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INDUSTRIAL MILITANCY IN NEW ZEALAND: THE
CONTRIBUTING INFLUENCE OF THE INDUSTRIAL
CONCILIATION AND ARBITRATION ACT, AND ITS
ADMINISTRATION, 1894 - 1908.

A thesis presented in partial fulfilment
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Industrial Militancy in New Zealand: the Contributing Influence of the Industrial Conciliation and Arbitration Act, and its Administration 1894 - 1908.

Abstract

This thesis will attempt to demonstrate that the legal and administrative evolution of the IC and A Act after 1894, contributed to a developing climate of industrial militancy down to 1908. It will further attempt to argue that the underlying reasons for such a development stemmed from changes in the operational philosophy of the IC and A system, most notably, in a movement away from stress on conciliation toward mandatory acceptance of decisions handed down by the Court of Arbitration, under threat of penalty.

This movement toward coercion is explained in terms of a number of institutional and administrative policies. These include: a major change in the law itself, by amendment in 1901, that permitted parties the right to by-pass conciliation and go immediately to arbitration, a tendency toward legalism exhibited by consecutive Presidents of the Arbitration Court, in the period 1903 - 1908, and the emergence of a policy of wage restraint that stemmed from the Arbitration Court's role as a wage fixing agency.

The study goes on to examine the way in which the administrative philosophy of Edward Tregear, the Secretary of Labour in the crucial years after the departure of William Pember Reeves, was given free rein in terms of organisational growth and policy, this particularly after 1896. In addition attention will be

directed toward the way in which Tregear was able to influence the shape of the industrial legislation, and by doing so extend the controlling powers of his department.

In the latter part of the study attention will be concentrated upon a number of important issues, which became the focus of trade union hostility, notably: under-rate permits, the provision for preference clauses in industrial awards and agreements, and the matter of apprenticeship regulations. These issues will also be used to demonstrate the unique nature of the statutory powers enjoyed by the Arbitration Court as an institution untrammelled in its authority, save by the sovereign will of Parliament.

In the final section of the thesis the problems facing the Ward government as it strove to find a legislative response to a situation where industrial conflict was re-emerging, will be considered in some detail. Here the difficulties facing John Andrew Millar in his attempts to pass legislation that would control conflict, will be examined against a situation where the emerging sectional interests of industrial labour and the employers' made such efforts virtually impossible.

The overarching conclusion of the study will be that the evolving IC and A system, was a contributing influence in the shaping of industrial militancy as it manifested itself in 1906 and 1907, and that such influences profoundly influenced not only the industrial events of 1912 - 1913; but later public attitudes towards industrial militancy in New Zealand.

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Abbreviations

AJHR:	Appendices to the Journal of the House of Representatives
AJLC:	Appendices to the Journal of the Legislative Council
B of A:	Books of Awards
IC and A Act:	Industrial Conciliation and Arbitration Act
JDL:	Journals of the Department of Labour
NZPD:	New Zealand Parliamentary Debate
NZLR:	New Zealand Law Reports
CP:	The Press, Christchurch
Dom:	The Dominion
EP:	Wellington Evening Post
ES:	Dunedin Evening Star
NZH:	New Zealand Herald
NZT:	New Zealand Times
ODT:	Otago Daily Times
ATL:	Alexander Turnbull Library
GA:	General Assembly Library
NA:	National Archives
EL:	Ellis Library, University of Missouri

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INTRODUCTION

The history of industrial relations in New Zealand is essentially the chronicle of an unusual economic and social experiment in which for some eighty-five years, men permitted the state to control the relationship between employers and employees in the labour market.¹ Underpinned by the principle of central regulation in the interests of all the parties, a system was evolved through the medium of the industrial law, coupled to appropriate institutional mechanisms that were in turn authorised and created by the law.

The principal aim was the regulation of industrial conflict, and the cornerstone of the whole legal and administrative apparatus was the Industrial Conciliation and Arbitration Act of 1894, and its later consolidations and amendments. Thus in the last decade of the nineteenth century, while other national economies struggled to find solutions to problems of industrial conflict, the New Zealand Liberal government led by W.P.Reeves, determined that the public good ran larger than the freedom to bargain collectively in the labour market. In consequence, trade unions of both employers and workers found from 1894, that while registration under the new law was a voluntary act, the benefits of registration such as statutory recognition as a bargaining agent, were offset by limitations on conduct, and the abandonment of the freedom

1. The IC and C Act is referred to in the past tense, because on 8 March 1974, it was formally struck from the statute book and replaced by the Industrial Relations Act 1973.

to develop innovative relationships with employers.

In a direct sense, the IC and A Act was an overt response by the government to the fact that in 1890, a major industrial strike had occurred between the Seamen's Union and the employers. The effects of what became traditionally known as the Maritime Strike were seen as a direct threat to New Zealand's overseas trade, and with their coming to power in 1891, the Liberals decided that the problem needed bold measures.² Under the creative leadership of the Minister of Labour, William Pember Reeves, a measure was finally placed on the statute book on 31 August 1894. The new Act provided for two principle methods of resolving industrial disputes; voluntary Conciliation, through the medium of Conciliation boards, and compulsory arbitration, through a process of awards handed down in judgement by a Court set up for the purpose.

From 1894 until 1906, the IC and A Act enjoyed a relative success in carrying out its main function, the maintenance of industrial peace. This period was to end symbolically on 27 November 1906, when a trade union registered under the IC and A Act struck for three hours in direct defiance of the industrial law. This dispute heralded a period down to 1914, in which strikes occurred with sporadic frequency, culminating in the large scale action of 1913.

Historians who have examined the conditions under which industrial direct action appeared after 1906 have tended to agree that an important cause of unrest was widespread discontent among trade unions, at the way

2. For a recent analysis of the events of 1890 see H.O. Roth, Trade Unions in New Zealand: Past and Present, Wellington, 1974, ch.2.

in which the IC and A Act was being administered. But since later militancy, notably in the period 1912-1913, was dominated on the trade union side by an organisation that claimed both ideological as well as strategic leadership of the industrial workers of New Zealand, research attention has tended to concentrate upon the underlying motives of the radical leaders. Studies have thus tended to examine such factors as class antagonism, the influence of socialist and syndicalist ideologies, and the ultimate political intentions of the radical wing of the labour movement.

Thus, what might be termed the traditional approach to industrial militancy in this country has evolved from the basic premise that militant behaviour stemmed from the confrontation of radical labour with propertied capital, in what might be termed a specific national manifestation of the patterns of industrial unrest to be found in Britain, the United States of America and Europe, down to the First World War.³

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3. Apart from the work of Roth already cited, other historians who have tended to identify class antagonism as a major influence upon industrial militancy include K. Sinclair, A History of New Zealand, Harmondsworth, 1958; W.B. Sutch, The Quest for Security in New Zealand: 1840-1966, Oxford, 1966 and C. Bollinger, Against the Wind: the Story of the New Zealand Seamen's Union, Wellington, 1968. While a specific Marxist interpretation of the industrial events down to 1914, is offered by S. Scott, A History of the New Zealand Labour Movement, Auckland, 1951.

The definitional questions involved in the use of the term 'class' has also led to a recent important discussion stemming from an essay by W.H. Oliver; see W.H. Oliver, 'Reeves, Sinclair and the Social Pattern' P. Munz (ed.) The Feel of Truth: Essays in New Zealand and Pacific History, Reeds, Wellington, 1969, pp.168-180. See also; E. Olssen, 'The 'Working Class' in New Zealand' NZJH 8, April 1974, pp. 44-61. C. Campbell, 'The 'Working Class' and the Liberal Party in 1890' NZJH 9, April 1975, pp.41-52.

Much historical attention in New Zealand has therefore been directed toward an analysis of the aims and strategies of militant trade unions whom after 1908, were associated with the 'Red Fed' or New Zealand Federation of Labour, an organisation initially dedicated in its public statements to the overthrow of the established industrial order.

It must be admitted that when this research was in the early planning stage, it was proposed to examine the relationship between prevailing industrial ideologies of militant labour unions in New Zealand and the influence of such theoretical assumptions upon the form and direction of industrial direct action in the period 1894 to 1919. But my attention was caught, after discussions with colleagues who were also researching in this period on institutional developments, by the fact that no real attempt had been made to examine the possible effects of the law, and its administrative institutions upon the development of militant attitudes before industrial direct action gained real momentum after 1907.

In formulating the hypothesis for this thesis, I was first strongly influenced by W.H. Oliver's investigations of various legislation of the 1870s, 1880s and 1890s ostensibly concerned with such matters as rabbit eradication and fruit inspection. In his examination of the evolving administration of such laws and regulations, Oliver found a common tendency in administration began to emerge; that what started as a regulative process based upon the principle of voluntary compliance, tended to develop into a bureaucratic structure, which involved regular inspection and a developing demand for mandatory

compliance with rules on the part of the citizen.

This theoretical assumption was given an empirical test in 1969, when P.J. Gibbons examined in some detail a Department of Labour policy that developed in the 1890s under Edward Tregear, to effectively de-causalize the swagger and itinerant labourer who formed a peripatetic element in the labour force. Gibbons discovered that the same tendency to move from compliance to coercion under regulation was a marked feature of Tregear's administrative philosophy, and that Oliver's theory was in this case validated by Labour Department policy.⁴

I was thus drawn into formulating a new series of questions for the reason that Edward Tregear was, after Reeves, the most important influence upon the IC and A Act. More importantly, with the departure of Reeves to London in 1896, Tregear's influence upon the administrative direction of the various consolidations and amendments to the IC and A Act legislation became paramount, down to the death of Seddon, who occupied the Labour portfolio from 1896 until 1906. There developed in consequence a new basic question. If, as many historians have agreed, the re-emergence of industrial direct action after 1906, could be attributed in part to the adverse way in which trade unionists in particular now viewed the IC and A Act, what factors of change in the law and the administration of what had become the IC and A system could be identified in turn as contributing elements toward such reactions? In other words, could a case be made from the official

4. P.J. Gibbons, 'Turning Tramps into Taxpayers: the Department of Labour in the 1890s', unpublished MA thesis, Massey University, 1969.

evidence for arguing that in defining those major factors that in sum produced industrial militancy in the period after 1906, cognisance should be taken of a central paradox; that while the IC and A Act of 1894 was introduced as a constraint upon militant industrial action, by 1906 it could be identified as having active influence upon the forms that militancy was actually taking?

The reasons for this are to be found in a number of important developments in the steadily expanding functions of the IC and A system between 1894 and 1908. For by the time the Liberals were ready to perform their final legislative surgery upon the IC and A Act in 1908, the whole centre of operational gravity had shifted away from the principle of voluntariness as contained in the process of Conciliation, toward mandatory compliance through arbitration. Again after 1903, the Arbitration Court had begun to take a very innovative line toward its duties within the constraints of the existing law. Successive judges saw their responsibilities under the statute as requiring both interpretative leadership and due consideration of economic matters in decision making. The overall results were to lead to what was in effect a policy of wage restraint on the one hand, and a demand for legal precision in the presentation of cases on the other.

In addition, the Department of Labour's administrative powers were expanded under the energetic leadership of Tregear to a point where additional powers to investigate and prosecute were seen

as a threat by both employers and trade union secretaries alike. The administrative situation was further complicated by Tregear's avowed bias against the employer, an attitude he never bothered to conceal from the public. The result was that the extension of departmental power stemmed from the particular social philosophy of this man, a compound of vaguely socialistic intentions, coupled to an almost obsessive belief that he alone was capable of discerning the wants and needs of the working man.

A third important element that contributed fundamentally to a growing climate of industrial unease was the process of change within the political system. The first decade of the twentieth century was to see the erosion of the Liberal tradition of consensus politics that had evolved under Seddon's pragmatic leadership.⁵ The decline of this tradition of consensus had an inevitable corollary in the industrial field, influenced in great part by a growing perception among employers and trade unions, that what they needed was that the IC and A system should reflect their sectional interests. Thus employers revealed a marked reluctance to permit the extension of administrative and legal powers over their perceived roles as leaders in the enterprise; while on the other hand, trade union secretaries saw the binding of as many

5. For a detailed analysis of the break up of the Liberal consensus, see R.T. Shannon, 'The Decline and Fall of the Liberal Government: a study in an aspect of New Zealand political development, 1908-1914.' unpublished MA thesis, Auckland, 1953, and R.K. Newman, 'Liberal Policy and the Left Wing, 1908-1911, a study of middle-class radicalism in New Zealand', unpublished MA thesis, Auckland, 1965.

employers as possible under the constraints of IC and A as a legitimate goal.

The result was to reduce the real options open to government to bring in the type of legislation that parties on both sides of the bargaining table would find acceptable. The situation was further complicated by the fact that employers and trade unionists alike sought to strategically influence the form that legislative and administrative amendments to the system would take.

By 1908, the government was also having to contend with a major crisis of confidence in the IC and A system, as the presence of quite large scale industrial direct action, starting in February 1907, raised real doubts about the ability of the system to fulfil its primary purpose, the control of industrial conflict. The end result was a triumph for the coercive principle that had been steadily emerging within the system since 1901, for the government's response was to introduce a pattern of penalties and restrictions that stressed compliance rather than collaboration. It is finally contended that the pattern of industrial direct action that followed after 1908, and finally broke out on a national scale in 1913, is only partially explicable in ideological and radical terms, and can only be fully understood in the strategic context of events that had their origin quite early in the first decade of the twentieth century. A period during which the state took to itself more and more centralised powers in response to increasing sectional polarity, and increasingly diverse

expectations from the IC and A system.

The thesis will begin with an examination of the basis principles upon which the Act was founded, and the initial intentions of the system's founder. This will be followed by further discussion of the process of amendment to the legislation down to 1900. The important change of law that took place with the IC and A Amendment Act of 1901 will then be examined in its administrative and political context, as the restrictions upon the right to go directly to arbitration were eased. Attention will then be turned to the question of the seminal role of Mr Tregear, whose influence upon the administrative shape of the IC and A system did much to advance the process of centralisation through judicious amendment to both the IC and A Act and related legislation, such as the Factories Amendment Act of 1901. Such concentration is made necessary by the fact that from 1894 to 1906 the relationship between the philosophy of Tregear and the extension of the role of the Labour Department was indivisible, supplemented by a combination of administrative determination and a highly personal relationship with the Premier.

In the subsequent two chapters an analysis will be made of the dominating issues and controversies that underlay many of the tactical approaches of the employers and the trade unions to the question of IC and A amendments. Matters such as the vexed question of preference to unionists, the employment of workers at less than the award rate through special permits, and conflict over the legal vagueness of the apprenticeship regulations, run like threads through much of the period

between 1900 and 1907. This will be followed by a study of the Arbitration Court's wage policy, relating to the principle of the minimum wage, and leading into further examination of the Court's unilateral policy of relating award increases to the state of the economy, and to the ability of the employer to pay.

The focus of the thesis will then turn to the question of the response of concerted employer and trade union organisations to the legislative changes put in train in the period 1903 to 1907 a time when considerable extension was made to the administrative powers of the IC and A system, and to the counter proposals put forward by these parties in an attempt to influence the shape of the amending legislation.

Finally the government's attempts to respond through the legislative process to overt industrial conflict and the direct challenge to the IC and A system, that such conflict created will form the last chapter of the study. A conclusion will then summarise the period, and briefly remark on later events.

It is an unfailing truth of the research process that a doctoral candidate finds himself in the intellectual debt of many persons, and I am no exception to this conclusion. I should like to begin by thanking my supervisor, Professor W.H. Oliver, who has assisted me in all aspects of the preparation of this study, and whose

many kindnesses are deeply appreciated. My thanks also go to my second supervisor, Professor J.W. Rowe, whose constructive criticisms have also been extremely helpful, particularly in the economic aspects of my research.

Other colleagues who deserve much thanks for practical help of various kinds include: Mr J. Gandar, Mr H.O. Roth, Mr E.J. Keating, Mr N.S. Woods and Mr R. Campbell. I should also like to thank Professor G.V. Boyle, Dr J.A. Mikrut Jnr and Mr F.B. Ferris of the Labor Studies Program, University of Missouri-Columbia, who collectively directed me toward important sources of American opinion on the New Zealand IC and A system during my period.

I gained valuable help and assistance from the staffs of The National Archives, the General Assembly Library, the Alexander Turnbull Library, Auckland University Library, Otago University Library and the Library of the University of Canterbury. I owe a particular debt of gratitude to the staff of the Massey University Library, especially the Inter-Loan Librarian, Miss Mary Green, who met with cheerfulness and efficiency the heavy demands I made on her department. I am also grateful to the staff of the Ellis Library, University of Missouri-Columbia, for the provision of research facilities and access to important information on my period.

It remains for me to thank my wife Beverley, who has borne the heavy domestic burden that research transferred from my shoulders to hers, with much cheerfulness. I owe her an immeasurable gratitude and dedicate whatever merit this work possesses to her.

CHAPTER ONE

Industrial Conciliation and Arbitration: Motives and Consequences.

The last decade of the nineteenth century in New Zealand has been traditionally hailed as a golden age of social and economic experimentation, aimed at the resolution of specific social and economic problems. It was a time of political experimentation during which individual ministers serving in a government that could claim a body of popular support from sectors of the political community, proposed specific legislation to meet what they considered to be pressing social, economic or administrative needs.

Thus after much weighty debate, frequently tinged with acrimony and tactically controlled through the skill of William Pember Reeves, Labour Minister in the first Seddon Cabinet, Parliament on 31 August 1894, placed on the statute book a new industrial law. Its purpose marks the recorded attempt by a national government, to regulate the labour market in the interests of industrial peace and in the overall name of the public interest.¹

1. The standard history of the legislation is N.S. Woods, Industrial Conciliation and Arbitration in New Zealand, Wellington, 1963.

Unfortunately Woods' study ends in 1963, and the period down to the Act's repeal in 1973, still requires detailed analysis, particularly the motives for finally abandoning the legislation. For an exploratory essay on the latter period see A. Williams, 'Industrial Relations' in P.A. Lane and P Hamer (eds) Decade of Change: Economic Growth and Prospects in New Zealand, 1960-70, Wellington, 1973, pp.109-126.

It is obvious that Reeves, in that first high summer of Liberal endeavour, could not know that what he was proposing as a bold experiment in industrial legislation would not only shape the institutional forms of the New Zealand industrial relations system over a period of the next eighty-five years, but have fundamental consequences for the basic relationship between employer and worker in the labour market. For not only did the IC and A Act lay down the central principles of conduct as defined by the twin processes of conciliation and arbitration. It called into being, gave identity and rights in law, and shaped the psychological attitudes of the institutions it was supposed to serve, industrial unions of employers and workers.² What followed was state intervention into the core of the market function, the bargaining process.

It was empowered to do this by virtue of the law's two dimensional function, the power to regulate and the power to punish, and the significance of the latter process increased as the administrative powers of regulation were extended in the period from 1900 to 1908.

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2. The term industrial union has a specific meaning in New Zealand industrial law. It means a union of either employers or employees duly registered under the IC and A Act or its successor, the Industrial Relations Act, 1973. By contrast, a trade union, to be legally precise, was a body registered under the Trade Union Act of 1878, and its successor, the Trade Union Act of 1908.

Since the promulgation of the IC and A Act saw a rush of trade unions to register under the new legislation, the Trade Union Acts are only tactically significant in the period 1908 to 1913, for reasons that will be explained in a later chapter. Since the term 'trade union' formed part of common parlance, it will be used to designate IC and A unions during this period, except where the term industrial union is specifically used.

