieved. Many markets are not perfectly competitive, thus providing a case for government intervention in the labour market to enhance resource allocation. Finally, an indication is again provided here that a reliance on competitive market forces to achieve efficiency goals will lead to greater economic and social inequality.

I have argued that the assumption, implicit in the perfectly competitive model, that growth is, somehow, automatically good is flawed. An equitable distribution of income does not automatically follow from growth in GDP.

The model makes no explicit statements regarding equity concerns. However, there is an implicit expectation that equity concerns will be adequately dealt with by focusing upon efficiency (Brosnan and Rea, 1991; Walsh and Ryan, 1993). This also assumes that people are rewarded in accordance with the criteria established within the perfectly competitive model. As has been demonstrated, rewards are not apportioned on the basis of these criteria. The application of the perfectly competitive model, in fact, serves to increase inequality. It tends to further marginalise those who are already in weak bargaining positions.

Kuttner (1984: 4) notes that the issues of equality and efficiency are:

... deeply political. The policy sphere is almost never autonomous. The range of equality/efficiency bargains that present themselves and the design of social institutions to carry them out reflect balances of political power. Few if any of the choices are merely technical, though they are often so disguised.

Additionally, Titmuss (1974: 132), for example, states that:

Not only is 'policy' all about values but those who discuss problems of policy have their own values (some would call them prejudices). But, whatever they are called, it is obvious that the social sciences - and particularly economics and sociology - are not, nor can ever be, 'value free'.

The underlying system of values and attitudes that people hold affect their perception of the world in which we live. This in turn affects their actions and support for, or opposition

to, given policy options. Therefore, what one person may consider an unreasonable and inequitable policy option, another may consider quite reasonable and equitable.

CONCLUSION

This chapter, has examined the free market model underpinning the decentralisation of bargaining (and industrial relations generally) in Sweden and New Zealand.

The evidence presented here, and elsewhere (see, for example, Sawyer, 1989; Lane, 1991; Arestis, 1992; Rosenberg, 1993), indicates that the free market is inherently, and persistently cyclical and unstable; unequal and inequitable. Further, persistently higher levels of unemployment, particularly of those in the secondary labour market, are likely to result from the application of this model with full employment being very difficult to achieve, and, if achieved, unlikely to be maintained.

This analysis indicates that the perfectly competitive model applied to the labour market enhances inequality. In addition, labour market segmentation, which is increasingly evident, is at least, in part, attributable to the more flexible arrangements. Thus, for many people in both countries, increasing marginalisation of incomes and working conditions will be the unavoidable result of the application of free market principles.

Finally, the need for a role for Government both in reducing the inequalities, and in encouraging and facilitating maximum use of resources within the business sector is indicated by this analysis.

Chapter Six concludes this thesis by discussing an alternative policy approach.

CHAPTER SIX

CONCLUSION: AN ALTERNATIVE

In this thesis, I have argued that the ECA is an inadequate policy for fostering mutually beneficial outcomes for both employers and employees, primarily because of the inequality it encourages. This chapter, therefore, sets out to identify the features of a more equitable industrial relations framework which also recognises the need for greater efficiency (productive and allocative) and flexibility. Before commencing this discussion, mention should be made of the likely costs of, and objections to, the proposals made here.

The costs to the employer associated with implementing such a framework are likely to include increases in statutory minima, in the short-term. In the long-term, and on the assumption that more workers turn to collective bargaining, higher wages may also result. However, these increased costs may well be offset by continued improvements in productivity, particularly through workplace reforms, increased training and use of technology. Objections to the following types of changes are likely to embody concerns about decreases in competitiveness, flexibility, efficiency and productivity, among others. These types of objections assume efficiency goals take precedence over equity outcomes. It would seem that negotiated agreements are the most equitable manner of achieving a given goal, particularly when trade-offs between various goals are involved. For many employees there is a vulnerability in bargaining because of the power imbalance favouring the employer, therefore collective bargaining is necessary for them if they are to obtain a degree equity in a rapidly changing workplace. The following case is predicated on the need for greater collective bargaining.

The earlier discussion indicates that while the ECA has apparently aided productivity gains (and thereby improved productive efficiency), these gains can be questioned on a number of grounds. In particular, the prime effect of the ECA in seeking an 'efficient labour market' has been to increase income inequality, primarily at the expense of those who comprise the secondary labour market. In addition, it seems that those who are the most disadvantaged in the labour market are *unlikely to share*, in the foreseeable future, in the present economic recovery, should it continue.

Further, based upon the earlier discussion, I view the ECA as an insufficient mechanism for assisting in the reduction of unemployment. Clearly, relying on 'the free market' to solve unemployment is not enough and government intervention is needed if we are to facilitate full employment (and minimise the effects of unemployment on those most vulnerable to it).

The Swedish system, under the Co-Determination Act, provides an indication of how the present contracts culture in New Zealand can, at least, be adjusted to facilitate improved worker protections. However, the Swedish system cannot be seen as a panacea for all of

New Zealand's industrial relations ills. The earlier discussion also indicates that through the decentralising of bargaining, a system like the Co-Determination Act, can facilitate the same types of results as those evident under the ECA. The weakness of the Co-Determination Act, as currently enacted, is that employers can, as they have in Sweden, emphasise enterprise bargaining and withdraw from centralised collective bargaining.

In this chapter, I wish to argue that the Co-Determination Act, with some adjustments can provide an alternative to the ECA. However, there are certain factors which influence this consideration of alternative policies that might be proposed for the New Zealand environment, and which restrict any possible policy prescriptions resulting from this thesis. These are: an acceptance of a flexible, contracts style framework and voluntary unionism (see for example, New Zealand National Party, 1993; Anderson and Walsh, 1993; Boxall, 1993; Foulkes, 1993a; ILO, 1994; Anderson, 1994a). In addition, International Labour Organisation (ILO) Conventions 87 and 98, in particular, set out certain fundamentals to be recognised in an industrial relations framework.

Convention 87 requires that the established legal framework within a country encourage employer and employee organisations¹. Article 8(2) of this Convention states:

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 this Convention. (ILO, 1992: 436 and UN, 1994: 427)

Convention 98 encourages the formation of collective agreements through voluntary negotiation between appropriate employers or employers' organisations and employees' organisations (Article 4). Further, it provides that employees be adequately protected against anti-union behaviour (Article 1).

If New Zealand is to accommodate the aforementioned constraints within its industrial relations framework, the ECA should be repealed, but a contracts framework retained. The shift to a new contracts framework should commence with the establishment of a body representing employers, employees and various political parties, with the responsibility of reviewing the whole industrial relations framework. It should, however, be based upon, and aimed at, facilitating effective collective bargaining; effective worker protection and interest group representation.

¹ A reading of these Conventions indicates that the ILO is referring to organisations established by employees and employers to represent their respective interests (that is trade unions and employers associations/federations). For details of the Conventions refer to UN (1994), which provides complete details of each Convention, and ILO (1992), which provides the main sections of the Conventions.

It should be noted that New Zealand Labour Party policy embodies a number of changes to the current contracts culture that exists in New Zealand. One of the Labour Party's aims is to develop a framework that will facilitate ratification of ILO Conventions 87 and 98. It would appear that their proposals will enable such ratification. The proposals offered in this chapter are similar, in some respects, to those of the Labour Party. However, it should be emphasised that the proposals embodied in this thesis are derived from the Swedish Co-Determination Act. Where a proposal was also suggested by the Labour Party, it has been noted. Given the focus of this thesis, other alternatives (Alliance proposals, for example) have not been discussed.

Finally, before discussing the alternative, it should be noted that there are two key differences between the Co-Determination Act and the policy proposals made in this chapter. First, the proposals made here allow for individual bargaining; the Co-Determination Act makes no mention of it. Secondly, the right to veto (discussed in Chapter Four) has not been included, as it would appear to be unacceptable within the current New Zealand policy making framework, particularly to employers, the National Government and, given Labour's proposals (New Zealand Labour Party, 1993), to them as well. In conjunction with this, it should also be noted that proposals such as priority of interpretation and co-determination, which have been included below, are likely to be strongly opposed by employers, for example.

Efficiency

I have argued that the Co-Determination Act provides a model for achieving agreements on equity, efficiency and productivity goals in a framework of voluntary, good faith bargaining.