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A useful physical model of the relationships that underpinned the IC and A system during this period is that of a legislative fulcrum containing the IC and A Act, and the legal and administrative agencies that gave it life, around which the parties trade unions and employers swung. At the risk of mixing the metaphor, the pattern of behaviour that developed can then be described as one of initiative and response, either outward from the centre of the system through legislative amendment, or inward from the parties in their attempts to change the law in their favour. Such a model best fits the fact that throughout its history, the IC and A system was never a static regulative mechanism, but a growing administrative organism subject to change, based on political perceptions of what the system needed to make it more efficient.

This process of ~~now~~ frequent amendment was particularly marked in the period from 1894 to 1908. It began as an inevitable procedure for correcting anomalies in the practical administration of the Act, and ambiguities in the definitional terms used in the various clauses. But after 1900, the procedure of amendment came under other kinds of pressure, not least the changing perceptions of roles among the parties who were now bound together under the system. The officers of the Court, the administrators of the decisions handed down by the Court, the Conciliation Board members, and not least, the parties in the labour market, all began to develop their individual conceptions as to what the system was intended to do.

The legislation was also to exert considerable influence in the public domain as the result of the basic philosophy that informed its

design and introduction. William Pember Reeves in moving the legislation had in mind the need for a central agency to control overt industrial conflict and anticipated from the standpoint of a late nineteenth century socialist, the modern doctrine of the public interest in industrial relations. By doing so he was acting with a degree of natural political confidence for it was a short step from the reality of power based on a comfortable majority for the Liberals in the House of Representatives, to the belief that such power was the will of the people. Since in turn the Liberal policy was based on the belief in a political consensus that linked town and country, it was logical to assume that there was a fundamental community of interest between an embryonic industrial capitalism on the one hand and an emerging industrial labour force on the other.³

The concept of the public interest coupled to the further assumption that at base the interests of employers and workers alike are the same, has had a remarkable longevity in New Zealand. It remains even today as a series of assumptions that take the following form: industrial direct action is both foreign to New Zealand's social ethic as a classless society and when it occurs, it is normally inspired by foreign elements whose ideologies have been borrowed from elsewhere.

3. The Minister's personal assessment of and rationale for the legislation can be found in W.P. Reeves, State Experiments in Australia and New Zealand, Melbourne, 1902, 2 vols. For a colleague's assessment of Reeves's intentions, see F.W. Rowley, The Industrial Situation in New Zealand, Wellington, 1931.

Again, New Zealand is an exporting country that must take firm action whenever industrial troubles threaten, because prolonged strikes can damage the national livelihood. Collectively, these attitudes have led to the prevailing belief that swift action by government when all else fails should not exclude punitive measures against strikers.⁴

It is clear that Reeves himself did not see punitive measures as an element that would be immediately required when the Act was first promulgated, since he assumed that most of the disputes handled by the IC and A system would be dealt with in conciliation and that the coercive power of arbitration, held in reserve, would be called in to play infrequently. That he was to be proved wrong is even more ironic when it is remembered that after 1896, he was to spend the balance of his active life in Britain and that, therefore, information about the progress of the IC and A system came to him at second hand.⁵

The process of development of the legislative functions of the IC and A system was accompanied by an important parallel event in political society, the steady disintegration of the consensus that gave the Liberals their electoral support. It was marked by the emergence of

4. What is at fundamental issue in the framework of the attitudes described is the legitimacy of trade unions in modern New Zealand society. For an analysis of this problem see A. Williams, 'Industrial Relations in New Zealand: a Sociological Perspective', in K.W. Thompson and A.D. Trlin (eds) Contemporary New Zealand: Essays on the Human Resource, Urban Growth and Problems of Society, Wellington, 1973, pp.163-186. Also A. Williams 'Government and Trade Unions in New Zealand: Some Emerging Issues', in S. Levine, New Zealand Politics: A Book of Readings, Wellington, 1975, pp 435-439.

5. The standard biography of Reeves is K. Sinclair, William Pember Reeves: Fabian Socialist, London, 1966.

special interest groups, each moving toward the identification of its own self-interest. Through the period from 1900 to 1908, first regional and then national organisations emerged with the specific purpose of placing pressure upon government to achieve sectional aims.

This development was reinforced in the industrial field by the fact that, on the employer side a formidable structure of industrial legislation with the IC and A Act at the apex constrained employer behaviour toward employees within a set of defined rules that required obedience.⁶ The result was a growing frustration throughout the period at what many employers perceived to be an unwarranted intrusion into areas of rights and interests traditionally considered sacrosanct. Latent antagonism toward IC and A was thus directed during this time toward specific targets, the most important being the professional trade union officer, whose emergence on the industrial scene was a by-product of the operational demands of the system on the employees side. The trade union counter argument was that trade union secretaries were not only an administrative necessity but a much needed independent voice in labour matters, on the grounds that employers were largely hostile toward rank and file activists, and frequently victimised men who agreed to serve in a union appointment.

Employers began to see the professional trade union secretary, who frequently offered administrative services to a number of trade unions

6. The official statistics for 1908 list ~~no~~ no less than forty-two separate pieces of industrial legislation enacted since 1890, most of which demanded employer compliance with rules and regulations. New Zealand Official Yearbook, 1908, p.514.

for a given salary, as a serious threat quite early in the period. For example, on 10 July 1901, it was reported in Auckland, that at the foundation meeting of the Auckland Employers Association, members had expressed considerable anxiety at the fact that the development of the IC and A system was producing the 'labour agitator' whose presence in increasing numbers threatened employer well-being. Always happy to have a stick to beat the government with, the New Zealand Herald editorialised:

Mr Seddon has said lately that labour legislation has gone far enough. But he has created a power which he cannot completely control and it is evident, that a whole body of agitators who have been brought into existence are not content; what has been conceded only strengthens them for more⁷

The strong tone of the editorial echoed the message delivered to the nascent Association by the 'guest speaker, Mr Henry Broadhead, Secretary of the Canterbury Employers' Association. His theme was simple and direct, employers needed to bury regional differences and amalgamate into a national Federation, with one avowed purpose, to make the IC and A Act a 'dead letter'.⁸ Such a unifying purpose was soon to disappear as employers realised there were important strategic advantages to be gained from an approach to the Act as a continuing factor in the overall industrial relations system. But the Auckland meeting is important for two reasons. It demonstrated continued employer hostility toward the idea of state intervention in the labour market and as will be revealed later, it made collective response to the IC and A Act an important condition of employer unity.

7. NZH, 10 July 1901.

8. ibid.,

This latter assumption is borne out by a recent important study of the development of employer organisations in New Zealand. The creation of a Parliamentary Committee, to represent the collective wishes of employers whenever amendments to the IC and A Act and related legislation were proposed, was an established fact by 1902, whereas the formal constitution of the New Zealand Employers' Federation was not finally approved until 1905.⁹

On the other hand, the emergence within the industrial labour movement of a collective will and purpose took somewhat longer to appear. The ostensible cause of such delay appear at first impression to mirror the confusions and contradictions afflicting labour movements internationally at the turn of the twentieth century: problems such as the basic antipathy between skilled tradesmen and unskilled workers, ideological arguments as to the best means of socialist progress either through evolutionary or revolutionary action, the vexed and related question of political representation under a capitalist status quo, and finally, the overarching question of the appropriate role of industrial direct action, were matters of debate in New Zealand during the period 1894 to 1908. But at this point, international comparisons begin to break down for a number of reasons.

If we take as a basic historical premise the assumption that the development of labour market institutions in a given society reflects in sum the social, economic and political experience of

9. R.S. Rudman, 'Employer Organisations: their Development and Role in Industrial Relations', in J.M. Howells, N.S. Woods and F.J.L. Young (eds) Labour and Industrial Relations in New Zealand, Sydney, 1974, pp.53-77.

industrialisation, then certain common experiences come into focus. If we take the British case as a model, we find that enduring hostility toward trade unions as conspiracies in restraint of trade begins to diminish after the passing of the Trade Union Act of 1871, after which trade unions began to gain real legitimacy as bargaining agents. The result in turn had important effects upon the law, with an emerging twentieth century tradition that it should only be used to legitimise where necessary consensus positions already hammered out by the parties in direct confrontation. The important underlying point being that industrialisation in the nineteenth century produced its own unique institutions as a function of the process of change.¹⁰

By comparison the history of labour market institutions in New Zealand, despite traditional views that because of homogeneity of ethnic origin, a common industrial attitude was transferred to the Antipodes, reveals on closer examination a radical departure from the British experience after 1890. It was not the process of large scale industrial change, nor the attendant development of new institutional forms that reflected a stratified society based on wealth, that shaped industrial relations in New Zealand, but rather a comprehensive pattern of labour

10. Recent British studies that tend to support this view include K.W. Wedderburn, Trade Unions and the Law, Harmondsworth, 1968; E.H. Phelps-Brown, The Growth of British Industrial Relations: 1906-1914, Oxford, 1967; H.A. Clegg, A. Fox and A.H. Thompson, A History of British Trade Unions since 1889, Vol. 1, Oxford, 1964.

For specific studies of particular trade union experiences see K. Lovell, Stevedores and Dockers, London, 1967; J. Hinton, The First Shop Stewards Movement, London, 1973.

Further citations are contained in an important review article on British historiographical development. See R.C.J. Stone, 'The Great Tradition in British Labour History and its Critics', Historical News, 22, May 1971, pp.6-10.

legislation, the fame of which soon spread abroad.¹¹

On the basis of the economic evidence, New Zealand can hardly be described as a country in the throes of industrialisation when the IC and A Act was first promulgated. Nor, with the exception of such occupational groups as miners, freezing workers and watersiders, could the environment in which men worked be described as one in which the proximity of home to work created a social continuum which made collective action and the diffusion of radical ideas about industrial change relatively easy. More importantly, by the end of the nineteenth century, New Zealand did not reflect the social structure of the modern industrial economy which Oliver has described as:

a fairly stable division between the propertied and the propertyless arising within an industrial society, and characterised by an enduring social hostility¹²

There was conflict, but of a kind channelled within the confines of the legislation, which really created it by requiring as a basic principle that a dispute exist before the machinery of the system could come into

11. For an indication of the widely diffused reputation of New Zealand's labour laws see H.O. Roth, Labour Legislation in New Zealand: a Bibliography, Auckland, 1964. The study lists investigations in French, Russian, German, Japanese and numerous English language studies. A striking example of enthusiasm for the New Zealand system is demonstrated in the report of the Manitoba Socialist Conference of 1912. A delegate described New Zealand as a 'straight' labour paradise, 'straight' meaning 'non-ideological'. Report cited in M. Robin, Radical Politics and Canadian Labour, 1880-1922, Kingston, 1968, p.85.

12. W.H. Oliver, p. 163.

operation. Coupled to this was a further hostility that developed during the period because of the system's failure to be all things to all men. But the IC and A Act defused a fundamental cause of industrial conflict, that of wage demands, by imposing through the award system a level of wages below which an employer was not permitted to go. The end result was that conflict, when it emerged, did so in response to sectional perceptions of limitations on rights imposed by the administration of the Act, not because of the principles on which the Act was founded.

The IC and A Act had an important influence upon the definition of the term 'conflict' as it relates to the New Zealand experience. For in the context of the law, the word not only described overt direct action in the form of a strike or a lockout, but the principle of default within the conditions of an existing industrial agreement or award.¹³ A dispute was thus created when one or other of the parties to a registered agreement or award failed to comply with the rules of conduct laid down in such instruments. A party wishing to obtain redress or to file for changes in the existing arrangement was thus required to create a dispute in order for the matter to go to either conciliation or arbitration.

It must also be observed at this point that the Arbitration Court lay outside the traditional legal process in two important respects.

13. There was an important distinction in New Zealand industrial law between an industrial agreement and industrial award under the IC and A Act. An industrial agreement was a collective bargain duly arrived at after bi-lateral negotiation, and binding under the original terms only on the parties represented at the negotiations. By contrast an industrial award was a unilateral decision handed down by the Arbitration Court, and binding without right of appeal not only on the parties but on any other parties the Court might wish to join in a trade, industry, district or region. The implications of the principle of joinder will be examined in detail in a later chapter. See IC and A Act, 1894, Part II and Part III inclusive.

First the principles which were to guide it were not formally defined in the original statute which meant the Court had the right to literally make the industrial law, guided only by the principles of equity and good conscience. This freedom was further reinforced by the fact that the judgements of the Court on any matter it considered to be within its jurisdiction could not be challenged in a higher Court of Appeal. This placed enormous powers in the hands of the President of the Court, the only member with legal training on the three-man bench, the others being employers' and workers' representatives respectively. As the period progressed, the policy of the Court, as reflected in its decisions and frequent proclamations of intention in various matters, became inextricably linked in the minds of the employers and trade unionists with the personality of the President. As we shall see later, two particular judges, F.R. Chapman and W.A. Sim, became the targets of sectional hostility directed not toward the principles of the IC and A system, but toward the way in which they as Presidents interpreted those principles.

Alongside the Court of Arbitration, as the administrative agency of the IC and A system, stood the Department of Labour. It is a matter of no small importance that the direction of this agency during the first twenty years of its existence was in the hands of Tregear, personal friend, ideological confrere and comforter in exile of W.P. Reeves. His role as architect of the administrative system has yet to be fully chronicled. He remains sans biographer, a complex and frequently contradictory personality who enjoyed the friendship and trust of labour leaders into his retirement in 1910. The employers by contrast, treated him with justifiable hostility and suspicion for his inordinate bias toward the

worker. He was able to sustain his power in such a situation largely because, until the death of Seddon in 1906, he enjoyed a position of power and influence that stemmed from a personal relationship with the Premier. Like his friend Reeves, Tregear was driven by his ideological beliefs to attempt to so order the industrial life of New Zealand that the needs and interests of the working men in society would transcend all else. But like all social reformers whose zeal has a touch of the messianic, his definition of the common good owed little to social reality and more to his own personal ideals of what the common good should be.

One final component of the developmental pattern that followed the passing of the IC and A has to be considered, before attention is turned to the prime purpose of the thesis: the role of Parliament as the only body in the country to which the Act was subservient in industrial matters.

On close examination, Parliament appeared to play an important role in three major areas of legislative activity between 1894 and 1908: First, as a forum, through the medium of the Labour Bills Committees of both the House of Representatives and the Legislative Council, where interested parties would give evidence on proposed amendments to the statute, and put forward practical suggestions of their own for inclusion in the amending legislation. As a consequence of this opportunity, the forum became an arena in which first the employers and then the trade unions attempted tactically to influence the process of legislative amendment in their favour by pushing ideas of their own and demonstrating

collective unity by either supporting or opposing proposed changes. The third dimension was the floor of the House or Council Chamber, where members, mindful of the electoral effects of the popularity or unpopularity of proposed changes sought in turn to influence the final form of amending legislation. It must also be borne in mind that it was in this third dimension of Parliamentary activity that the employers enjoyed a distinct advantage, for at no time was the political representation of a purely labour interest strong enough to exert real pressure upon the Liberal intentions, while in the Upper House, the employer case could always be assured of a sympathetic hearing.

One thing remained constant in what was a period of fluid administrative and legal change, political confidence in the process of legislative amendment as a means of resolving the root causes of industrial conflict in the labour market. It follows that the history of the IC and A system during this period is one of a search for that precise combination of legal and administrative devices that would bring the objective of industrial peace. It was an ironic side effect of that search that once the state had intruded in the labour market in 1894, the logic of such a policy demanded that it continue to extend and develop those administrative functions that intrusion had put in train in order to meet the needs created by the process of change itself.

Reaction, when it came in 1907, led to counter reaction based upon the need for government to resist what was in effect a challenge to its own authority. For to suggest that the bold experiment of Reeves had ultimately failed was to question the whole validity of the state's role in industrial relations. The result was a pattern of labour laws that

began by attempting to resolve the causes of conflict by voluntary means and ended in 1908 by coercing the very groups whose interests the system was intended to serve.

It will thus be the central theme of this study, that in seeking to serve the general interests of what it believed to be a consensus of employers and trade unions, the state by the extension of legal and administrative powers. contributed to an inevitable reaction by the parties that resulted in a return to direct confrontation, between not only trade unions and employers, but trade unions and the government. Consequently after 1908, while other influences had a role in the industrial conflict that culminated in a national upheaval in 1913, the sympathy with the cause of the militants that brought many moderate trade unions and their leaders into the fray, has already been shaped by frustrations and anxieties at the way in which the IC and A system had evolved down to 1908. It is to the causes of such ultimate effects that attention will now be turned.

CHAPTER TWO

The Development and Directions of Legislative Change: 1894-1900.

The point has already been made in the previous chapter, that the process of legislative amendment that shaped the IC and A system from 1894 onward. was virtually a continuous activity. What began as a series of technical adjustments to the legal machinery. became in short order after application in the labour market a process of sometimes sweeping change, as particular problems refused to yield immediate answers, and the amended application of particular clauses threw up the need for yet further modification.

In this chapter it is proposed to examine the period down to 1900, as the forerunner of the first great change in operational emphasis that the IC and A Act was to experience, for in 1901 the decision was taken to make access to arbitration more easy for the parties. The result was to have very important ramifications in the period 1901 to 1908, and it can be argued that the total period was thus demarcated in terms of the major issues and problems that stemmed from the IC and A Amendment Act of 1901.

Some indication of the rate of change is offered by a chronological description of the process of amendment and consolidation of the original statute, that began in the year that the IC and A Act came into operation, 1895. Amendment Acts followed in 1895, 1896, and 1898, and by 1900

a Consolidating measure incorporated the changes that had taken place since 1894. At this point the process began again with Amendment Acts passed in 1901, 1903 and 1904 leading to a further Consolidation Act and a short Amending Act in 1905. An Amendment Act followed in 1906 and in the wake of industrial direct action in 1907, government tried to introduce sweeping penal provisions through the medium of a further amending Bill. Hostile resistance from the trade unions in that year led to the abandonment of the proposal as time ran out for the Administration. But in 1908, the government returned determined to push through its Amending Act of that year. The Amendment Act of 1908 marked two important milestones in the legislation's progress. It was the last time that the Liberal government would propose major changes in the industrial law, while its major clauses dealing with penal provisions against industrial direct action revealed the extent which coercion had reached by 1908. It remained for the Massey government to place the capstone on the system of restraint now explicit in the IC and A Act, by passing the Labour Disputes Investigation Act of 1913. The Liberals were to make further minor modifications to the IC and A legislation in 1910 and 1911, but to all intents and purposes their attempts at major changes in the law ended in 1908.

Within the total framework of legislative change, the period from 1894 to 1900 was one in which the process of technical modification to the operational clauses in the IC and A Act began to give way to a more perceptible shift in emphasis toward administrative centrality, coupled

to the growth of the institutional powers of the Arbitration Court. In examining the process of change it is proposed to concentrate on those factors in amendments that contributed to a growing state power in three areas: those which enhanced and extended the power of the Arbitration Court, as the apex of the system; those which in turn extended power to impose penalties for failure to comply with decisions and rulings, and those which tended to expand central administrative powers, such as those relating to Inspectors of Awards, at the relative expense of employer and trade union representatives. Both in this and in later chapters, these three policy directions will be the subject of closer scrutiny.

We can begin by considering the context within which the IC and A Act began to operate in 1895. The point has already been made, that despite the emerging presence of a viable pastorally based industry, large scale industrialisation had not emerged in New Zealand. Thus the clause relating to the size of membership in a trade union as a pre-requisite for registration under the new Act reflected the highly regional and scattered working population of the country, a demographic fact compounded by the lack of a national transport system. The Act thus encouraged what was later considered to be an excessive multiplicity of trade unions, each regionally and locally orientated, by decreeing that an industrial union should consist of:

A society consisting of any number of persons not being less than seven, residing within the colony, lawfully associated for the purpose of protecting or furthering the interests of employers or workmen in or in connection with any industry in the colony..... 1

This meant that labour organisers who tried to develop a coherent and unified trade union movement from scattered members, not only had to struggle against the hostility of employers, but against the problems created by such a wide dispersion.² To add to the confusion, the Arbitration Court tended to make a distinction in its awards, between a national union, such as the Australasian Federated Seamen's Union, which registered under the Act as a composite body, and its member branches in the various ports. The result was a dual system of registration which created bad feeling within the branches whenever the union head office attempted to impose a coherent national policy.³

1. Industrial Conciliation and Arbitration Act, 1894, c. 3.

2. The tribulations imposed by geography, upon the trade union organiser are reflected in the comments of P.H. Hickey in a letter to his mother. He said..." I am having quite an experience biking from place to place. Already I have mended 40,000 punctures, blown up the bike 73,085 times, fell off once...." Letter n.d. cited by J.C. Weir, in 'Pat Hickey and the Red Federation', unpublished Ms in the possession of author.

3. For a description of the conflict caused by dual registration in the Seamen's Union, see, C. V. Bollinger, Against the Wind, Wellington, 1968, pp. 62-69.

In planning the legislation, Reeves paid careful attention to the question of enforceability of decisions. Thus the initial statute contained a number of clauses in which the matter of penalty for default was given definition. In the first instance, under clause thirteen, a trade union secretary who failed to supply the Department of Labour with a six monthly list of his members, could find himself liable for a fine of two pounds, and if he persisted in his failure, the sum could become two pounds for every week the return was delayed.⁴ Under clause twenty-two, the penalty for breach of agreement could be as high as five hundred pounds, while the definition of such a breach was to be laid down within the terms of the agreement under which the breach occurred.⁵ The same clause also made it an offence for an employer to hinder any member of a Conciliation Board, or an accredited officer of the Board, who entered his premises to investigate matters arising out of a current dispute, the penalty in such a case ranging up to a maximum of fifty pounds.⁶

Clause seventy-eight was also important but for a different reason. It introduced the principle that as a condition of enforcement of penalty when a party failed to pay a fine for breach, the appellant could sue for payment.⁷ The process was extended under clause seventy-nine, to include the right, where the defendant party failed to pay to transfer the responsibility to the individual members of the union involved, with the further right to proceed against the real and personal

4. IC and A Act, 1894, c.13.

5. ibid., c.22(1) , and 22(2).

6. ibid., c.22(3).

7. ibid., c.78.

property of the union if this in turn failed to produce compliance.⁸ As will be seen later, this power was stressed as a penal provision under the ICand A Amendment Act of 1908. But for the moment the importance of the clauses lies in the fact, that from its inception, the ICand A Act did not recognise a distinction in law regarding penalties, between a trade union as a corporate body, and the individual persons who made up its membership.

The clauses also indicated that while Reeves confidently assumed that the substantial body of issues coming before the tribunals would be dealt with in conciliation, he was prudent enough to give to the Arbitration Court considerable 'reserve' powers in the matter of default by any party.

The process of extension of function, that was so marked a feature of the ICand A system in the period between 1894 and 1908, began with the ICand A Amendment Act of 1896. Under clause four, the principle of joinder was introduced. This meant, that:

When any industrial dispute has been referred for settlement to a Board or the Court, any employer, association, trade union, or industrial union may, on application, if the Board or the Court deem it equitable, be joined as party thereto at any stage of the proceedings, and on such terms as the Board or the Court deems equitable....⁹

8. ibid., c.79.

9. ICand A Amendment Act, 1896, c.4.

In other words the Arbitration Court and the Conciliation Boards were to be permitted to join a party under the terms of an industrial agreement or an award, who, while not being privy to the original decision, wished to have its provisions extended to it. This principle, as later discussion will reveal, became the source of much controversy, as trade unions sought to join as many employers as they could under the terms and conditions of awards in particular, thus forcing them to pay award rates.

The IC and A Amendment Act of 1898, was also to provide, through the introduction of a new principle in wage fixing, a source of later controversy in the IC and A system. The relevant clause was intended as a means of offsetting problems in the supply of skilled labour created by fluctuations in the levels of net in-migration, the remoteness of some communities, and the types of work demanded by local market conditions. As a result, the new Act introduced the following clause:

The Court in its award, or by order made on the application of any of the parties at any time during the currency of the award, may prescribe a minimum rate of wages or other remuneration, with special provision for a lower rate being fixed in the case of any worker who is unable to earn the prescribed minimum10

10. IC and A Amendment Act, 1898, c.6.

The Act was thus providing, under the conditions of the colonial labour market, for the employment of men whose lack of skill, or advanced age, prevented them being employed at the award rate, at a level of wages below the prescribed award.

The overall effect of this clause in the long term was to make the 'permit system' as it was called, the object of craft union hostility. For in the hands of employers constantly short of operating capital, the permit system became an excuse to lower labour costs, with consequential abuse of the system. As a consequence, the question as to who could authorise and control the issue of such permits became a matter of some contention to both sides after 1900, until as subsequent ~~changes~~ will reveal, the power was transferred to Inspectors of Awards, much to the chagrin of the trade union secretaries.

The same amending legislation was responsible for another important series of changes in the principal statute. Under clauses three and nine respectively, the power to define what constituted a breach of an award or an industrial agreement was removed from the individual instruments and vested in the Arbitration Court.¹¹ By the same token, the Court's authority was also extended under clauses eight and ten, to permit it to specify the parties to whom penalties were payable after actions for breach, with a further extension of power to

11. ibid., c.3, and c.9.

exact penalty for all offences defined as such under the original statute.¹²

These clauses, indeed the whole amending legislation of 1898, marked a strong movement toward the centralisation of the legal functions of the IC and A Act under the Arbitration Court. The trend also indicated the beginning of a move toward Arbitration as the primary process of the system, that was to reach its apogee in 1901, for as Woods described it, after 1896:

the development of the Conciliation machinery by statutory action came to a standstill ... the policy of constructively amending the Conciliation machinery was not abandoned for lack of suggested improvements. No legislative notice was taken of the many suggestions put forward for meeting difficulties which the Boards were encountering 13

The Amendment Act of 1898 also moved under clause one, to change the original intention of the statute as passed in 1894, by the deletion of the original preamble that made the IC and A Act a law:

to encourage the Formation of Industrial Unions and Associations and to facilitate the settlement of Industrial Disputes by Conciliation and Arbitration14

The change was made by deleting the phrase relating to the formation of industrial unions.¹⁵ The reason for this according to Reeves was the fact that the first President of Arbitration Court, Mr Justice Williams,

12. ibid., c.8.

13. N.S. Woods, Industrial Conciliation and Arbitration p.53.

14. IC and A Act, 1894, c.1.

15. IC and A Amendment Act, 1898, c.1.

had in the course of decision making, introduced the principle of preference to trade unionists as an obligation incumbent upon an employer under the terms of an industrial award.¹⁶ As a consequence Reeves concluded by so changing the preamble, the legislators attempted to warn the Court that the practice of granting preference should be discontinued.¹⁷ Since the subsequent history of the preference issue is the subject of further argument below, it will not be discussed further at this juncture, save to say, that the Court refused to be so guided. The reason for such obstinacy forms part of a larger issue, the relative independence of the Arbitration Court within the framework of the legal system to virtually make its own law hindered only by the express intention of Parliament, through amendment to the IC and A Act, a matter, as will be seen later, that became the centre of much contention.

From the trade union point of view, the decision to remove the phrase was largely irrelevant, since in marked contrast to the employers, workers were eager and willing to register under the IC and A Act. This eagerness was reinforced by a decision of the President of the Court given in 1898. After hearing submissions for an industrial award, from

16. The principle of preference stated briefly, involved an obligation upon an employer covered by an industrial award, to grant preference of employment to a worker who was member of the trade union also covered by the award, over a worker who was not a member of the said union.

17. W.P. Reeves, State Experiments, II, p.121.

first the Grocer's Assistants and then the Tramway Employers of Wellington, Mr Justice Edwards refused jurisdiction on the grounds that the occupations specified in the submission did not come under the definition of the term worker, as laid down in the Act.¹⁸

The incident does serve as an example of the powers enjoyed by the President of the Arbitration Court, who as the only law officer on the industrial bench, could, if he so wished, make personal rulings with scant regard for precedent of custom and usage, the normal tradition of the civil courts. It also serves to highlight the essential and special form of the IC and A Act from its inception. For by definition, the Arbitration Court's powers rested upon the way in which each President defined the boundaries of such jurisdiction. Thus to all intents and purposes, the Arbitration Court lay outside the mainstream of judicial procedure in New Zealand, and as a later example will reveal, could not be restrained by either an appeals system to a higher Court, or by any authority save that of Parliament.

The overwhelming impression is created, that neither the founder of the IC and A Act, William Pember Reeves, nor his political colleagues had any real idea of what the translation of the principle of control over industrial conflict meant in legal terms. As the powers of the Act

18. Since the President did not make an award, no decision was recorded in Journal of the Department of Labour for that sitting of the Court. The matter is referred to in detail however in Department of Labour Annual Report, AJHR, H-11, 1898, p.4. The substance of the President's decision was that since the workers involved were engaged in service occupations, such activities did not come under the meaning of the term work in the sense of productive effort. Thus until the IC and A Consolidation Act, 1900, c.2. workers in service occupations were not permitted to register under the IC and A Act.

were extended, the administrative process required by the application of decisions became more complex. The result was that second order problems began to appear as a result of the practical application of the Court's decisions, which required in turn, further amendments to the legislation.

The IC and A Consolidation Act of 1900, did little more than codify the legislative changes that had taken place since the law came into force in 1894, though its passing marked the emergence of a new principal Act, superseding the original statute.¹⁹ But the process of consolidation was overshadowed by a debate that had been going on since 1898, with regard to the future of the conciliation process. What was at issue, and the arguments will form the substance of later discussion was the whole question of the work of the conciliation boards. The basic discussion revolved around one question, should the IC and A system be modified to make for easier access to a arbitration by the parties?

This shift in procedural emphasis was not so much the result of deliberate governmental pressure, as manifest discontent at the limitations of the conciliation process. Since the Arbitration Court was not restricted in terms of its interpretative functions, and in its ability to instigate, promulgate, restrain and punish, it seemed logical to the supporters

19. One of the key modifications proposed by the Consolidation Act, the re-definition of the term worker, proved on practical application to be unsatisfactory. IC and A Consolidation Act, 1900, c.2(f).

of arbitration, that the right to bind parties unilaterally, should be the lynch pin of the entire system.

In summation, it can be argued that the period between 1894 and 1900 was one in which the role of the Arbitration Court was re-defined, to the extent that its central importance in the IC and A system was finally established. In one sense, such a trend was inevitable, since the decision of the state to enter the labour market with the ostensible purpose of regulating behaviour in the interests of industrial peace made for a natural extension of powers. The reason for this is simply that industrial harmony subsumed so many of the key issues such as: wages, conditions, skill premiums, minimum wage questions, job definitions, preference and a host of related matters. The fact that the powers of the Arbitration Court were, in jurisdictional terms, limited only by the will of Parliament made it the natural agency to carry out the numerous subsidiary functions that surrounded the process of the granting of industrial awards.

The shift from voluntary compliance, implicit in the process of conciliation, to mandatory compliance through the medium of unilateral arbitration was to have a secondary effect of great importance. The general climate of industrial relations in the period after 1901, was profoundly influenced, as analysis will reveal, by the growth of an administrative bureaucracy centred upon the Department of Labour. For the principle of mandatory compliance required in turn the growth of authority to conduct surveillance as a pre-requisite for punitive action against any party who defaulted.

In this total context, the year 1901 has an important significance, because many of the later problems identified by the parties as stemming from the administration of the IC and A Act related back very directly to the decision to make access to arbitration much easier for the parties. This shift in the centre of administrative gravity was, as will be seen later, also symbolic of the growing tendency toward centralisation of function, that emerged naturally with the extension of the Arbitration Court's authority, from the highly individualistic interpretation of the IC and A Act's purpose exhibited by Presidents such as F.R. Chapman and W.A. Sim, and from the administrative drive of J. R. Tregear, who operated at the point where legislative power came into contact with administrative application in the labour market. It is thus necessary to turn to and examine in some detail, the events that led up to the IC and A Amendment Act of 1901, in order to place in perspective many of the important later events of the period.

CHAPTER THREE

Conciliation or Arbitration: The Controversy of 1901.

The passing of the IC and A Amendment Act of 1901. signified the formal ending of a fierce debate that had ranged across both the industrial and the political arenas. It will therefore be the main purpose of this chapter to examine the various factors that made for change of this magnitude. In this context, attention will be paid not only to the formal machinery of legislative amendment, but to the political debate that surrounded the passing of the Amendment Act, a debate that succeeded in embarrassing the government and raising large questions about the management of the Labour portfolio.

The amending legislation was comparatively short in length, and dealt first with what was becoming the vexed question of the definition of the term 'worker'. The IC and A Amendment Act of 1900 had attempted to deal with the problem of limitation imposed by Justice Edward's caveat of 1898, by defining a worker as:

any person of any age or either sex employed by any employer to do any skilled or unskilled, manual or clerical work for hire or reward in any industry1

Doubts were immediately expressed as to the meaning of the term 'industry', and so the IC and A Amendment Act of 1901 duly proceeded to define the

1. IC and A Amendment Act, 1900, c.2.

term further by introducing the following clause:

'Worker' means any person of any age, of either sex, employed by any employer to do any skilled or unskilled manual or clerical work for hire or reward 2

These clauses are important in the sense that they speeded up the industrial enfranchisement of the working population under the IC and A system, since the widening definition brought more occupational groups under the comparative advantages of registration. But the major issue that emerged during the debate on the amendments involved the question of clause twenty-one, which proposed direct access to Arbitration under specific conditions.³

To place this change in context, it is first necessary to outline the basic operative principles which Reeves had intended the IC and A Act to follow. His original strategy was to make the right to go to Arbitration conditional upon the exhaustion of procedures at conciliation. Only after an impasse had been reached by, for example, the refusal of one of the parties to accept the conciliation board's final recommendations on the matters under dispute, could the outstanding issue then proceed to arbitration at the request of one of the parties involved. What clause twenty-one introduced, was the right of the parties to go to arbitration without first utilising the process of conciliation, and it is to the events leading up to the promulgation of this clause that attention can now be turned.

2. IC and A Amendment Act, 1901, c.3.

3. ibid., c21.

This clause was later to earn the dubious nickname of the 'Willis Blot', after the member for Wanganui, A.B. Willis, who first proposed it in the House of Representatives.

In his annual report to Parliament for the year 1900, Tregear, attuned as always to the prevailing climate of industrial opinion, had this to say:

Suggestions for still another vital amendment have been received from different localities and from representatives of both employers and the employed. It is that, in case both parties to a dispute agree, the Conciliation Board should be passed by altogether, and the case commenced in the Arbitration Court. There is no doubt that valuable time is lost by suitors before the Conciliation Board when there is an expressed determination by one or the other not to take notice of the Board's recommendation whatever it may be, but to proceed to the Arbitration Court for the power to bind possessed by the Court and not by the Board .4

Tregear was not only reflecting current concerns with the apparent inability of the Boards to bring about mutual agreement between the parties, but a degree of official disenchantment at the way the Conciliation system was working in practice. The problem of dispute resolution under Conciliation was also the subject of candid comment by Reeves, who said in his assessment of the IC and A system:

The proportion of 'disputes' settled by the Board only slowly increased. Of the first thirty-one cases under the Act they managed to compose eight, and but twenty-nine out of eighty-six, when the number had increased to one hundred and fifty, they had accounted for forty-five. This was much less than had been expected from them when the Act was framed5

Clearly, the assumption that the parties would submit themselves to the resolution of their outstanding differences through a process of Conciliation had not taken into account, the inevitable growth of sectional

4. Department of Labour Annual Report, AJHR, H-11, 1900, p. iv.

5. W.P. Reeves, State Experiments II, p.127.

expectations with regard to what the IC and A Act was supposed to do. From the trade union point of view, the advantage of awards lay as Tregear had perceptively observed in the power to bind. In this context, the trade union strategy appeared to have a twofold purpose: to limit the powers of the employers by binding them under the terms of an award, which imposed compliance under threat of penalty for breach of conditions. The second purpose aimed at extending the terms of awards to as many employers as possible, an aim that had been clearly stated at the Annual Conference of the Trades and Labour Councils of 1900, where the delegates had approved a motion that called for a situation:

where the majority of the trade unions in New Zealand are working under awards of the Arbitration Court, or industrial agreements when the commodities are interchangeable ... the majority of the trade shall have the power to cite the other manufacturers to show cause why they should not be bound by the awards or industrial agreements6

The purpose of the motion is interesting because it demonstrated the underlying tensions that were emerging within industrial occupations where employers and unions were bound by an award, and where some local firms were still in what could be called a 'free labour market'. An indication of the prevailing trade union attitude toward this question emerged in August of 1900, when a delegation representing the New Zealand Tailoresses Federation waited upon the Labour Bills Committee of the House of Representatives, led by Misses A. Whitehorn and K. Daly, who were empowered to speak on behalf of union branches in Wellington, Christchurch and Dunedin.

6. Trades and Labour Councils Annual Report, 1900, p.7.

Their main purpose was to protest at the fact that, to date, the Auckland city and district had remained outside the terms of the industrial awards which covered members in the other three main centres. It was further argued that Auckland employers were enjoying an unfair advantage to the detriment of the trade elsewhere in the country, by maintaining a system of piece work rates no longer in current practice in the other cities.

The indignant trade unionists were supported in their petition by R. Hercus of the Canterbury branch of the Clothing Manufacturers' Association, who made a plea for an extension of the existing award to cover the Auckland district, on the grounds that such a national award would make for fair competition. He was supported in the presentation of the case by J. Blackwell of the Canterbury Employers' Federation, who explained his presence in the light of his Association's declared hostility to the IC and A Act, on the grounds that, in application, the Act was bearing more heavily on some industrial sectors than others.⁷

The argument demonstrated on the surface a legitimate employer concern for fair competition, but their willingness to achieve this aim by an award covering the trade did not indicate enthusiasm for IC and A as much as a hard-headed realisation of its tactical value. For while the Auckland clothing industry remained free of the demands of an award, employers in the district could enjoy a very considerable advantage in

7. For a full transcript of the delegation's evidence see, Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-10, 1900, pp. 2-38.

in terms of labour costs over their southern rivals who, after all, were competitors within the domestic market. Since they did not have to pay a minimum wage under the terms of the award, which was liable to periodic adjustment by the Court, they were able to relate directly labour costs through piece rates to productivity in the factory. This, despite the fact that, since the Sweating Commission of 1890, piece rates in the clothing trade had carried a heavily anti-social connotation.⁸

That the Auckland employers were very much aware of their advantage in the matter of labour costs became evident when their representative, J. King, gave evidence. He expressed complete satisfaction with the status quo in Auckland, and advised the Committee that workers in the trade were simply not interested in unionisation.⁹

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8. The Auckland employers' disregard for the anti-social aspects of piece rate practices, appeared to be directly linked to the fact that 'sweating' was not commonly practised in Auckland at the time the Commission visited. Official evidence reveals that the Commission completed its work in Auckland very early, because of lack of witnesses. See AJHR, H-12, 1890. I am grateful to my supervisor, Professor W.H. Oliver, for drawing my attention to this important fact.
9. King's argument that workers were not interested in the union seems to be borne out by two separate pieces of evidence. First, the evidence of the delegation which admitted that out of an indeterminate number of tailoresses employed in Auckland, only sixty-six had joined the union. The second revealed that in the case of a single award covering the trade in the Auckland district, the maximum rate permitted was 17s.6d per week, a fact sufficient to explain the reluctance of workers to come under the award. See AJHR, I-10, 1900, p.4 and Summary of Awards under the Industrial Conciliation and Arbitration Act, AJHR, H-11D, 1912, p.15.