Recent research indicates that enhancing employee participation in an organisation can raise productivity (Dertouzos, et al., 1989; Blinder, 1990; Bowles, et al., 1993). Therefore, the alternative should include a co-determination clause. However, the co-determination clause of the Swedish statute could possibly be extended to cover such issues as workplace reform and efficiency goals more explicitly. Nevertheless, I would envisage such a clause being similar to that in the Swedish statute, that is, general, not prescriptive.

Freedom of Association

The freedom of association clauses in any new legislative framework should incorporate an emphasis on collective bargaining. Further, they should be written in such a manner as to encourage (voluntary) union membership, rather than discourage it as it does at present. In

this way such clauses would facilitate the ratification of ILO Conventions 87 and 98. The appropriate ILO Conventions could act as guidelines to any new framework, as could the Right of Association section in the Co-Determination Act (both discussed earlier in this thesis).

Finally, it should be noted that the New Zealand Employers' Federation argue that Justice Gault's decision (quoted in Chapter Three) indicates that the provisions for freedom of association are in fact consistent with the appropriate ILO Conventions. However, the interim report of the ILO (1994, paragraph 741 (f)) would appear to contradict this view. Ultimately, The follow-up mission by the ILO will clarify this issue.

Status of Unions

An alternative industrial relations framework should be developed which will clear the way for New Zealand to ratify ILO Conventions 87 and 98. To this end the wording of any new legislative framework should make it clear that the employees' organisations referred to are organisations formed by workers to represent their interests (that is, trade unions). Additionally, employers' organisations, of a similar nature, should be given equal weighting within any new legislative framework. Further, given the criticisms of the ILO, noted earlier in this thesis, strike (and lockout) activity covering multi-employer agreements should be permitted under any new framework, as should such activity covering economic and social policy issues affecting worker interests. The structure of the Co-Determination Act provides for all of these aspects and thus facilitates the ratification of ILO Conventions 87 and 98. Hence, the Co-Determination Act again provides a model for an alternative statute for New Zealand.

Collective agreements and their negotiation by trade unions (as defined above) are emphasised by ILO Conventions 87 and 98. To further facilitate the ratification of these Conventions, the negotiation of collective agreements should be conducted solely by trade unions. New Zealand Labour Party (1993: 6) states that "collective agreements will be negotiated between unions and employers", under their proposed framework. In relation to this, the proportion of collective agreements negotiated by trade unions, under the ECA, is relatively high (approximately 80 percent).

Finally, it does not seem necessary for unions (or employers' organisations) to go through a formal registration procedure, as existed under the Labour Relations Act 1987 (LRA). However, they should be required by statute to conform to appropriate patterns of good conduct and democracy. Further, each employers' organisation or union should be required by law to prepare a charter which provides a set of goals and directions for the

organisation and which incorporates good conduct and democracy provisions. Currently, s 6 of the Incorporated Societies Act 1908 would seem to allow for this.

Bargaining Stance

Any new framework should foster bargaining, in good faith, between parties; the employer should not be able to refuse to negotiate with any lawful bargaining agent of the employees choice. To this end, all parties should be obliged by statute to *negotiate* with the other party (or their representative) once a desire to negotiate has been indicated by one or other party. This could be included within statute by adding a clause requiring negotiations to take place within a certain timeframe, once an interest in such is indicated. As noted in Chapter Three, however, current case law has supported the right of employers not to negotiate, if they wish. Further, 'reasoned proposals' should be required when bargaining. In addition to this, *all* employment contracts should be required, by law, to be in writing with every employee either having their own copy of the contract or, at least, ready access to a copy (without having to request a copy from the employer).

The section of the Co-Determination Act covering The Right to Negotiation, discussed earlier in this thesis, provides for reasoned proposals to be made when negotiating and requires that once an interest in negotiating is indicated, the parties concerned must negotiate. The Co-Determination Act could thus provide a model for similar provisions within New Zealand statute. Finally, it is interesting to note that the proposals by the Labour Party, in this area, are very similar to the provisions of the Co-Determination Act (see New Zealand Labour Party, 1993).

Company Information

Those involved in the process of negotiating an employment contract should be able to obtain company information relevant to those negotiations, upon request. Again the provisions within the Co-Determination Act, as discussed in Chapter Four, could act as a guideline for New Zealand statute here. The New Zealand Labour Party (1993) also provides for this type of clause within its proposed framework.