His most telling argument however was reserved for the comparison of rates paid under awards in the three southern centres, and prevailing rates paid in the Auckland area under the piece work system. For, as he revealed, award rates ranged from a minimum of 6s.6d. to 21s. 10d. respectively, while the piece work rates for Auckland ranged from 8s.1d. to 30s. 0d.¹⁰

In conclusion, King suggested that under the circumstances the Auckland employers were prepared to be magnanimous, and concede the principle of a uniform hourly rate throughout the country, provided they were left free to continue operating piece rates as before. At this point the argument reached an impasse and was adjourned to reoccur at frequent intervals throughout the next two to three years, as the Tailoresses continued their struggle for a national award.

The significance of the delegation lies not in what it achieved but in what it symbolised, an increasing tension between trade unions and some employers already under the IC and A Act, and those who still operated outside it and who were therefore the target of the trade unions' drive to bring as many employers under the legislation as possible in an effort to raise, not only the level of wages, but to restrict their control over the employment situation.

10. AJHR, I-10, 1900, p.17.

The year 1901 was also important for a significant change in the IC and A Act that affected the relationship between it and the Trade Union Act of 1878. Most trade unions in existence before and after the passing of the IC and A Act in 1894 had availed themselves of the opportunity to register under the new legislation. The opportunity still existed in law for a group of workers to duly register under the Trade Union Act of 1878 and thus enjoy the rights of direct negotiation with the employer and the further right to withdraw services, if necessary, should negotiations break down.

The IC and A Amendment Act changed this very deliberately, by the inclusion of the term 'trade union' after the term, 'industrial union', in key clauses of the new law.¹¹ But while trade unions registered under the Act of 1878 were thus brought under the terms of IC and A, rights and privileges as duly registered unions were to be denied them.

The intention of these amendments was to effectively curtail the freedom to take direct action under the Trade Union Act, for as Tregear, the architect of the clauses, pointed out to the Labour Bills Committee of the Legislative Council, the purpose of the changes was to:

11. IC and A Amendment Act, 1901, c.2, c.5, c.10, c.14.

prevent the trade unions withdrawing from under the Act, and striking or in any way setting up industrial disturbances, which the industrial unions could not do. It makes the trade unions liable to the disabilities of the Act but not to the privileges...12

Tregear's anxiety at the possibility of industrial disturbances reflects a deeper determination that the IC and A Act be proven a success in its primary mission, the control of industrial conflict. Psychologically, as their correspondence reveals, Tregear, saw himself as a surrogate and administrative executor for the absent Reeves. He was, as later events were to demonstrate clearly, to succumb very quickly to the idea that trade union freedom in respect of direct action should be curtailed in what he believed was the trade union interest. Unfortunately this course of action was to strike at a central principle of trade unionism: the basic right to withdraw labour, a subject of angry debate in 1907 and 1908.

The growing legislative and administrative trend toward centralisation of control, through appropriate changes in both the law and its interpretation, was thus demonstrated in the examples offered by the Tailloresses' delegation and in the amendments to the law affecting the relationship between the IC and A Act and the Trade Union Act of 1878. These matters were however overshadowed by the intense debate over the future role of Conciliation to which attention can now be turned.

12. Evidence before the Labour Bills Committee of the Legislative Council, AJLC, 1901, 4, p.23

Parliament began its final deliberation upon the ICand A Amendment Bill of 1901 against the background of debate on the utility of the conciliation boards, as well as their relative efficiency. In this the Wellington Board was singled out for particular obliquy on the grounds that members had prolonged hearings in order to collect the fees for attendance.¹³ But no one was prepared, as the House moved into committee on 3 October, for what was to follow. The Premier in his dual capacity as Minister of Labour, and indeed, the Liberal front bench were disconcerted, when at nine o'clock pm, a group of independent Liberals: A. D. Willis of Wanganui, F. Pirani of Palmerston North, F.M.B. Fisher of Wellington, A. Guinness of Grey, and G.S. Smith of Christchurch, brought down a late amendment in Willis's name, requesting that it stand part of the Bill.

The amendment read:

Either party to an industrial dispute which has been referred to a Board of Conciliation may file with the Clerk an application in writing requiring the dispute to be referred to the Court of Arbitration, and that Court shall have jurisdiction to settle and determine such dispute in the same manner as if such dispute had been referred to the Court under the provisions of section fifty-eight of the principal Act.¹⁴

13. NZPD, 119, p.167, 3 October 1901.

Woods implies that Board members in Wellington may not have been above extending the hearings for profit, by commenting that the decision to pay members 21s. a day was a retrograde step. N.S. Woods, Industrial Conciliation and Arbitration, p.51.

14. NZPD, 119, p.169, 3 October 1901.

The new clause showed all the signs of hasty drafting and preparation, but to Seddon's particular surprise, it was not discarded by the House but passed by thirty votes to eighteen, a majority of twelve.

The feeling that the Liberals had been caught unawares and were now at a tactical disadvantage was heightened by the fact that the normally locquacious Sir Joseph Ward who opened for the government, could do little more than thrash around in rhetorical praise of the IC and A system, concluding rather limply that "... the House, in a state of frenzy, has gone too far in some directions in its amendment"¹⁵

Awareness of the Premier's discomfort at the situation created by the Willis amendment became obvious when his objection to a proposal by W.H. Herries, that public servants be brought under the IC and A Act, provoked the following cutting rejoinder:

The right honourable gentleman's attitude in Committee has been so peculiar, first opposing then agreeing to amendments, that I doubted whether he knew what he was doing; and with regard to the last amendment put on, the Premier strongly opposed but was beaten ... I should not be surprised to see the Upper House invoked to alter that .¹⁶

The perspicacious Herries, without intention, had correctly predicted the course of tactical events in terms of Seddon's later actions over the Willis clause. But for the moment the battle was only in its opening phase, and much was to follow.

15. ibid., p.174.

16. ibid., p.171.

The independents who had introduced the clause, obviously elated by their early success, and led by Pirani, now began to threaten government in no uncertain terms. The message as stated by Pirani was clear:

if any attempt is made by another branch of the Legislature to alter the Bill in the direction of reverting back to the old system of Conciliation Boards, there will be very little hope of it passing this House. The last vote given in Committee in regard to the Conciliation Boards is an exact reflex of the opinion of the country from one end to the other; and that is that, with the exception of one or two instances ... employers and employes should have the right to go direct to the Arbitration Court ...¹⁷

It was four o'clock on the morning of 4 October, before the rules of debate permitted the Premier the right of reply to his detractors. After opening comments on a number of issues raised early in the debate, he turned his attention to the Willis amendment. Utilising all his rhetorical powers he thundered at the House:

I am afraid, Sir, that on reflection there will be a change of opinion in the minds of honourable gentlemen. I do not think that, because it has been alleged the working [sic] of one Conciliation Board has been unsatisfactory, we should have endeavoured to wipe out practically the Conciliation Boards of the colony.... it will create a feeling of resentment and that moral force which must be behind, and which is essential to ... and of paramount importance to the working of the Act will be interfered with by what has been done... 18

17. NZPD, 119, p.175, -3-October 1901.

18. ibid., p. 178

Seddon was too experienced a politician not to know that he was over-dramatising the effects of the Willis clause, and that permission to by-pass the Boards did not mean the destruction of the principle of Conciliation. But he was right in implying, however rhetorically, that the proposed change altered the whole centre of gravity of the system. The question also remains that, given his tactical experience, was he really taking this phase of the debate seriously? For within minutes of his attack on the Willis amendment, he was calmly congratulating the House in the following fashion:

I am very pleased with our night's work, and if all our Bills and legislation were dealt with as we have dealt with the conciliation and arbitration question tonight it would be to the credit of the House, the representatives of the people, and, I believe, in the best interests of the great majority of the people of the colony . 19

Clearly the Premier was willing to fight another day, confident in his own mind at least that the traditional hostility felt by the Upper House toward IC and A, would soon make short shrift of the Willis amendment, which after all stressed compulsion through its bias toward the Arbitration process. In fact he was committing another blunder by this assumption, as the progress of the debate in the Legislative Council was to reveal.

On 31 October 1901, W.C. Walker opened the debate in the Legislative Council for the government. In rather lugubrious tones he said:

19. ibid., p.179.

In moving the third reading of this Bill, I do so with some feelings of regret. I cannot say that I like the form in which the Bill has come down to us, because I think the clauses put in in the other House in the early hours of the morning have, to my mind, destroyed the Bill, and tend to make it operate against the principles of the original Act .20

With mounting indignation, Walker warmed to his theme, finally asking the members of the Upper House:

Why has there been this attack upon the principle of the Act? Simply because it has been alleged that in Wellington, the Conciliation Board has not been doing its duty - and that it has spun out cases unduly, and has not succeeded in conciliating. And all the blame is placed on the representatives of labour on that tribunal . 21

The question of the role of the Wellington Conciliation Board will be discussed in more depth below, but for the moment attention must be turned to the response of supporters of the Willis amendment to Walker's opening statement.

Their case was opened by J.M. Twomey who began by arguing that the Willis amendment, by introducing the principle of free choice, would at last reveal that the Conciliation process had true value. In his view, opposition to the way in which the Boards operated had polarised around three issues: the inordinate time spent by the parties before the Board, when compared with the actual number of cases finally settled in Conciliation, the problem of refusal to accept rulings as the result of the limited power of the Boards to influence a final decision if a party

20. ibid., p.916.

21. ibid.

was determined to go to Arbitration; and, finally, the inordinate cost of the Conciliation process, particularly in the Wellington area, when compared with actual results. As far as Twomey was personally concerned, the real fault could be traced to the labour members of the Board, who he believed were extending hearings simply to obtain fees.²² He then went on to demonstrate through the submission of statistics that Conciliation was costing an inordinate amount, and that the Wellington Board was responsible for most of the total cost.

TABLE I

Summary of Cases Heard and Completed in Conciliation with Overall Operational Costs: 1900-1901.²³

Board	Cases Completed in Conciliation	Cases sent to Arbitration	Days in Session	Total Cost	£.	s.	d.
Auckland	6	4	71	336.	6	0.	
Canterbury	2	11	16	109.	4	0.	
Otago	2	13	40	220.	14	2.	
Taranaki	-	-	-	8.	8.	0.	
Westland	-	-	-	17.	6.	4.	
Wellington	2 plus 1 (partially) 1 (withdrawn) 1 (modified)	15	169	1,089.	16	5.	
Totals completed	10	43	296	1,811.	11.	11	

Note: The sums incurred in the Taranaki and Westland districts were setting up costs for new Boards.

22. Twomey's charge that labour representatives on the Wellington Board were deliberately using their positions to make money, seemed to be confirmed by the fact that the members concerned ranked first and third respectively in order of fee payments for 1899. AJHR, H-10B, 1899, p.1.

23. The table is based on a return requested by Council for the debate. NZPD, 119, p.917, 3 October 1901.

The statistical evidence presented by Twomey made the anomolous position of the Wellington Board even more clear, when the time spent on individual cases was assessed.²⁴

Auckland spent a total of seventy-one days on cases, but a single case out of the ten considered for conciliation took no less than forty-nine days before it was sent to arbitration. Thus for the remainder, nine cases in all, the Board spent an average of two and a half days per case, before six were submitted to the Court. In Canterbury, thirteen cases took an average of two and a half days to complete before eleven were submitted to Arbitration. Otago, where sixteen cases were heard, took eight days on one matter before submitting to the Court while fourteen cases were dealt with in anything from four days to one day. Wellington, by contrast, took thirty-eight days on one case, a further twenty-five days each on two more, seventeen days on yet another case, with a further two cases taking fourteen days each.

24. The Wellington Board had had a rather chequered history since it was first gazetted on 26 November 1896. When first constituted its members were J. Charles (Insurance Agent), C. Haslam (Bootmaker), D. Fisher (Compositor), A. Collins (Baker), W. Quick (Solicitor), Chairman.

Haslam resigned shortly after appointment and was replaced by J. Wilkie (Mining Engineer), on 26 August 1897. Wilkie in turn died in 1899 and was replaced by H. Flockton (Cabinet Maker).

The whole Board was reconstituted on 25 January 1900, with only Fisher and Collins representing the original appointees. Charles was replaced by J. Murrell (Shipping Agent) while the Reverend J. Crewes became the new Chairman.

See New Zealand Gazette, 91, 26 November 1896, p.1679.
 74, 26 August 1897, p.1542.
 19, 10 February 1898, p.246.
 7, 25 January 1900, p.161.

To make matters worse, the Wellington Board had accounted for over half the total cost of the entire conciliation system and had spent over three times as much as Auckland, its nearest rival in terms of operating costs. The figures also provided critics of the system with a further weapon because the facts now stood revealed that out of a total number of fifty-three cases heard by all boards in the period 1900-1901, forty-three had subsequently been referred to arbitration. In other words, despite the careful balance of the ~~two~~ processes, the great majority of cases were finding their way to arbitration as a matter of course.

The Chairman of the Conciliation Board in Wellington, the Reverend J. Crewes, appeared before the Labour Bills Committee of the Legislative Council on 18 October 1901, in an attempt to justify his Board's apparent dilatoriness.²⁵ He proceeded to point out to the members that in the case that involved thirty-eight days, the Wellington Wharf labourers' dispute, the employers after twenty-one days of hearings, had proceeded to move a motion on a technicality that had required the Board to recommence taking evidence from the very beginning of the action. The issue had involved preference to unionists, and it was his considered view:

25. Evidence before the Labour Bills Committee of the Legislative Council, AJLC, 4, 1901, p.34. From both his biographical introduction and the later mode of his evidence, Crewes stood revealed as a man of precise habit, and meticulous attention to detail when approaching a case.

As far as I could see, that dispute was peculiar in this respect, probably we have never had a dispute in which the feeling against granting preference to unionists has been so strong as it was in that particular dispute and throughout, considerable difficulty was experienced in steering the dispute through .26

The running battle between employers and workers over the preference question which runs like a thread through the period, will be the subject of argument below but it is interesting to notice that employer resistance to the principle was beginning to harden by 1901.

In defending the conduct of his Board, Crewes made the further contention that there was a deliberate tendency for specific cases to be brought before the Wellington Board so that any ruling in the disputes involved could be cited as precedents, particularly where a decision was required involving the principle of demarcation over the introduction of new machinery. He offered, as an example, the case of the Wellington Linotype Operators which had involved the Board in some twenty-five days of hearings, and had been awaited by other Boards because it was generally viewed as a test case for the entire colony. In discussing this particular case, Crewes also took the opportunity to air a few grievances of his own for as, he said:

26. ibid., p. 32.

Before the matter was referred to us the parties had been unable to agree on a very large number of questions, but when before us, they had ventilated their grievances they, under strong persuasion, consented to confer, and the result was that when they went away three fourths of the very difficult questions were settled, and they were not re-opened before the Arbitration Court at all. But we get no credit for it because there were a few left open27

Innocently, in venting his grievance, Crewes had underlined an important ancillary relationship between Conciliation and Arbitration; the ability to clear away the large mass of subsidiary issues in a dispute, leaving the Court to handle the outstanding matter in conflict. He was supported in his plea by W.T. Young, the national secretary of the Seamen's Federation, who argued in his turn before the Labour Bills Committee:

I know and believe that I voice the opinion of the majority of the unionists in Wellington when I say that they are most anxious that every method should be exhausted through the medium of Conciliation before they go to Arbitration28

But the pressure for change now given direction and purpose through the Willis amendment was already too intense to be controlled by 31 October 1901, and the clause was still standing part of the Bill as we have seen, when Walker opened the debate on the final reading.

27. ibid., p. 33. Crewes in fact had the private support of his Dunedin colleague, F.R. Chapman, who in 1903, was to be appointed to the Arbitration Court. In his papers, Chapman commented " ... this to my mind is a retrograde step as it greatly increases the work of the Court and does away with the preliminary hearing, which was a great help in clearing away details, and opening the way to ascertaining the really substantial points at issue" cited in W. Rosenberg, 'An Early View of the New Zealand System of Industrial Conciliation and Arbitration: F.R. Chapman, Judge of the Arbitration Court (1849-1936)', Labour History, 20 May 1971, p.9.

28. AJLC, 4, 1901, p.17.

What followed was a gallant attempt to delay the inevitable on the part of a small group of members in the Upper Chamber. They began with J.E. Jenkinson, who argued that the problem of delay that members complained of in getting decisions through the Boards, could be offset if a record of proceedings was kept. He suggested:

if an amending Bill comes here in the future we should take steps to compel the Boards to have their evidence reported, so that it can be used by the Arbitration Court We would then find that, instead of witnesses giving evidence which extends sometimes over the hours, and even days, they would condense their evidence²⁹

His comments, which were indicative of the desperate state of the defenders of the status quo, were followed by a speech from J.Rigg, who ingeniously tried to take the statistics delivered so tellingly by Twomey, and prove that in fact the glaring gap in costs between the Wellington Board and the others was not as large as it looked. He then made one last plea, that the Bill be read again this day six months, but all was to no avail. The motion that the Bill be read a third time was put and passed by twenty votes to six.³⁰

The vote reflected the fact that a change had occurred in the political attitude toward IC and A in the Legislative Council since the original statute was passed. Further, it was a change that the Premier had probably not anticipated when the Bill went forward to the Upper House.

29. NZPD, 119, p.925, 31 October 1901.

30. ibid., p.946

In the event, the Premier was now faced with the unenviable task of piloting the Amendment Bill through the House in the knowledge that his enemies on both sides of the chamber were going to enjoy his discomfort.

The Bill was recommitted to the House of Representatives on 1 November 1901, and the Premier rose to make his opening speech, signalling the beginning of formal discussion. His introductory remarks were both placatory and at the same time magnanimous as he said:

as Leader of the House, although it is contrary to my own convictions, and what I believe to be the best interests of labour and of employers, I must observe what is due to a majority of members of the House I have no right under these circumstances to challenge the situation.... 31

Such humility was totally out of character and did not last for long, for at this point Seddon tried to salvage some control over the situation by suggesting with enormous condescension, that his government "... have concluded that they will see between this and next session what the results of giving either party the right to pass over the Conciliation Board may mean32

The rather lordly assumption that the government would permit the key amendment to go forward as some form of short term experiment, was too much for Willis and his supporters who entered the fray in some spirit. The result was an acrimonious exchange of comments between Seddon, Willis and Pirani, in which the Premier claimed that he had not seen a

31. ibid., p.1036.

32. ibid., p. 1047

final draft of the proposed clause twenty-one, prior to its committal on the floor of the House and that in any case, the true architect of the clause was Guinness and not Willis. This reversion to personalities was an unfortunate blunder on Seddon's part for it permitted his enemies in the House to attack on the same grounds.

G.W. Russell, for example, quoted the Premier's own words against him with telling effect when he read from Hansard of 31 July 1901 a passage in which Seddon had:

thought that in respect to the Conciliation Boards and their proceedings, there was room for improvement. In his opinion so many cases and so many persons being cited meant riding the thing to death. He thought that there ought to be more Court, less Board, and more Conciliation³³

Russell made much of the confusion implicit in the last statement, pointing out that the New Zealand Herald and other newspapers had interpreted this to mean that the Premier had lost confidence in the IC and A Act!³⁴ He further implied that since the Premier had no real idea as to what the IC and A system should be doing, he was therefore subject to influences outside the House. As he described it:

It is merely another instance of what we all know. After the Premier has taken a stand there are various deputations up the back stairs. The omnipotent labour party of Wellington approach him and tell him what dreadful things will happen unless he moderates his tone and the result is he comes to the House and delivers a speech on the lines he has used tonight³⁵

33. ibid., p.1044.

34. NZH, 1 August 1901, and EP, 1 August 1901.

35. NZPD, 119, p.1047, 1 November 1901.

Russell's comments cannot be dismissed as the spiteful outburst of a political outsider in the Liberal party, for the central question of Seddon's role at the Department of Labour was taken up by another member, W. Hutchison who said bluntly:

The real fact of the matter is that for the last five or six years we have had no Minister of Labour. We have had the Right Honourable the Premier, running the Department as a kind of sideshow, discharging the duties in a most perfunctory manner, and being guided at times by the advice of his officers, at times by deputations from the Employers' Federation, and at times by deputations of workers....³⁶.

What Hutchison was really saying was that with the departure of William Pember Reeves, the whole momentum of industrial relations reform contained in the IC and A Act had slowed and lost direction. He went further and called for the House to recognise the fact that Seddon simply did not understand the complexities of the labour portfolio with the words:

Now, if the House will admit that the Minister of Labour has devoted to these measures the solicitous care and attention necessary for him to understand the exact trend of the working of the existing law, who, then, is it to be guided by but by the responsible officer of his department, and if he has not accepted that guidance, surely the House is justified, failing the honourable gentleman himself, in embodying these recommendations in the amending Act³⁷

It was a rhetorical question that no one on the government front bench was prepared to answer.

36. ibid., p.1048.

37. ibid., p.1049.

The reference to Tregear, the Secretary of the Department of Labour, was important since it illustrated the fact that members of the House of Representatives recognised him as a motivating influence on policy. The extent and nature of that power will be analysed in detail below. But the point must be made at this juncture, that Tregear had been steadily lobbying for change along the lines of the Willis amendment since 1898. His vehicle had been his departmental reports made annually to Parliament. Thus, in 1898 he wrote " ... whether it is desirable to destroy the principle of Conciliation by giving the Boards the power of a tribunal is questionable, but it would certainly be an immense gain from the point of view of the economy"³⁸ Again in 1900 he wrote "... It has been suggested that an entire alteration in the system of Conciliation Boards is necessary, and I am convinced that the arguments adduced for such change are so strong as to be worthy of serious consideration by the government"³⁹ The style is discreet and couched in the official passive voice but the words reflects Tregear's major administrative aim, the centralisation of all administrative functions with the added power to control industrial behaviour in the interests of industrial efficiency.

38. Department of Labour Annual Report, AJHR, H-11, 1898, p.4.

39. Department of Labour Annual Report, AJHR, H-11, 1900, p.7.

The IC and A Amendment Act, 1901, became law on 7 November and on the following day, the New Zealand Herald stated that:

Parliament which enacted the law, the very men who were enthusiastic about it have declared it a failure. They have done this by repealing the leading and most prominent feature of the Act, and they have done so despite the arguments and entreaties of the Premier40

In fact, in its anxiety to make capital of the Premier's embarrassment, the Herald missed the real point of the change. That far from killing the Act, the proposed change had reinforced the principle of compliance, and made the terms of arbitration more accessible both as a tool of the Court and as a tactical weapon whereby the trade unions in future, would attempt to bring recalcitrant employers under the terms of industrial awards. It also failed to recognise the fact that with the departure of William Pember Reeves, the Liberals had really lost their way in the field of industrial relations legislation.

Under the new weight of the official emphasis upon arbitration, the Court itself was to suffer heavy strain as the demand for awards increased in tandem with the related pressure for enforcement actions brought by trade unions under the law. The result was an inevitable backlog of cases and frequent delays which increased frustration and created further pressure for administrative amendment to the IC and A Act.

40. NZH, 8 November 1901.

Had Seddon lived until 1907, he would have taken personal pleasure in the sight of clause twenty-one of the IC and A Amendment Act of 1901 being publicly reviled as the 'Willis Blot' coupled to mounting demands that the clause be repealed as delays in hearings multiplied and the Court struggled to meet its heavy commitment.

The period following the changes of 1901 was also to see a drive to extend those administrative and para legal functions that supported the Arbitration Court in its main role, stemming from the creative energy of J. H. Tregear and taking the form of further amendments to the IC and A Act and other specific labour legislation. For, after 1901, Seddon appeared to take little or no interest in labour matters, and policy making thus tended to devolve in practice upon the Secretary of Labour. The result of this was to have important consequences because, as has already been mentioned, Tregear brought to his duties a highly personal view of the purposes and functions of the IC and A system. For him, organisational development meant that the well-being of IC and A was best served by bring as many practices and procedures as possible under the firm hand of the Labour Department.

As this process developed the consequential erosion of freedom of action by the parties was not lost on the employers who saw Tregear as a threat to their well-being. On the trade union side, the process of bureaucratic centralisation that was the nub of Tregear's approach to policy, was overshadowed by his open bias toward the cause

of the working man, a fact that was to delay trade union awareness of the real effects of centralised power under IC and A until 1907. It is time then to consider the role of this complex man, whose influence upon IC and A, until the death of Seddon and the accession of J.A. Millar to the Labour portfolio, was of fundamental importance in shaping the administrative direction of the IC and A system.

CHAPTER FOUR

Administrative Expansion: the Role of Edward Tregear.

It was argued in the last chapter that the political progress of the IC and A Amendment Act of 1901 through the House of Representatives, revealed serious shortcomings in the Premier's handling of the Labour portfolio. Such inadequacies were in turn the result of his particular style of administration which revealed throughout his career an almost obsessive unwillingness to delegate responsibilities to other senior members of his party.¹

Given Seddon's manifest inability to give full attention to the complex problems of the Labour portfolio, the obvious question arises, who then was the prime mover and guide of changes in the IC and A Act which continued on a regular pattern of judicial and administrative modification down to 1908? The answer is not difficult to find, for it is evident that the departure of Reeves from the political scene left real power to direct the affairs of the IC and A system in the hands of Edward Tregear.

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1. Friends of Reeves writing to him in London were of the opinion that apart from Ward, no men of real talent were available to man the front bench. F. Waldegrave to Reeves, 15 February 1897, and J. McKenzie to Reeves, 16 February 1898 in Letters of Men of Mark. ATL.

By contrast, it was Seddon's expressed opinion that men of the calibre of J.A. Millar, J.A. Hanan, G.W. Russell and T. Mackenzie were far too independent in their political opinions to be trusted. Seddon to Ward 15 May 1902, Prime Minister's File. misc. corr. NA.

That Seddon's political style was offending progressive visitors is further reflected in the fact that by 1900, Henry Demarest Lloyd was strongly urging Reeves to return to New Zealand and 'restrain' Seddon. Advice which Lloyd's biographer asserts Reeves seriously considered. See C.M.A. Destler, Henry Demarest Lloyd and the Empire of Reform, Pennsylvania, 1963, p. 527.

By 1896, Tregear was reporting to his friend in exile "... I never get a word with him [Seddon] except on Sunday's when if there is anything really important I get him for half an hour."² By 1901, even these brief meetings had terminated and Tregear could write, not without a trace of satisfaction, "... I haven't seen him [Seddon] in the last six months - practically I am the Minister of Labour."³ Later after the death of Seddon, Tregear saw his relationship to the Premier as that of a creator of ideas upon which the pragmatic Seddon could base policy suggestions. In a reflective letter to Reeves he wrote "... The Premier would sit for hours listening to what he called 'my dreams', but they were dreams he did not forget to make use of."⁴

It is ironic that Tregear, who was later to feel such self doubt as his vision of social justice in industrial relations withered under the onslaught of the hard reality of 1912 and 1913, enjoyed a much larger reputation among progressives, notably in the United States, than he did in New Zealand. Indeed, among the group associated with progressive movements in Chicago and Boston, he was probably the best known New Zealander after Seddon and Reeves.

2. Tregear to Reeves, 31 August 1896, Letters of Men of Mark, ATL.
 3. Tregear to Reeves, 7 May 1901, Letters of Men of Mark, ATL.
 4. Tregear to Reeves, 18 July 1906, Letters of Men of Mark, ATL.

His fame owed no small part to the fact that he was a frequent contributor on labour matters to such journals as The Arena, and The Independent. Professor Frank Parsons, the editor of The Arena, in his eulogy on the death of Seddon, went on to pay handsome tribute to Tregear with the assertion "... he has been one of the chief framers of many measures successfully put forward and enacted under the vigorous administration of the late Prime Minister".⁵

By contrast, the radical elements in the American industrial labour movement took a far more jaundiced view of both Tregear and the IC and A system. One prominent theoretician, who visited the Department of Labour in 1903, later concluded a critical essay on the IC and A system with a description of Tregear as "... a genial and romantic philosopher who longed for industrial peace and knew nothing about the class struggle".⁶

The antipathy of the radical left, was echoed on the institutional right of the American labour movement, from the IC and A Act's inception. Samuel Gompers was to prove a hostile critic of the system, especially after Lloyd's return from New Zealand in 1901, and the publication of his somewhat rhapsodic description of her labour legislation.⁷

5. F. Parsons, 'Death of New Zealand's Leader', The Arena, 35, 9, October 1906, p.197.

6. R.R. La Monte 'The New Zealand Myth', International Socialist Review, 9,6, December 1908, p.488. La Monte was in fact Tom Mann's successor as Secretary of the New Zealand Socialist party for a short time during 1903.

7. For an early expression of Gompers's hostility see Report of the Congress on Industrial Conciliation and Arbitration, Chicago, 13-14 November 1894, p.90. EL. And for adverse comments on Lloyd's experiences see Report on the Industrial Committee of the Civic Federation, New York 1902, p.237. Gompers's attitude was, if anything, reinforced by a visit he made to Australia in 1906. See H. Robbins (ed.), Labour and the Employer by Samuel Gompers, New York, 1920. EL
H.D. Lloyd, A Country Without Strikes, New York, 1901.

The relatively cool response exhibited by the American labour movement toward IC and A, echoed in a sense, the response of New Zealand employers to Tregear. For, during his term of appointment, he built an impressive bureaucracy to support his administrative purpose which alarmed many businessmen. Measured by New Zealand standards, the Labour Department between 1894 and 1908 stood as an impressive monument to Tregear's personal relations with a Prime Minister, whose control of the public service was something of a legend. The following table gives some important indicators of departmental growth in the period from the inception of the Bureau of Labour in 1892 to the end of the period in 1908.⁸

TABLE TWO

Statistics Indicating Growth of the Department of Labour.

Year	Aggregate Vote from Consolidated Fund £	Amount of Vote Apportioned to Admin. salaries £	Total No. of Officers Employed.
1892	2,615	1,115	6
1893	2,835	1,335	14
1894	3,670	1,630	14
1895	6,460	1,810	18
1896	6,084	1,834	21
1897	7,225	1,915	27
1898	6,859	2,205	29
1899	7,479	2,380	30
1900	8,511	2,530	30
1901	10,040	2,890	34
1902	9,585	3,135	37
1903	10,010	3,810	40
1904	11,011	4,786	41
1905	11,669	5,536	34
1906	15,864	7,225	46
1907	25,744	10,454	67
1908	30,888	12,618	83

8. Financial Reports, AJHR, B-7, 1892 to 1908.

The statistical pattern revealed by the table is interesting for a number of reasons. In terms of the aggregate growth in the annual vote, with the exception of slight downturns in 1898 and 1902, a steady increase is reported for the period 1892 to 1908, with the annual grant to the Department increasing by approximately twelvefold. At the same time, permanent staff on the establishment of the Head and district offices increased from six in 1892 to eighty-three in 1908.⁹

While the proportion of the vote taken up by salaries also showed a steady increase in the period, Tregear himself did not enjoy a constant increase in the level of his personal remuneration. His commencing income on appointment in 1892 was £325 and by 1908 this had only reached £600 per annum. Between 1894 and 1896 and again between 1900 and 1903 he did not receive an increment. Since these periods coincided with slight downturns in the departmental estimates, it is safe to assume, that the zealous Tregear was prepared to forego his annual increments of £25 during these years, though he did complain after retirement that long service and loyalty had left him in a state of comparative poverty.¹⁰

9. Financial Reports, AJHR, B-7, 1892-1908.

Unfortunately, departmental returns do not reveal the number of local officers employed on a part time basis by the Department of Labour during this period. It is safe to assume however, that the figure was normally over one hundred. An American return for 1904, for example, estimated that during that fiscal year, the Department employed some one hundred and sixty local police officers on various duties connected with the IC and A system. United States Department of Commerce and Industry: Bulletin of the Bureau of Labour, 9, 54, September 1904, p.1074.

10. This statement was made at the presentation of a purse of 100 guineas and an illuminated address by the Annual Conference of the Trades and Labour Councils for 1911. Trades and Labour Councils' Annual Conference Report, 1911, p.52.

It has been established that during the period from 1896 until the death of Seddon in 1906, Tregear enjoyed a special relationship with the Premier, that placed him in a unique position to influence and shape changes in industrial legislation by his own perceived sense of the direction that the law should follow. The body of this chapter will be devoted to a close examination of specific items of legislation where his personal influence was not only at work but was generally perceived by the employers in particular, to be the motivating force. Attention will therefore be paid to the Factories Amendment Act of 1901, the Labour Department Act of 1903, the IC and A Amendment Act of 1903 and the IC and A Amendment Act of 1904. The value of these statutes lie not only in their use as indicators of Tregear's particular administrative philosophy, but as focal points for concerted response by the employers to Labour Department initiatives, for in the employers' view, the Department and Tregear were one and the same in the matter of legislative changes.

But first, what of the complex personality of the man himself, why did Tregear invest such enormous energy and drive into his role as Head of Department? In order to attempt an answer to this question it is first necessary to consider the man's fundamental beliefs. For there can be no doubt that Tregear's conception of the role of the IC and A system fitted within a larger conception of what constituted the good society. For him, the function of industrial legislation was materially to assist the working man of New Zealand toward a better economic existence where he would be free of the moral degradation that had accompanied industrial-

isation in older countries, such as Great Britain. Yet at the centre of this purpose there were the elements of contradiction, for as Gibbons has perceptively put it:

much of the motivation for half-a-lifetime of labour for the 'toilers' of society must have come either from his desire for orderliness or from his idealistic socialism, for the generality of labourers were often distasteful to him. He described the British workman (as he recalled him) as an 'unmitigated ruffian' though he admitted that if Reeves's accounts were true, the workman of the 1890s had 'doubtless improved much'¹¹

This quality of distaste can be found even when he was waxing most indignant at the condition of industrial society in New Zealand, the subject of some of his strongest prose. But for the moment, it is timely to consider the man as he appeared to observers who came to talk with him from overseas.

One impressionable representative of the American progressives who came to interview Tregear was moved to remark:

the peace of the man is in action. In the thousand details of his work as Head of the Labour Department he can strive ceaselessly. I think he would have made the ideal leader of a forlorn hope or of a cavalry charge, but the seige would have destroyed him¹²

It would seem that Tregear's personality was an amalgam of two contradictory elements which fused to give direction to his great administrative energy. The first was the quality of spiritual romanticism in his

11. P.J. Gibbons, 'Turning Tramps into Taxpayers', p.28

12. S. Kingsbury, 'Edward Tregear of New Zealand: A Character Sketch', Twentieth Century Magazine, 3, 16, January 1911, p.325. Beatrice Webb had noted the same quality of energy and found it distasteful. See K. Sinclair, Ch.4.

intellectual makeup that made him a poet of no outstanding talent, but good enough to get his verse published. The second, a hard core of Victorian probity that saw moral value in hard work and employment for gainful ends as the salvation of the wanderer and the derelict, with the family home as the repository of values that were important to society. Thus in the second dimension, which directly influenced his professional work, Tregear stood four square in the larger tradition of dispassionate reform. But there were other aspects to the man; he was for example, a noted Maori scholar and deeply interested in the Polynesian languages, a founding influence on the Journal of the Polynesian Society and, in the tradition of the day, a fervent believer with his friend Reeves in the danger of the yellow peril.

In addition to his scholarly interests, he was active in professional union affairs, holding the Presidency of the New Zealand Civil Service Association between 1907 and his retirement in 1910. It appears that this position enabled him to exercise his natural tendency toward authoritarianism, for as the official historian of public service unionism in New Zealand has put it:

A certain 'personality cult' appears to have been built up around the old man, and the Association appears to have worried about nothing in which he was not personally interested¹³

In the matter of his overall approach to what he believed to be the good life for the workers, Tregear apparently was never able to develop a consistent ideological position with regard to the relationship between administrative means and social ends.

13. Fifty Years of Service: the Story of the Public Service Association, Wellington, 1963. The author was the late Dr. C.V. Bollinger.

For example, in 1900 he described New Zealand's approach to social legislation in the following terms:

Many of the political efforts in New Zealand are more in the direction of humanitarianism than of collectivism, in as much as they are devoted toward the protection of the poorer and weaker members of the community. Luckily however, there is combined with the attempt to remedy the ills that afflict the working class a sincere determination to do so if possible without inflicting injury on the wealthy or the investors of capital¹⁴

In other words, Tregear appeared to be thankful at this juncture that socio-economic change was being put in train, without real pressure for upsetting the industrial status quo. Yet, by 1904, Tregear's ostensible distaste for collectives had become an aggressive enthusiasm for the nationalisation of transport, land, mining and other facilities, for, as he confided to his friend, Frank Parsons of Boston:

We have to make the State coal-mines a success. We have to get the shipping traffic nationalised as we have the railways. We have to improve the Industrial Arbitration Act, watching carefully to keep it flexible and in touch with every movement of the ever changing industrial position. We have to get the land back for the people, to house the poor, to train the young technically, to get the country out of debt¹⁵

Such ideological ambivalence was to be a feature of Tregear's social philosophy through his entire career and into retirement.¹⁶

14. E. Tregear, 'Progress in New Zealand', The Independent, 62, 296, 19 July 1900, p.701.

15. F. Parsons, 'Progressive Ideals Cherished by New Zealand's Secretary Labor'. The Arena, 31, 7, July 1904, p.85. Parson's intention in publishing what after all was a personal letter, is indicative of the importance of New Zealand experiments in social legislation to American progressives at this time. For he was eager to demonstrate that progressive thinking with regard to social legislation had a practical working model in the Antipodes.

16. The beneficiaries of Tregear's endeavours had no doubts as to his ideological position. For as M.J. Reardon, President of the Trades and Labour Councils Conference of 1911 said in his eulogy at Tregear's presentation "... He was now, if not a socialist, one who was working for social reform on lines acceptable to most of those present." Trades and Labour Councils Annual Conference Report, 1911, p.51.

The focal point of Tregear's administrative policy was thus the protection of the working man from the evils attendant upon the basic inequalities of society. For despite his enthusiasm for collectivism his determination to change the economic system stopped short of changing the nature of the capitalist order. Indeed, it can be argued that what enthusiasm he possessed for collectivisation was really an offshoot of his more fundamental beliefs in the efficacy of centralised administrative processes which marked his approach to departmental administrative duties. It appeared that he was willing to accept inequality in the economic sense as part of a natural order, and it followed that the major purpose of his administrative, and therefore, legislative efforts, was to counter balance employer advantages in the labour market by imposing upon them what limitations on their freedom the IC and A system allowed.