It should be emphasised that any such information provided by the employer should be governed by appropriate confidentiality procedures. Within the New Zealand context, and where appropriate, any provisions of this type would also have to take account of the Official Information Act 1982, the Companies Act 1993 and the Privacy Act 1993 with regard to the provision and confidentiality of information. Nevertheless, the inclusion of such provisions, under appropriate confidentiality requirements, would facilitate a more equal bargaining position.

Peace Obligation, Priority of Interpretation and The Right to Strike

Employment contracts should not be able to be unilaterally altered during their term. However, renegotiation (and associated industrial action), during the term of a contract, should be permitted, if:

- (1) there is a clause within a contract permitting its renegotiation at the request of one or other party;
- (2) when an employee (or employees) feel(s) that work is of such a hazardous nature as to endanger their health and or life and an employer still requires the work to be done; and
- (3) one or other party breaches the contract during its term.

Action to redress any wrongs (for example, breaches of contract) during the term of a contract should in the first instance be through negotiation and if a settlement is not reached to the mutual satisfaction of both parties, resolution should be through the institutions of the Employment Tribunal and Employment Court.

Interpretation in these instances should be in favour of employees who are generally the weaker party to an employment contract. This interpretation should apply until the Employment Tribunal or the Employment Court has ruled on the dispute. The appropriate sections of the Co-Determination Act, discussed in Chapter Four, covering Priority of Interpretation, could provide a model for New Zealand statute here.

Finally, the right to strike should be extended with particular emphasis on reintroducing such activity for economic and social policy issues that affect workers as well as the negotiation of multi-employer agreements. Negotiations should be able to be initiated by either party and, as with other contract details, negotiation, once initiated, should be obligatory by statute.

Institutions

Since employment law treats the relationship between parties to an employment contract differently to that which applies in other contracts², the specialist institutions of the Employment Court and Employment Tribunal should be retained. In conjunction with this, the delays already existing within the Tribunal and the Court, may be increased, if, for example, cases were to be heard through the general courts system. Resources for these

² For a detailed discussion of this issue see Chapter Five of Deeks, et al. (1994).

institutions should, however, be increased at least in the short-term to ensure that delays in hearing cases are reduced significantly. Additionally, the resources of the Labour Inspectorate should be reviewed to ensure that they are adequate to meet the demands placed upon them.

Further, provision should be made for penalties to be levied on those organisations who do not meet their obligation to forward copies of their employment contracts to the Secretary of Labour. In conjunction with this, the Government should make resources available so that regular, and detailed, survey research can be conducted on a quarterly basis into all employment contracts - similar to that carried out by the Department of Labour (in DoL, 1992f and 1993a). This would facilitate a wider information base upon which to assess the impact of any contracts style framework that may exist.

Wages, the Role of Government and Statutory Minima

On the assumption that flexibility (and bi-partite negotiations) remain dominant themes in future industrial relations systems, government involvement in the negotiation of wages and salaries in the private sector would seem inappropriate. However, as the State sector employer, a role for government in this area would seem appropriate. In this regard, the Swedish system provides a model for government representation in negotiations with its employees. A permanent head responsible for State incomes and employment policies (possibly that of the State Services Commission), and representatives (possibly permanent heads) of various government departments could facilitate government involvement with its employees.

Further, in the long-term, it is envisaged that all statutory minima be determined and maintained by a consultative process involving organisations representing employers, employees and the State. The chair of any body given the responsibility for implementing this process, could possibly be filled by an Employment Court Judge.

Key Weaknesses and Other Contracts

The prime weakness of this framework, in terms of providing effective protection for workers, is the poor union density currently in existence in New Zealand, and the reliance, as an *a priori* assumption, upon voluntary unionism. However, if we are to ratify ILO Conventions 87 and 98, it would seem that advocacy of this type of alternative framework is required. While this proposed framework enhances the position of unions and workers, the future of the union movement in New Zealand will still depend upon how they approach their role, the strategies they pursue, and how well they meet the demands of their members in this new environment.

Finally, while encouraging and emphasising collective bargaining and union negotiated contracts, it should be acknowledged that within the New Zealand context, and under a regime of voluntary unionism, there will always be those who bargain individually. Additionally, there will always be those who wish to bargain away from the union movement. A new industrial relations framework would provide for individual employees, if they wish, to negotiate their employment contract themselves or through any lawful bargaining agent (excluding (a) organisations which represent, or are funded/established by employers; and (b) those persons who have a criminal record, as discussed earlier). Collective contracts, however, could only be negotiated by trade union organisations.