Tregear was constantly striving to inculcate into the mainstream of New Zealand life, the traditional virtues of thrift, hard work, honesty and integrity, each a tangible reflection of a moral value. The fervour of his moral commitment as arbiter of the good life for working man, would, on occasions, fuse with his poetic imagination to produce an official prose of an almost Hebraic imagery and ferocity, as for example in this segment from his Annual Report of 1897:

The male larrikins and the corrupted girl-children who are at present the sore of our social body are many of them, the product of ill-kept and miserable homes, wherein poverty is not so noticeable as mis-management and waste. If this evil supply could be intercepted, its outcome, of grown up loafers and shameless harridans, the despair of the reformer and the charitable, would disappear from our midst17

17. Department of Labour Annual Report, AJHR, H-6, 1897, p. ix.

Underlying this indignation was not so much real pity, as anger at inefficiency and waste. The real sin was that women were required to work instead of being at home with their families, a situation that offended Tregear's dream of a contented and prosperous working class, protected from the employer, by the appropriate system of legal and social controls, and rejoicing in the virtues of honest toil.

This then was the man, confused, often angry, but always guided by a dogged belief in the virtue of his struggles for the betterment of the working man. He brought to his role as Secretary of Labour a strong if somewhat confused belief in the merits of social engineering which linked him to; the American progressivies, the British tradition of middle class social reform, and such eminent late Victorian reformers as Charles Booth and the Webbs. His particular contribution to the IC and A system was an abiding faith that, in New Zealand, his social objectives could best be achieved by extending administrative and institutional controls over the parties in the labour market and it is to these efforts that attention can now be turned.

The legislative drive that led to the passing of the Factories Act of 1901, was at base, motivated by Tregear's concern at what he perceived to be the social effects of the economic upturn that occurred after 1905 in New Zealand. By 1897 the effects of the economic revival were reflected in the demand for labour to work overtime, and Tregear noted in his Annual Report:

There has been a great increase this year in applications by employers for permits to work their hands overtime... While congratulating the industrial classes on the busy state of affairs that such applications evidence, it is very doubtful whether the Act should permit so great an extension of labour of those at present employed18

This note of anxiety was repeated in 1898 and 1899, and his concern at the rising demands made upon the labour force by increasing overtime became urgent when the statistical returns for the period 1900 to 1901 revealed the following dramatic increases in overtime worked by women and young people in the four main centres.

TABLE THREE¹⁹

Increases in Overtime Worked by Women and Young People in the Four Main Centres: 1900-1901.

Centre	No. of Persons Employed		Increase in Permits Issued	Aggregate Hours Worked		Increase in Hours Worked
	1900	1901		1900	1901	
Auckland	811	1,407	596	14,302	25,354	11,052
Wellington	1,362	1,995	633	39,689	52,354	12,775
Christchurch	1,745	2,066	321	42,154	70,558	28,404
Dunedin	1,174	1,819	643	42,024	63,348	21,324
TOTALS	5,092	6,287	2,193	138,169	211,725	73,555

The returns on the increase of overtime were sufficient cause for Tregear to push for ameliorative legislation but by the time a Bill was

18. Department of Labour Annual Report, AJHR, H-6, 1897, p. iii

19. The source of the data used in the table is P.J. Gibbons, 'Employment and Labour Control,' Unpublished MS in the possession of the author, p.4.

introduced in 1901, the idea of curtailing overtime had been extended under his undoubted influence to include males as well as women and young persons. Thus when the Labour Bills Committee of the House of Representatives convened on 14 August 1901, they found a Factories Bill for their consideration which included the following important clause:

Subject to the provisions of this Act, a male worker shall not be employed in or about a factory:

- (a) for more than forty-eight hours, excluding meal times in any given week, nor;
- (b) for more than eight hours and three quarters in any given day, nor;
- (c) for more than five hours continuously without an interval of at least three quarters of an hour for a meal20

Tregear did not realise that that he was virtually giving the employers a rallying point around which they could marshal strong resistance to the offending clause, for any restriction on overtime would be automatically interpreted as a limitation on production.

The employer reaction was led by representatives of the meat exporting industry who appeared before the Committee in force. They requested total exclusion from the overtime clause on the grounds that the nature of their work, seasonal and highly concentrated in certain months of the year, was totally dependent upon a high level of overtime when in full production. Any reduction they suggested could seriously undermine not only profitability but the level of wages paid to workers, who were dependent upon a short but highly paid season for their annual incomes. They were followed by representatives of the ancillary

20. The clause was later to be included in the Factories Act. See The Factories Act 1901, c.18.

industries such as tanning, who were in turn dependent upon the primary processors for their raw materials. Their leader, D. Sladden, was careful to point out to the Committee that any restriction on overtime would restrict employment opportunities since it would prevent "...what we have generally been urged to do by the trades and labour representatives and that is to put on two shifts, where it can be done, in preference to working overtime ..."²¹

The logic of the case presented by the meat and by-products processing industry appears to have impressed the Labours Bill Committee because the final statute expressly excluded them from the provisions of clause eighteen. But the presentation of their case for exception was but a prelude to a general employer attack on what was seen as a mandatory ban on overtime.

In short order, successive witnesses from the Wellington and Christchurch Industrial Associations rapidly placed the argument over the clause in a national perspective. They began by pointing out that local industry in most places was already carrying a heavy burden of production costs and if the proposed amendment on overtime became law, labour costs would be increased enormously at a time when existing capital was already in short supply for re-investment and expansion.

One of their number, soon to become a prominent national spokesman for the employer interest, G. Booth of Christchurch, was confident that in introducing the proposed legislation, government had not fully considered

21. Employer Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-8, 1901, p.4.

its implications. Carefully turning the argument around he said:

If this Bill comes into effect in the shape in which it at present exists, no less than fifty per cent of the men now employed in many of the manufacturing industries of the colony will be out of work... There is plenty of legislation in existence at present, and for such cases as are not already provided for, the Court of Arbitration provides all that is necessary....²²

Booth's comments were also an oblique criticism of the ICand A system's functions as a wage fixing agency, for his remarks contained an underlying hostility toward the principle of a minimum wage implicit in an industrial award. He did not develop this line of criticism, for an important reason. The proposed Factories Act was not only concerned with restricting the use of overtime but with the extension of the powers of Inspectors of Factories in an area of employer activity considered sacrosanct.

For, under what became clause six, the Bill proposed to extend Inspectorial powers to include the right to demand if required:

...the production of the certificate of registration held by the occupier of a factory or any book, notice, record, list, or other document which the occupier of a factory is by this Act required to keep or exhibit therein, and inspect, examine, and copy the same....²³

Thus, tactically, there was more to be gained from attacking the legislation directly than in criticising the ICand A system. For the Factories Bill had important symbolic as well as administrative dangers,

22. *ibid.*, pp. 12-13.

23. The Factories Act, 1901, c.6.

for employers at this time. For to so extend the powers of Inspectors was tantamount in the employers' view to allowing access by hostile persons into matters of the utmost confidentiality. Even the IC and A Act of 1894 had not gone as far as the new legislation proposed, for while the principle of search had been admitted, the rights of conciliation boards to do so had been restricted to company documents relating to the dispute at issue.²⁴

Employer unease at this very significant extension of administrative powers for the Labour Department was intensified by the fact that the legislation would also extend the personal powers of Tregear in his dual capacity as Chief Inspector of Factories, and the thought of their now avowed adversary being vested with such powers was too much to be countenanced. In the event, they were unable to move the Committee and the considerable extension of the right to search stood as part of the final Act. The experience did much to reinforce the drive for collective employer unity in the face of a biased and hostile Labour Department, and Tregear was to find himself faced from now onward by a determined employer opposition every time proposals for administrative changes came before the Labour Bills Committee.

In marked contrast, the Trades and Labour Councils took up a position on the new legislation that was completely opposed to that of the employers. It was clear that they saw the new Act as a watershed in their struggle for a universal eight hour day. As one of their spokesmen put it to the Labour Bills Committee:

24. IC and A Act, 1894, c.27.

The workers' at the present time if this Bill is passed— saving with regard to the holidays, are prepared to lose the wages. They are so much in earnest on this question of eight hours a day, and which [sic] has been before the country for so long, that they think it was time it was put on the statute book, and they are prepared to lose this time....25

The trade unions could afford to be magnanimous because Tregear was after all their personal champion, and the restrictions placed upon the employers' in the matter of overtime would do much to stabilize weekly wage rates. Further, the belief was steadily growing that anything that restricted the employers' freedom was by simple definition a good thing from the workers' point of view.

But Tregear in his active pursuit of his legislative and administrative ideals had specific problems of his own to contend with. For by 1900, an ambiguous division of executive authority had emerged with regard to his office, and the Registrar of Friendly Societies. The IC and A Act of 1894, in laying down operative functions, had left the power to examine the rules of trade unions applying for registration in the hands of the Registrar, who had been given such responsibilities under the Trade Union Act of 1878. This now rankled with Tregear and he began his campaign for change with traditionally careful comment in his Annual Report to Parliament. Using his usual approach that suggestion for change had emanated from many quarters, he wrote in 1900:

25. AJHR, I-8, 1901, p.41.

Other points of amendment that have been recommended by the trades conference and other representative bodies are... That the administration of the Conciliation and Arbitration Act and other labour laws be under the control of the Labour Department. I may add in explanation of the last recommendation that the expenses of the Act are borne by the vote of the Department of Labour, and that at present there is divided authority between the Registrar of Friendly Societies and the Secretary of the Labour Department. If by any means the executive and pecuniary controls could be united in one officer the arrangement would in all probability simplify the working of the statute.... 26

By 1903, the government was ready to proceed with the matter, and brought down a Labour Department Bill. It was to meet stiff opposition from the employers' through their national Federation. For when the Bill was circulated, it was discovered that that a new proposal was included, intended to give the Labour Department responsibility for the collection and analysis of industrial statistics, these to be supplied by firms throughout the country.

Their offensive began with a dramatic flourish when H. Field placed in evidence telegrams received from affiliates. Most were short, some were expletive, one accused Tregear of introducing a Russian tyranny, and all were totally opposed.²⁷ The root cause....

26. Department of Labour Annual Report, AJHR, H-11, 1900, p. iv.

27. Associations protesting were: Auckland, Napier, Blenheim, Christchurch, Dunedin, and Invercargill. Employer Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9A, 1903, p. 13.

employer resistance was expressed in the submission of the Canterbury Employers' Association which stated:

If the only object sought to be obtained through the Department of Labour were the compilation of legitimate industrial returns no serious objection could be raised, but the Bill provides for such extensive and undefined powers beyond those already held by the Department of Labour... under other Acts that the committee considers the Bill dangerous in the extreme, and should be strongly resisted....28

Employer concern had also been aroused by clause nine of the Bill which in the event was to stand part of the final Act. This permitted the Minister of Labour the right to delegate the power of search, which was planned also at the same time, to be extended under the Commissioner's Act of 1903, to designated officers within the Department of Labour. As far as the employers were concerned, the proposed legislation was but a thinly disguised attempt to create a new and more powerful Labour Department, for as the Canterbury submission went on to argue:

It appears, however, that the compilation of statistics is not the main purpose. The idea is to set up a Department of Labour which will have very wide powers, and to some of these we object as being very dictatorial and likely to cause conflict29

That the real target of hostility was Edward Tregear was proven in the next section of the submission, in which the Canterbury Association President went on to say:

I think I am not saying too much when I say that if the authority is placed in the hands of the Labour Department there will be very considerable resentment throughout the employers of the colony, because it must be borne in mind there is already a feeling of distrust in the Department. I do not for one moment desire to reflect on the gentleman who is the Head of the Department - I believe he is doing his duty

28. ibid., p. 10.

29. ibid., p. 12.

according to his lights - but there is no disguising the fact that the Labour Department is the special guardian of the labourer, and has no regard in its work for the general public or the employer. You can readily see that if such powers are granted to the Labour Department occupying this position in the eyes of the public and of the employers, there is sure to be...friction, which we as employers are as anxious to avoid as this Committee is...30

Booth was closely followed by other employer delegates who confirmed his statement that Tregear had created considerable hostility among the employers in the country and the proposed legislation would simply exacerbate the situation.

By contrast, the trade unionists giving evidence were strongly in favour of the new Bill, asserting that they had been calling for more reliable labour statistics for at least ten years. But on closer examination it was not objective accuracy they were after, but more reliable statistics to use as the basis of award wage claims. This purpose was confirmed by a Wellington delegate, W. Naughton, who complained to the Labour Bills Committee:

In my opinion the last bookbinding statistics are very unreliable; and in the case of the boot-makers ... with regard to piecework...[the figures] are taken from the rates prevailing two years ago, whereas there has been a fresh award since31

The question of statistical accuracy in wage rates in particular, was taken a stage further by Andrew Collins, a former member of the Wellington Conciliation Board, who pointed to the difficulties that trade unions were now facing before the Arbitration Court since the

30. ibid., p. 12.
31. ibid., p. 14.

appointment of Mr Justice Chapman to the bench.

The new President brought considerable experience to his position having previously served as Chairman of the Dunedin Conciliation Board. But he also brought a determination to pursue a vigorous policy particularly with regard to the central function of wage fixing. The effects of such a policy on trade union and employer attitudes will be examined in some detail, but for the moment it is necessary to put Chapman's approach to the Court's wage fixing functions in the context of trade union support for the Labour Department Bill of 1903.

The Arbitration Court's attitude toward its wage fixing function while under the Presidency of Judge Chapman involved as a basic principle the assumption that when increases in award rates were being considered, the bench should also take into consideration such factors as the general economic stability of the industry, the ability of the employer to pay, and the prevailing national economic climate at the time the award application was being considered. It followed that the Court now began to demand firm evidence in the form of a trade union claim that living standards of the workers covered by the award had been adversely affected by a rise in the cost of living. In addition, it required categorical proof that the industry and firms involved could bear an award increase in terms of net additional labour costs. In both cases the onus for statistical proof lay with the trade unions.

But, in addition to these demands for concrete economic evidence, Chapman had added a policy change with regard to procedures before the bench. He abandoned the tradition that applications should not be found

wanting for lack of form and demanded rigourous compliance with the technical aspects of applications. In addition he made it very clear that he was antagonistic to the common practice that trade union secretaries should take actions for breach before the Arbitration Court.

Small wonder then that Collins should express trade union enthusiasm for the Bill on the grounds that:

If this Bill becomes law it would to a large extent do away with the difficulties under which the unions labour in their efforts to get information with regard to the true state of any particular industry. Such information is very necessary when bringing cases before the Conciliation Board or the Arbitration Court, seeing they are not in a position to obtain it this measure would be of great advantage to the workers ... if we knew the particulars of the employers' business and the real position he held in the industry some of us might not feel it right to go and make a claim on that industry32

In making this statement, Collins was further highlighting the limitations on collective bargaining imposed by lack of information. The same point was raised later by a question from the Committee to D. McLaren, the Wellington delegate:

I take it there are many cases brought against the employer under the Conciliation and Arbitration Act which would not be pushed if the officers of the industrial associations had reliable information to depend upon?

You can quite understand that things are now often forced through, whereas if there were reliable information they would not be pushed forward and the cases would be more easily settled33

32. ibid., pp. 14-15.

33. ibid., p.16.

This promising line of discussion in which trade union officers justified the case for more information was unfortunately cut short when, on 22 October 1903, Tregear came forward to give evidence.

He was angry on arrival before the Committee because, the evening before, the Evening Post had attacked him in an editorial entitled 'A New Detective Bureau!' His anger had been further compounded that very morning by a report in the Times of a recent meeting of the Wellington Employers' Association, in which a member was quoted as saying:

It is now apparent that the labour party led by the Secretary of the Labour Department, has decided upon a most socialistic platform, which has as its ideal, one employer only and that employer the state³⁴

Tregear's reply to this charge indicated the moral attitude which influenced his role, when he said of his detractors " ... all I can say is that I do not think there is anything wrong in being called a detective because the duty of a detective is to bring criminals to justice"³⁵ Such language was indicative of his personal bias, and his complete lack of concern for the employer side of the argument was revealed a moment later, when in reply to a question from Booth regarding employer distrust of the Labour Department he said " ... I think that anyone who distrusts it, has something to hide ..." ³⁶ Such arrogance

34 . EP 21 October 1903 and NZT, 22 October 1903.

35 . AJHR, I-9A, 1903, p. 16.

36 . ibid., p. 18.

was understandable, because in this instance, Tregear was to triumph over his enemies, and the Labour Department Act of 1903 became law complete with the clauses that had given so much concern to the employers.

A further indication of the fact that this period marked the highpoint of Tregear's power to influence the process of legislative change was given by the IC and A Amendment Bill introduced in 1903. The proposal was a short statute containing two machinery clauses and then it led into very important changes. Under the terms of clause four, the principle of joinder was extended to permit the Court, of its own volition, to join to awards any employer, trade union or association operating in the industrial district where an award was in existence, whose presence as an unregulated party in the local labour market gave an economic advantage over employers and parties bound under an award. In effect, this clause gave the Arbitration Court discretion to join parties under an award who were not original parties to the award application.³⁷

It was clearly Tregear's intention to make it much more difficult for employers to avoid, or actively attempt to subvert, the terms of an award once it was in existence. For as clause five of the Bill stated:

If during the currency of an award any employer, worker, industrial union or association, or any combination of either employers or workers, has taken proceedings with the intention to

37. IC and A Amendment Bill, 1903, c.4.

defeat. any of the provisions of the award, such employer, worker, union, association or combination... shall be deemed to have committed a breach of the award, and shall be liable accordingly.³⁸

That Tregear's target was really the employers is made explicit when clause six, sub section three, is read in conjunction with clause five, for there the Bill defined as an offender:

Every employer who dismisses from his employment any worker by reason merely of the fact that the worker is a member of an industrial union, or who is conclusively proved to have dismissed such worker merely because he is entitled to the benefit of an award, order or agreement, shall be deemed to have committed a breach of the award, order, or agreement, and shall be liable accordingly.³⁹

In formulating this latter clause, Tregear was strongly influenced by the result of a case he had taken in Auckland involving the Auckland Furniture Trades' award. The case will form the substance of further discussion below, but it is important to note at this juncture that Tregear not only failed to prove his case, but had also come under severe censure from the Judge, for what looked suspiciously like an attempt to teach him his duties. The result was this attempt to defeat combinations of employers intent upon avoiding the terms of an award.⁴⁰

38. IC and A Amendment Bill, 1903, c.5.

39. IC and A Amendment Bill, 1903, c.6.

40. That Tregear had the full support of his Minister, is demonstrated in a letter Seddon wrote to Frank Parsons of Boston. In his view "... much more importance was given to the dispute than it deserved, but it had the effect of getting the law amended in the direction of forbidding combinations to endeavour to defeat an award" Seddon to Parsons cited in 'New Zealand's Continued Prosperity: A Late Word from Prime Minister Seddon', The Arena, 31, 7, July 1904, p.86.

A further cause of employer unease was contained in clause seven of the Bill. For this proposed to extend the powers of search, vested in Inspectors of Factories, under the 1901 legislation, to Inspectors of Awards under the IC and A Act. Tregear's expressed reason for this also made for employer unease when he stated:

You must remember that informations are not laid by ordinary Inspectors. They have to report to the central office and only when we approve are they allowed to make any prosecutions 41

In other words, decision making in the matter of enforcement was not only centralised, but dependent upon head office approval before actions could be put in train, with Tregear as Chief Inspector the final arbiter.

Tregear's appearance to give evidence on the Bill also afforded the Committee an opportunity to question him on his administrative philosophy, and he defined his role for the Committee in the following manner:

I know that there are ten thousand astute brains always ready not to lose ground; and on the other hand there are thousands of uneducated men who are certainly as a general rule below the average employer, because a man being an employer—pulling himself out of the ruck, and being no longer an employee proves he has brains above the average. But these thousands of uneducated

41 . Evidence before the Labour Bills Committee of the Legislative Council, AJLC, 2, 1903, p.19.

workers want someone to help them. and on matters that do not tamperwith justice I am on the side of the labourer. I am a labour man, I do not look after the employers. They do not ask me—they ask Mr Field42

It is thus clear that Tregear perceived his main function as an administrative counter weight in a socio-economic system that saw in a natural order men of talent rise to the top and those less endowed sink to the bottom of the social pyramid. He therefore interpreted his role literally when he said in conclusion:

In my official position I try to be as just as possible to the employer as to the worker, but I am more interested in the claims of the worker. I represent the Department of Labour. My duty is to look after labour, to see that the labourer is benefited . in every way43

In application this philosophy clearly involved restraining the employers' freedom of action wherever possible, by legislative amendments of the kind that made up the IC and A Amendment Act of 1903.

That his zeal in the pursuit of the recalcitrant employer was shared by his departmental officers was made manifest in 1904. In that year a short Amendment Bill was brought down in an attempt to finally resolve the anomalies surrounding the term 'worker' that had been

42. ibid., p.21.

43. ibid., p.21. That he believed his interest in labour was reciprocated was made evident in a letter to Parsons in which he said "... Our real source of pride as a Department is that we keep in touch with the workers themselves, and if there is a derogatory work spoken in public against the New Zealand Labour Department, it is instantly and fiercely resented by the trade unions and other workers" Tregear to Parsons cited in 'Progressive Ideals ... p.85.

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bothering both legislators and administrators since 1898. The hearings set down to take evidence were used by Tregear as a platform to demonstrate the efficiency of his Departmental staff. For example, the thoroughness with which parties in breach were hunted down was demonstrated by F. Halley, the Inspector of Awards for the Otago district who advised the Committee, in a statement presented by Tregear:

The unions did not always make the complaints...as it often happens that if an employer is brought up for a breach or is asked to give an explanation he often says, why come to me when Mr Jones is doing worse than I am? And it is on such statements as these that the Inspector makes use of the allegations with regard to Jones....44

The impression that it was prosecutions that counted when it came to actions for breach by the Labour Department was reinforced when Tregear stated with some enthusiasm and self-congratulation:

I think therefore that to obtain one hundred and fifty convictions out of one hundred and eighty cases is an exceedingly good record, particularly when one takes into consideration the quality of the evidence which is not always of the best character45

One must also bear in mind that the percentage of cases actually taken before the Court, was only a part of the total actually reported to the Department by field staff, for as James Mackay, the Chief Clerk advised the Committee:

44 . Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1904, p.40.

45 . ibid., p.39.

I may say that there are no cases brought before the Court in any part of the colony until they have been approved by the Department in Wellington. Every Inspector has to send on the facts of each case, and ask us whether they are sufficient to warrant them taking the case into Court; and I may say that quite half the cases sent on to Head Office for advice are refused....46

In other words, the process of centralisation of administrative functions had reached a stage where the regions under the control of the Department of Labour operated as mere appendages of a central authority based in Wellington. In addition, the purpose of inspection had clearly become an end in itself, with stress on the detection of defaulters, particularly employers, taking precedence over all else.

Nor was Tregear content with the administrative situation as it stood. For if he saw his duty in terms of the amelioration of the needs of the working man, his sense of responsibility did not extend to trade unions. The reason for his demonstration of departmental efficiency became clear when he introduced into his evidence his opinions as to the role of the trade union secretary in the matter of procedures for breach. He said:

... a great deal of trouble arises through the secretary of the union not going to the employer when a charge is made before him and hearing his side of the matter. We always go and hear the other side of the case ... the Court is frowning very much on any unions bringing in any cases whatsoever 47

46. ibid., p.41.

47. ibid.

The implications of Tregear's message for the Committee were very clear. Given the relative inefficiencies that were contained in actions for breach brought by trade union secretaries, and the Court's developing hostility toward them when they appeared to plead an action, who better to take over the total process? In other words, it appears that Tregear was envisaging the administrative possibility of a process of investigation, under the complete control of the Labour Department, who would then take the action forward before the Court. That this would make employers' and workers' unions little more than appendages of the Labour Department and their members clients of a centralised system of state control, appeared to escape him in his single-minded pursuit of his administrative ideals.

Another important fact appeared to have escaped Tregear at this time; that his ability to influence and shape legislation for his own administrative ends as in 1903 and 1904, was ultimately dependent upon the willingness of the Minister to concede such powers to him. His ground plan for control of the labour market through the appropriate balance of administrative and legal devices, was also dependent upon the tacit assumption that the Liberal consensus in national politics would continue and flourish. Finally, his assumption that in the long run, the interests of industrial labour could best be protected by a benevolent bureaucracy was to conflict with the fact that the interests of labour and the employers were no longer compatible, but were already beginning to reflect the pull of special interests.

It was the man's personal tragedy in the last few years of his career to both lose the power he had enjoyed over policy, to a single-minded and energetic Minister, J.A. Millar, and to see the efficacy of the IC and A system he had built come under increased and critical attack especially after February 1907.⁴⁸ His response was to retreat into that form of poetic mysticism which had always been a strong element in his personality. Yet his dedication to the system that he had built, was still strong enough to arouse him to passionate defence of the principles of IC and A. Thus when asked to judge the success of conciliation and arbitration he replied:

It cannot fail! It has the reality behind it. If soul goes out of life, if only ashes and material are left, if endeavours pass and leave no trace, no benefit, then we are living to save burial expenses. But this cannot fail, strike or no strike. We are throwing out forces into the infinite every day we are here for today or for tomorrow and may not see or know, but they go into broadening eternity and live and operate. Behind us and before us is the eternal that is why we must be careful not to mar, I am not afraid. I know that it has not failed, that it will not fail, that it cannot fail⁴⁹

This passionate cry was more than the affirmation of confidence in what he had built, it was the genuine voice of self-doubt. For not only was his life work under question, other fields in which he had struggled to obtain a reputation, for example, that of anthropological and linguistic scholarship, had not yielded up the approbation that he desired and felt he had earned. His Maori Dictionary had been declared useful but not definitive by the critics, while his years of distinguished service had brought only the Imperial Service Order, and not as

48 . S. Kingsbury, Edward Tregear ... p.328.

49. ibid.

as one suspects he hoped, some larger token of government approval.

Tregear's abiding epitaph was to be a long tradition of centralised administration, as successive governments saw the utility of the IC and A system in terms of a medium for control. Over time, the central organ became the Arbitration Court whose duties were to be progressively extended into the field of economic regulation, until a major crisis involving General Wage Order procedures in 1968, finally challenged the efficacy of the whole system. In developing the administrative apparatus that made centralisation possible, Tregear stands as the central architect. It is perhaps the ultimate irony that a man who sought to banish industrial unrest from New Zealand by the appropriate balance of administrative devices, should have materially helped to create the climate of frustration and suspicion that made some form of militant reaction to the IC and A system inevitable in the period down to 1908. The next chapter will consider in detail some of these elements which made for reaction.

CHAPTER FIVE

Developing Issues and Controversies: 1900-1907.

Two important issues that can be identified as factors contributing to a growing disenchantment at the way the IC and A system was being administered were discussed in the latter part of the last chapter: Edward Tregear's inordinate bias toward the worker, and an increasingly legalistic approach to the duties of the Arbitration Court that began to emerge after 1903, with the elevation to the Presidency of F.R. Chapman. It is now time to examine some of the other controversial issues that aroused comment and reaction after 1900 which can be identified as sources of almost constant friction.

In the context of this discussion, two important operational issues dominated the scene, especially from the trade union point of view, in the period from 1900 to 1907. The first involved the question of preference to trade unionists, the second the related question of apprenticeship regulations and the adverse effect of the policy of under-rate payments for incompetent workers. A third important matter, the question of the Court's wage policy will be considered in detail below.

On 16 April 1906, D. McLaren, a Wellington delegate to the Annual Conference of the Trades and Labour Councils rose to move a late motion for debate. He advised that the Wellington Trades Council had recently passed a resolution to the effect:

That this Council has no confidence in the Arbitration Court as present~~ly~~ constituted, and that it should be a recommendation to Conference ... [to] very seriously consider the responsibility ... in having to face the situation that has arisen through the unsatisfactory administration of the Arbitration Court¹

The Wellington motion marked a formalisation of labour's frustrations with the IC and A system which had been building up since 1901. It is important to distinguish at this juncture between the trade union attitude toward IC and A as a principle, and the excessively legalistic way in which the Court was interpreting its duties. It was only with considerable reluctance, coupled to considerable misgiving, that many trade union leaders finally turned against the IC and A system. Thus the initial stages of what became a militant reaction to IC and A was marked by a paradox, the problem of reconciling a continuing faith and loyalty in the system, with the growing frustrations and concerns at the increasingly legalistic way in which the system was being administered.

To make for further confusion, by 1908 a parallel labour movement had emerged based on the Miners' Federation which directly challenged the Trades and Labour Councils for the leadership of organised labour. At the same time it would be unwise to assume that such a movement marked a distinct break with the tradition of statutory recognition that marked the IC and A system. On the basis of the early strategy of the

1. Trades and Labour Councils Annual Report, 1906, p.4.

Federation of Labour, it can be argued that the contrary is the case given the fact that the tactical act of de-registration from under the IC and A Act was followed by re-registration under the Trade Union Act of 1908, for the greater freedom to take direct action that the statute offered.²

It follows, if their actions are further examined, that radical activity in the period after 1908 was thus not merely the manifestation of a new and militant reaction to the industrial status quo, but the inevitable result of the frustrations that had been growing steadily in the period before 1908. These were compounded after 1908, by the fact that the punitive aspects of the IC and A legislation had been heavily reinforced, in terms of restrictions upon the right to take direct industrial action.

But it is now time to consider in more depth and detail, the issues raised at the beginning of the chapter. Matters which by their constant presence as sources of controversy were elevated in questions of principle by the trade unions in particular.

The Question of Preference to Trade Unionists.

Simply stated, the principle of preference assumed that where an employer was bound by an award to recognise a trade union as the agent of the workers he employed, such obligation should extend to the employ-

2. See Registrar's Certificate dated 28 February 1910, Rules of the New Zealand Federation of Labour, Wellington, 1910. p.2.

ment process, and that where new workers were being taken on, preference should be given to members of the union concerned.

Under the first Presidency of Sir Joshua Williams, who sat on the industrial bench from 1896 until 1897, the award of preference had become a usual procedure in his decisions. The principle of preference was challenged in 1899 as a result of a decision involving the plumbing trades in Christchurch. The President, Mr Justice Edwards, had, in making his decision, advised the parties that a preference clause would be included. This was challenged by one of the employing firms which took an action in the Supreme Court against the decision. The employers, undaunted by the fact that a writ of prohibition was refused then proceeded to take the matter to the Court of Appeal.³

The action was again denied on the grounds that the Arbitration Court had the right to make such decisions if it so wished. More importantly however, in a caveat entered by the Chief Justice, Sir Robert Stout, the principal right of the Arbitration Court to make law was sustained, on the grounds that Court was answerable only to the Legislature.

3. Taylor and Oakley v Mr Justice Edwards and Others, New Zealand Law Reports, 18, 1900, p. 876.

The Court was to be guided in preference decisions by the principle laid down in 1898, by Justice Edwards who asserted:

The claim of the union to preference fails when it is ascertained that the union is not really representative of the greater number of men employed in the trade and the claims of the union have not resulted in any practical benefit to the workers.

See V.S. Clarke, 'Report on Labour Conditions in New Zealand', JDL, 12, 131, p. 322. January 1904.

That the Chief Justice considered preference to be a retrograde development is witnessed by his statement that it:

... abrogates the right of workmen and employers to make their own contracts. It in effect abolishes 'contract' and restores status.... The power of the Legislature is sufficient to cause reversion to this prior state, though jurists may say that from status to contract marks the path of progress4

Following the Supreme Court decision, requests for preference became a standard procedure in most award applications. As a consequence the Court evolved a policy whereby preference was granted provided that individual members of the trade union who were equally qualified when compared with non unionists, were available for employment wherever vacancies occurred. The Court also established conditions to be met before preference came into operation. For example, discrimination against non unionists already in the employ of firms under the award was forbidden, while a union receiving the right of preference had to open its membership to any person of good conduct who applied, and further had to make the invitation known by appropriate public advertising. The Court also reserved the right to delay implementation of the provision until it was satisfied that the union had complied with all qualifying conditions. Inevitably there developed a tendency toward standardisation of such clauses, as the following example reveals:

4. Taylor and Oakley ... p.885.

16. Subject to the proviso to this clause, if . . . , and so long as the rules of this union permit any person, now employed as a journeyman in the industrial district, and any person who may hereafter reside in this industrial district, and who is of good character, may become a member of the union...
17. When the rules of the union are such as to entitle the members to preference under the foregoing clause, and at all times thereafter, the union shall keep in the office of the Inspector of Factories at Nelson, a book to be called the 'employment book,' wherein shall be entered the names and addresses of all members of the union for the time being out of employment, with a description of the branch of the trade in which each member claims to be proficient, and the names and occupations of every employer by whom the such member shall have been employed during the preceeding twelve months... Such book shall to be open to any employer or his agent without fee or charge during working hours as herein defined. . . If the union fail to keep such an employment book in the manner provided by this clause, then so long as such a failure shall continue any employer shall be free from the restriction imposed by the last preceeding clause hereof.
18. No employer shall discriminate against members of the union, and no employer in the dismissal or employment of workmen, or in the conduct of his business, shall do anything for the purpose of injuring the union, whether directly or indirectly.
19. When members of the union and non-members are employed together there shall be no distinction between members and non-members, and both parties shall work together in harmony and under the same conditions and shall receive equal pay for equal work5

5. Nelson Carpenters' Award, cc. 18-18, JDL 13, 143, pp. 44-46, January 1905.

This award has been selected because it was the intention of the Court at this time to put forward model clauses to be used by other unions; the effects of this will be discussed below.

Clause nineteen, which rapidly became a standard form in awards, was to prove a bone of contention since it was normally accompanied by a non-discrimination clause of the following type:

11. The employer shall employ members of the union in preference to non-members, but this does not compel an employer to dismiss a journeyman from his existing employment6

From the trade union point of view this was an unsatisfactory situation because the non discrimination clause continued to permit the employer a degree of freedom in the matter of choice between applicants. It also prevented the trade unions from achieving their real aim, the development of closed shops under universal preference which would have given them control over the employment situation under each award. The trade unions were given a further cause of frustration by the fact that where the Court granted what appeared to be complete preference, it frequently made it difficult to apply because of vague language, for example:

15. Employers shall employ members of the union in preference to non-members, all things being equal7

6. Otago Sailmakers' Award, c.11, JDL, 10, 113, p.665, July 1902.

7. Christchurch Stonemasons' Award, c. 10, JDL, 10, 119, p.56, December 1902.

Probably the most complete statement with regard to preference that the Court made during this entire period was contained in the composite award covering the boot trades as a national group. The clause stated:

1. Throughout all departments recognised by this award preference of employment shall be given by employers to members of the New Zealand Federated Boot Trade Union, and on the part of the union, preference of service shall be granted to members of the employers federation... When a non-union workman is engaged by an employer in consequence of the union being unable to supply a workman of equal ability willing to undertake the work, at any time within twelve weeks hereafter the union shall have the right to supply a man capable of performing the work, provided the workman first engaged declines to become a member of the union. This provision shall also apply to those non-union workers already employed....⁸

The clause is interesting because it introduced the obligation of preferential service to employers covered by the award, and anticipated the future development of unqualified preferences clauses which did not appear in New Zealand until 1961. It also went a long way toward resolving the trade union problems of both supplying a workman at a point in time required by the specific employment opportunity, and having to work with non-union labour in a given industrial situation. Unfortunately, a promising method of resolving the dilemmas attendant upon preference was not proceeded with by the Court, and the principle of composite awards across industry had to wait for a later age.

⁸. New Zealand Federated Boot Trades Award, c.1, JDL, 11 124, p.490, May 1903.

Both the Conciliation Boards and the Arbitration Court had the right to recommend or grant preference, and the further right to deny such a privilege if they considered it necessary. Thus in an application for an industrial agreement, heard by the Wellington Conciliation Board on 25 September 1901, preference was refused local tramway employees on the grounds that:

It is open to doubt, whether consistent with the due exercise of the power of making regulations as to the licensing of drivers and conductors vested in a local authority, a tramway proprietors can be legally bound to give preference to unionists; and looking at the fact that the proprietors are all carriers of passengers largely in the public interest, the Board thinks that they should not be so bound9

In effect the Board was saying that it would not advise preference in cases where the employees in the course of their duties were engaged on work in the public interest. This anticipated, without pre-meditation, the re-emergence of the same kind of principle in 1907, when government proposed to restrict the rights of certain occupational groups who might be considering direct industrial action, on the grounds that it would not be in the public interest.

The question of the narrowing definition of what constituted public interest will be dealt with in due course, but for the moment it is necessary to examine official attitudes toward preference in a particular industry, as a demonstration of the increasing administrative rigidity that had begun to surround preference after the accession to the Presidency of F.R. Chapman.

9. Wellington Tramways Union Industrial Agreement, JDL, 9, 104, p. 927.
October 1901.

The trade union to suffer most under the powers of the IC and A system to withhold preference was the Federated Seamen's Union. The union applied for preference in 1897, 1899, 1902, 1904 and 1906, and each time the Arbitration Court refused to grant it in the award. On 12 January 1904, the reason for refusal by Justice Chapman was that:

It is not within the province of the Court to say or do anything which may interfere with the exercise by the master of his judgement in the management of his ship, or anything which will tend to relieve him of the responsibility for such management10

When in 1906, Judge Chapman's successor, Justice Sim, an even more legalistic President than his predecessor, repeated the same objection, A. Slater the Workers' Representative on the Court, entered a dissenting opinion. He pointed out that the restriction had become virtually meaningless on the grounds that ninety-five per cent of all seamen shipping out of New Zealand ports were members of the Union. In other words, the granting of preference would have simply recognised an existing fact, that ships' masters had to deal with unionists when they manned vessels in any case. Despite this, the Court remained unmoved.

This kind of judgement raises the question, what was the basic philosophy of the Court at this time? The answer is made relatively easy because Justice Chapman was fond of using cases as a platform for the enunciation of principles that guided the Court in its decision making.

10. Federated Seamen's Award, JDL, 12, 131, p.19, January 1904.

This particular judgement is important for an entirely different reason. The action was first filed on 30 June 1902; judgement was finally given on 12 January 1904. In other words the union had waited eighteen months for the Court to finally act on the award application. This delay thus stands as a vivid example of the problems caused by the Court by the passing of the IC and A Amendment Act, 1901, c.21.