In addition to the above distinction between individual and collective contracts, a new legislative framework should clearly differentiate between employees' and employers' organisations (trade unions and employers' associations) and industrial bargaining agents, who, for a fee, simply represent individuals and organisations in negotiations or in Tribunal and/or Court actions.

A SYSTEM IN TRANSITION

Efforts by opposition parties in New Zealand to introduce private members bills, and the pressure from the ILO, would seem to indicate that the current industrial relations framework is unlikely to last much longer in its present form, particularly once the Mixed Member Proportional Representation (MMP) electoral system is fully operational. Further, Hill (1994) reports that in a strategic move designed to facilitate the survival of the ECA under MMP, the New Zealand Employers' Federation has advised the Government to amend the Act. However, the specific nature of the amendments is not discussed.

It is hoped that by encouraging this type of framework a greater degree of equity and social justice will be fostered in New Zealand's industrial relations system. Finally, it is hoped that the types of changes proposed here will redress, as much as possible, the imbalances of the present system and in the long-run - by facilitating greater interest group representation - assist in reducing the marginalisation of unskilled, low-income workers.

Ultimately any system of industrial relations should be seen as part of an overall system which aims to provide opportunities for New Zealanders and not simply one which aims to reduce constraints. It is important, therefore, that any future developments within the industrial relations system are not viewed in isolation from other policy areas which may impact upon, and enhance, the operation of the labour market (reducing, for example, the

length of unemployment and associated costs). Areas of particular importance here are industry policy, education policy and workplace reform.

This thesis, in part, has studied an alternative industrial relations framework to that of the ECA with a view to identifying a framework which is more equitable for New Zealand. The suggestions provided here indicate the types of changes needed if New Zealand is to achieve greater equity while seeking to enhance efficiency. It is apparent that efficiency objectives, narrowly defined, predominate within the ECA framework. Equally apparent is the lack of equity and social justice objectives. Further, it has been demonstrated that the ECA is apparently reinforcing existing trends toward greater income (and social) inequality. To leave the ECA in place, therefore, is to encourage further labour market segmentation, to the detriment of those in the weakest bargaining positions. It must, therefore, be asked whether this is what New Zealand wants from an industrial relations system or whether the encouragement of negotiated agreements which enhances the interests of workers and employers, but particularly those workers who are vulnerable in terms of poor wages and conditions, is what is wanted. The thesis has argued that policies leading to increasing segmentation of the labour market achieve only a limited type of efficiency and disregard the goal of equity.

APPENDICES

COMPARATIVE STATISTICS

APPENDIX (A): LABOUR MARKET DATA

(I) EMPLOYMENT/UNEMPLOYMENT

TABLE A.1: Standardised Unemployment Rates (%).

Year	Sweden	New Zealand	OECD Average
1974	2.0	---	3.5
1975	1.6	---	5.2
1976	1.6	---	5.3
1977	1.8	---	5.3
1978	2.2	---	5.2
1979	2.1	---	5.1
1980	2.0	---	5.7
1981	2.5	---	6.6
1982	3.2	---	8.1
1983	3.5	---	8.5
1984	3.1	---	8.0
1985	2.8	---	7.8
1986	2.7	4.0	7.7
1987	1.9	4.1	7.3
1988	1.6	5.6	6.7
1989	1.4	7.1	6.2
1990	1.5	7.7	6.1
1991	2.7	10.2	6.8
1992	4.8	10.3	7.5
1993	8.2	9.5	7.8

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A24).

TABLE A.2: Unemployment Rates (%): Commonly Used Definitions .

Year	Sweden	New Zealand	OECD Average
1977	1.8	0.6	5.4
1978	2.2	1.7	5.3
1979	2.1	1.9	5.2
1980	2.0	2.7	5.8
1981	2.5	3.5	6.6
1982	3.2	3.6	7.9
1983	3.5	5.3	8.5
1984	3.1	4.5	8.0
1985	2.9	3.5	7.9
1986	2.7	4.0	7.8
1987	2.1	4.1	7.5
1988	1.8	5.6	6.9
1989	1.5	7.1	6.4
1990	1.7	7.8	6.3
1991	2.9	10.3	7.0
1992	5.3	10.3	7.8
1993	8.2	9.2	8.2
1994	8.0	8.7	8.5
1995	7.8	8.1	8.3

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A23).

TABLE A.3: Labour Force Participation Rates (%).

Year	Sweden	New Zealand	OECD Average
Avg 1968-77	75.8	73.7	67.5
1978	79.3	74.5	68.6
1979	80.1	75.4	68.9
1980	80.8	75.1	69.0
1981	80.6	75.6	69.0
1982	80.7	75.3	68.8
1983	80.9	74.2	68.8
1984	81.0	74.3	68.8
1985	81.6	75.5	69.0
1986	80.9	75.2	69.4
1987	81.7	74.9	69.8
1988	82.3	73.2	70.1
1989	82.9	72.2	70.5
1990	84.6	72.7	70.9
1991	83.8	72.9	71.1
1992	82.0	72.7	70.9
1993	79.9	73.1	70.6

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A21).

APPENDIX (B): MISCELLANEOUS MACROECONOMIC INDICATORS

(I) MEASURES OF INFLATION

TABLE B.1: Consumer Prices (Percentage Change from Previous Period).

Year	Sweden	New Zealand	OECD Average
Avg 1970-74	7.5	9.1	8.0
1975	9.8	14.7	11.7
1976	10.2	16.9	8.9
1977	11.4	14.4	9.3
1978	10.0	12.0	8.1
1979	7.2	13.7	10.4
1980	13.7	17.2	13.5
1981	12.1	15.4	10.8
1982	8.6	16.2	8.0
1983	8.9	7.3	5.6
1984	8.0	6.2	5.6
1985	7.4	15.4	4.9
1986	4.2	13.3	3.0
1987	4.2	15.7	3.6
1988	5.8	6.4	4.3
1989	6.4	5.7	5.4
1990	10.5	6.1	5.8
1991	9.3	2.6	5.2
1992	2.3	1.0	4.0
1993	4.6	1.3	3.6

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A18).

TABLE B.2: Private Consumption Deflators.

Year	Sweden	New Zealand	OECD Average
Avg 1967-76	7.1	8.4	7.4
1977	10.7	16.2	9.1
1978	11.6	12.2	8.2
1979	7.9	14.0	9.5
1980	13.8	17.9	12.4
1981	12.3	14.7	10.0
1982	10.6	15.3	7.8
1983	11.3	7.2	6.3
1984	7.7	6.5	5.7
1985	7.0	16.7	5.0
1986	4.7	12.8	3.3
1987	5.3	12.8	3.8
1988	5.9	8.4	4.2
1989	6.8	6.5	5.2
1990	9.7	7.2	5.1
1991	10.1	3.2	5.1
1992	2.6	1.0	4.2
1993	6.1	1.4	3.5
1994	2.4	1.0	3.5
1995	3.3	1.8	3.4

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A17).

TABLE B.3: GDP Deflators.

Year	Sweden	New Zealand	OECD Averages
Avg 1967-76	7.6	9.5	7.8
1977	10.5	17.1	8.9
1978	9.5	15.3	8.8
1979	7.9	15.7	9.3
1980	13.0	15.8	11.2
1981	9.5	16.6	9.8
1982	8.3	11.1	7.6
1983	10.0	7.7	5.8
1984	7.6	4.8	5.7
1985	6.6	13.9	4.7
1986	6.9	19.0	4.1
1987	4.8	14.9	3.7
1988	6.5	6.4	4.4
1989	8.0	8.9	5.1
1990	8.9	3.5	5.0
1991	7.6	2.5	4.8
1992	1.4	2.4	3.9
1993	2.8	2.2	3.4
1994	1.7	1.1	3.5
1995	3.0	1.7	3.3

Source: OECD (1994b) *Economic Outlook*, Number 55, June (pg. A16).

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KEY SUBMISSIONS PRESENTED TO THE LABOUR SELECT COMMITTEE ON THE EMPLOYMENT CONTRACTS BILL

ny Drysdale.

ltown.

r Zealand Business Roundtable.

r Zealand Council of Trade Unions.

r Zealand Employers' Federation.

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