Thus, in the Auckland Tailors' Award of 1904, he took time to lay down what he conceived to be the basic principles that informed the Court's conduct:

The Court is a Court of Justice, which, while invested with extensive powers and furnished with an elastic procedure, administers justice upon the same principles as are applicable to all Courts of Justice under our Constitution, and its powers to exercise an unfettered discretion based upon the results of the evidence and other proper considerations connected with each case brought before it untrammelled by forms of limitation is the most beneficial power possessed by it ...¹¹

Despite his pride in the flexibility of the powers of the tribunals, the President in practice tended to restrict his judgements within specific terms of reference created by the language used in pleading the cases. He was not prepared to use the wide interpretative powers enjoyed by the Court, and eschewed innovation wherever precision could be maintained, as a principle in judgement. Unfortunately, to the practical men who were the recipients of the Court's decisions, what appeared to Justice Chapman as a logical exercise based on legal facts, was construed as little more than a series of abstruse judgements based upon judicial nicety. The following cases are thus intended to demonstrate the widening gap that was emerging between trade union perceptions of the Court's purpose and the policy of precision in judgement that the President was content to follow.

11. Auckland Tailors' Award, JDL, 12r, 139, p. 749, September 1904

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Wellington Tailoresses Union v Wellington Woollen Company - 23 December,
1904.¹²

The action involved a charge made against the company on the grounds that in employing men, the employer had not given preference to one Robert Scott over one Harry Collett, the latter not being a member of the union covered by the award.

It was stated in evidence by A. Chipper, a foreman in the company's employ, that he had been ordered to release men on the grounds that business was slack. In the case of Collett who had been with the firm for a long time, he had advised him personally that as soon as business picked up, he would be taken on immediately. It was the company's defence that Collett had never ceased to be in their employ, and that since the union had filed the action, he had become a member. Under cross examination it was admitted by an officer of the company that the real reason for the dismissals was not redundancy, but the fact that the company wanted to avoid the payment of holiday pay, a statutory condition under the award.

At no point in his decision did Justice Chapman refer to the fact that the real cause of the action was a flagrant attempt by the company to defeat the terms of the award. Instead he concentrated on the fine distinction between dismissal and lay-off arguing:

12. Wellington Tailoresses Union v Wellington Woollen Company, JDL, 13, 14^b, p32ff. January 1905.

We have repeatedly accentuated the distinction existing in many trades between dismissing a man and merely putting him off work, and the same distinction exists between taking a man into service, and putting a recognised employee on work¹³

In other words, he was virtually inviting employers to circumvent preference by claiming a condition of special status for persons who had been in their employ for some time as non-unionists. In the matter of the preference clause itself, the President conceded the fact, that as it stood clause five of the award granted the right of preference, but he also considered that the clause was:

... restrictive of the common law rights of the employer and ought not to be read as imposing anything more on him than the terms of the clause plainly warranted¹⁴

The Court's decision revealed a personal antipathy toward preference and a refusal to accept the fact that, if the clause was ambiguous, it was the Court's fault and not the parties. Small wonder then that as a direct result of the President's zeal for legal precision, his decisions whatever their legal logic, were soon identified by the trade unions as a basic distortion of the principles of IC and A. Inevitably, trade union beliefs as to what was wrong with the IC and A system, became closely identified with the personality of Judge Chapman, and his policies were interpreted as a deliberate attack upon the rights of industrial workers.

13. JDL, 13, 143, p.34, January 1905.

14. ibid.

The question of preference was given an added importance at the time the case just referred to was heard, because by 1905, the Wellington district was experiencing an increase in net in-migration. The situation was such that by 10 August 1905, the President of the Arbitration Court was moved to make the following observation at a sitting of the tribunal in Wellington:

Large numbers of men continue to arrive from the Commonwealth, South Africa, and England, and, as had been stated on previous occasions many of them are eminently suitable, while on the other hand, large numbers of them are totally unsuitable for hard up country life, and city work is so actively competed for, that men have to have exceptional qualifications before they can secure billets as clerks, shop assistants etc¹⁵

Thus trade union determination to push for preference as a universal principle was partially conditioned by the degree of protection it afforded members at a time when the labour market was unusually slack.

Late in 1906, Justice Chapman retired from the Court after three years service. He was replaced by a legal colleague from his home city of Dunedin, Justice W.A. Sim. Any trade union hopes that the change of Presidents would herald a more sympathetic attitude toward their claims were soon to be dissipated, as the new Judge revealed an even greater impartiality for legal niceties than his predecessor. From the trade union point of view, Justice Sim's legalism was compounded by an even

15. JDL, 14, 151, p.610, September 1905.

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more dangerous tendency; that of taking employer evidence as essentially accurate, especially in award hearings, while insisting in turn that the trade unions produce alternative evidence of a precision and detail that was quite beyond their resources.

Sim's appointment to the industrial bench came at a time when trade union frustrations at the policies followed by Judge Chapman were seriously undermining confidence in the IC and A system. As the cases cited below will indicate the new President succeeded in adding fury to frustration as the degree of precision in decision-making reached what the labour movement considered to be new levels of aggravation.

Inspector of Factories v. The Banks Co-operative Meat Company, 13
November 1906.¹⁶

The company was charged with a breach of the preference clause, on the grounds that they had employed a man as a butcher when his job was technically that of a carter, thus denying a qualified trade unionist a job opportunity.

In its defence, the firm argued that the duties upon which the man was engaged did not constitute that of a carter, but in the evidence of

16. Inspector of Factories v. The Banks Co-operative Meat Company,
JDL, 15,166,p.1189,December 1906.

the Managing Director, came nearer to what could be described as 'beef lumping', or 'practical work of its own'. The Court dismissed the action on the grounds that:

The real occupation of the man in question was the special work required of him, and that carting was incidental to this We do not wish it to be understood that whenever some degree of special skill is required the duty falls outside that of a carter. Carters perform many classes of duties, and are classified in known ways according to the work to which they are accustomed¹⁷

Irrespective of the careful caveat included in the decision which implied that the judgement should not be taken as precedent whenever jobs involving carters were brought into question, the trade unions saw the judgement as an admission by the Court that in future employers were going to be permitted to classify the content of jobs, normally defined in terms of trade union membership. The situation was exacerbated by Sim's decision to make law, in the manner of his predecessor, by using the occasion to make a statement on preference. He advised the trade unions that:

It has always been recognised as a cardinal rule that the giving of preference of employment to unionists is not intended to force an unsuitable man upon an employer to the detriment of his business, and it is consequently the duty of the union to show the employer by means of the employment book, what he is to look for in case[sic] of unemployed men, in order that he may pursue his enquiries as to their suitability without delay and inconvenience¹⁸

17. ibid.

18. ibid.

Whether by accident or design, Judge Sim was revealing his dislike for preference in the worst way possible. Further, he was revealing a remarkable lack of concern for the tradition of preference as it had developed. The task of the union was not to assist the employer in the sense that Sim obviously meant it, but to meet through the employment book, standards of skill for a specific vacancy, in competition with any non-unionists in the trade who might be applying for a specific job. Now from the trade union point of view, Sim was demanding that the employment book be used to satisfy employer needs, and not as part of a system of conditional standards under which preference was normally granted.

A further judgement made in 1907, is illustrative of the increasing legalism of the Court, and the tendency of the Judge to split semantic hairs over the preference issue.

Wellington Tramways Union v. Wellington Corporation, 11 March 1907.

It was the main contention of the trade union in this case that under an existing industrial agreement, preference had been granted in a form that required all employees to be members of the union. In evidence they produced clause nine of the agreement which was as follows:

9. From the coming into operation of this agreement all employees mentioned shall become members of the Tramways Union within one month of joining the service, it being agreed that the entry fee shall not exceed 2s.6d., and the subscription 3d. a week19

In his decision, Sim refused to recognise the validity of this clause with the words:

We are unable by any recognised method of interpretation to construe this clause as imposing on the Corporation the duty of compelling any of its employees to join the union. The clause purports to impose on employees who are not members of the union the duty of joining the union, but as such employees are not bound by the agreement, the clause is ineffectual except in so far as it fixes entry fees and subscriptions20

Sim's judgement was legally correct on the grounds that the principle of joinder referred only to collective bodies, and not to individual members of a collective body. But again from the trade union point of view, the effects of the judgement were much more important than its legal accuracy. In this context, the decision could only be interpreted as an invitation to the Wellington Corporation to employ whom it wished, given the fact that the preference clause in this case had been virtually nullified by the Court.

The Court's apparent unwillingness to make judgements that could be construed as imposing limits on employers' rights, really began under

19. Wellington Tramways Union v. Wellington Corporation, JDL, 16, 181, p. 381, March 1907.

20. ibid.

the Presidency of Judge Chapman. Thus in 1903, when granting preference in an award, he advised the parties that his action was "... not at all against the interests of the company".²¹

By contrast, in an award claim of 1904, preference was refused on the grounds that:

The Court does not claim to dictate how an employer with responsibilities such as fall upon this company is to conduct his affairs²²

In one of his last judgements in 1906, a request to rescind preference was refused, while an action for a dispute was being heard, with the very significant warning "... Had it proved that the existence of preference was the cause of the trouble we should have had to reconsider the position".²³

The trade unions thus appeared to have some justification for their claims that the Court was being hostile toward their interests, for the prevailing motivation for policy under first Judge Chapman and then Judge Sim was not the maintenance of preference as an administrative right, invested in the Arbitration Court, but the effect that preference was having upon what both Presidents were fond of calling 'the common law rights of the employer'. It is now time to examine the trade union response to the way the Court acted on preference in the crucial years 1903 to 1907.

21. Auckland Sugar Workers' Award, JDL, 11, 120, p.124, February 1903.

22. Auckland Tramways' Union Industrial Agreement, JDL, 12, 136, p486, June 1904. It is significant that industrial direct action when it emerged within the IC and A system, did so in this particular company.

23. ibid.

Preference: Trade Union Responses to Court Initiatives.

The call for statutory preference, for the insertion by government of a clause in the ICand A Act that would make such clauses mandatory in all awards and agreements, was a regular item on the agenda of every Trades and Labour Councils Annual Conference from 1900 onward. By 1904, delegates were debating the viability of model clauses, that would make preference to unionists a reality for all occupations covered by the legislation.

The issue had become so important as a point of principle, that in evidence to the Labour Bills Committee of the House of Representatives, W.T. Young, speaking on behalf of the Trades Councils said:

it must be borne in mind that the trade-unionists of this colony are responsible themselves for doing away with the system of strike. Personally, I am very pleased that it has been done away with... but I am afraid that if this very important point is not conceded to the unionists before long, I do not know what will happen...?

That is a threat?

No it is not a threat. I am only expressing the opinions that have been expressed by unionists at their meetings.

But it is possible that may come about?

It is possible that that may come about, as it is getting a strong point with unionists. 23

23. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1904, p.30. The interlocutor was C.A.C. Hardy, member for Selwyn.

Clearly by 1904 the question of preference had been elevated into a 'dangerous' status in industrial relations - it had become a matter of principle. Anger at the Court's imposed limitations upon the terms of what was now seen to be an important right was compounded further by what was construed to be a deliberate attack upon the role of the trade union secretary by the judiciary. Thus delegates at the Trades and Labour Councils Annual Conference of 1905 were unanimous that:

... during the period under review, and since the appointment of Mr Justice Chapman to the Presidency the Arbitration Court has, with the object of compelling the unions to place all cases for enforcement in the hands of the Labour Department, penalised a number of Unions for moving the machinery of the Act in this respect, by refusing to allow adequate costs when convictions had been obtained24

In other words, the 'tampering' with preference now formed a part of a larger policy which had as its main aim the restriction of the powers of trade unions at their most crucial point, that of access to the functions of the IC and A system through the medium of their professional officers. The Trades and Labour Councils, as representative of the large number of trade union secretaries in the country thus found themselves threatened institutionally and personally by current Court policy. It was therefore inevitable that the 1905 Annual Conference of that body, should hear a call from J.A. McCullough, a Canterbury delegate, that the demand for preference be replaced by a further demand for compulsory unionism.

24. Trades and Labour Councils Annual Conference Report, 1905, p.6.

This rather precipitate motion alarmed the more moderate delegates notably from Otago and Auckland, who were still loyal to the IC and A system, and who saw the problem as one of counteracting the policies of Justice Chapman rather than directly attacking the structural elements of the IC and A Act. The motion was lost by nine votes to four, but it did demonstrate the severe strain that frustrations at the way in which the Court was acting was now putting on an erstwhile loyal group of trade union professionals.

Any hopes that the moderates were entertaining that the best approach to the resolution of their problems was through the medium of lobbying the government, was dealt a severe blow in 1906. For with the death of Seddon, the industrial world was to see a new Minister of Labour on the front bench, J.A. Millar. Any anticipation that the new appointee would be more amenable to the trade union demand for changes in the manner of awarding preference were soon dashed however. On 5 September 1906, a Trades and Labour Council delegation waited upon him only to be told in no uncertain terms:

The Trades and Labour Councils have been asking for statutory unconditional preference to unionists, well he could tell them that no Parliament would give any body of men the right to make rules as they pleased. They would never get preference on any other lines than that given already²⁵

25. NZH, 6 September 1906.
EP, 6 September 1906.

Millar's role as Minister was to suffer damage for the brusque way in which he spurned the trade unions request to urgent consideration of the preference question. A major crisis in the form of a series of strikes in the meat industry was about to overtake the Liberal party and preference tended to fade into the background as during 1907 and 1908, the question of the future viability of the IC and A system itself demanded attention.

The question now arises, what of the employer attitudes toward the preference issue? How did they see the matter, which after all imposed a constraint upon their freedom to employ workers? An attempt will now be made to answer that question within the context of their reaction to IC and A in general.

Preference: the Employer Response.

There can be no doubt that the judgement in the Court of Appeal that upheld the authority of the Arbitration Court in the Taylor and Oakley case of 1899, was a direct challenge . . . to the employers. In the event, they were not to languish too long without a champion. On 15 October 1901, G. Booth, the national employer leader, addressed a meeting of his parent Association in Christchurch.²⁶ His topic was

26. G.T. Booth, The Unionist's Claim for Preference, Christchurch, 1901

ostensibly the preference issue, but in his speech he did more than attempt a rebuttal of the trade union position. In fact his comments could be described as a statement of the commercial ethos of the employer at that time.

He began by observing that the freedom to work was an inalienable human right on the grounds that:

If a man can be said to possess any natural or inherent right at all it is the right to work for a living, to exercise such capacity as nature has bestowed or training developed, in maintaining himself and those dependent upon him. To restrict the exercise of this right must be regarded as an infringement of his liberty, and in as much as the subject's livelihood is at stake he is justified in resisting to the utmost27

It followed by inference that trade unions were a restriction on the basic rights of the individual, especially those persons who had the superior talent to rise above the mass of industrial workers. For as Booth went on to argue:

It is obvious that to an intelligent, ambitious working man, who wants to make the most of his manhood, to get ahead in the race, to attain to something better than daily manual toil such a proposition as preference to unionists offers no attraction He probably distrusts the motives of the Union, notes that membership will involve sacrifices, and doubts the adequacy of the return28

27. ibid., p.1.

28. ibid.

29. The assumption that trade union membership is a barrier to socio-economic mobility appears to remain a part of the modern small business ethos in New Zealand. It is in part compounded by the fact that even in 1976, the average business employs only twenty persons. For further discussion of this see J.M. Howells, 'Statutory Regulations of Labour Relations in New Zealand', Westminster Bank Quarterly Review, February 1971, p.72-80. Also C.A. Blyth, 'The Special Case: the Political Economy of New Zealand, in S.D. Webb and J. Collette, (eds) New Zealand Society: Contemporary Perspectives, Sydney, 1973, p.2-13.

Booth was assuming that in the fairly fluid and open economy of New Zealand at the turn of the twentieth century, the clever, able and ambitious would quickly gravitate toward a position of independent self-employment. It was his further contention that trade unions did little for the moral good of the workers and even less for the general public, arguments, that given the nature of his audience, he was not called upon to substantiate. He did however, agree with one form of unionism, that which he described as:

... the union between an employer and his workpeople for their common good, a partnership on well understood terms with a very definite objective in which both parties have a common interest. This sense of community of interest, breeds mutual respect, good feeling and confidence, and promotes a healthy competition between shop and shop from which advantages accrue to the community29

Beneath the rhetoric lay the core of Booth's argument, a simple claim for employer hegemony over all aspects of the industrial relations system, in which the interests of the workers could be safely left to the employers who would always act in a manner which was best for everyone.

His real concern however, was somewhat more practical than that displayed by his evocative language. For if the employers gave in on the matter of preference, they would also have to concede the principle of a universal minimum wage, since by definition, an extension of preference would mean an extension of industrial awards and agreements. It would also mean a considerable rise in unit labour costs in an economy

29. Booth, p. 3.

always chronically short of liquid capital for investment. Finally, universal preference would mean abrogation of the fundamental employer right to hire and fire. It therefore followed that employers had a lot to lose if they accepted the principle of preference.

The issue was important in another sense which really subsumes Booth's attack upon the idea of preference, in that it made for an issue around which employer resistance could be organised. That the feelings expressed by Booth were shared by his contemporaries in the business world goes without saying, for in that same year a former supporter of IC and A went on record to report that:

... there are indications that they, the employers, are beginning to realise the necessity for the common defence against the tyrannical exactions of the unions³⁰

Yet there were deeper and more fundamental issues involved in the question of preference, for both employers and trade unionists were to a large extent, 'actors' in a situation where ultimate control over the issues that divided them lay outside their personal jurisdictions. For as V.S. Clarke, the American observer, put it:

The arguments advanced by working men for granting compulsory preference are derived from the nature and provisions of the existing legislation, and only indirectly, and by analogy trench upon the grounds upon which trade unions in other countries, where individual or collective bargaining prevails, justify their attempts to exclude non-unionists from employment³¹

³⁰ J. MacGregor, Industrial Arbitration in New Zealand: is it a Success?, Dunedin, 1901, p.1.

³¹ V.S. Clarke, p.339.

Clarke was basically arguing that the development of the preference issue in New Zealand ran counter to the overseas experience in the sense that in other systems, preference attempted to protect the members of the specific skill group from both the employer and the unskilled. While in New Zealand, the aim of the trade unions was to exert control over the employment process by using the preference clauses to limit any employer's choice of workers to members of the trade union covering the occupation, skilled or unskilled. It followed that the employer tactical response was dictated by the need to protect what he considered to be the right of free choice over the employment process. What made the New Zealand system unique in this respect was that both aspects of the preference question, the trade union initiative and the employer response, were directly caused by the fact that the IC and A Act existed, and had made provision for the principle of preference to exist.

The general climate of employer-trade union unease was further influenced by the fact that the Court under Justice Chapman had taken upon itself the task of regulation of employer-employee relationships, for as the President observed in 1905:

... an award is not a contract and does not depend on any contract or consent, though it may embody a contract, but that its is a judgement between parties having in some respects the effects of a subsidiary law There is no doubt that an award is made not exclusively to regulate matters between employers and employees, but to adjust relations between employers which employers have an interest in maintaining....³²

32. Statement of the President of the Court in *Auckland Builders and Contractors v. Clarke*, JDL, 13, 151, p.884, September 1905.

It is thus clear that in exercise of his authority, Judge Chapman saw the substantive matters for control extending beyond the formal question of dispute regulation into areas of relationship that in other systems would have been left to the natural interaction between employers and trade unions. While this statement did little to abate employer hostility toward the Arbitration Court, it made trade union antagonism toward Chapman administration a fait accompli, since the implication that it was in the employer interest that employer-employee relations should be adjusted seemed to prove trade union claims that the Court was leaning toward the employer.

Preference thus forms a part of a larger development at a time when the Court seemed determined to intrude further into the employer-employee relationships. It did this by a series of decisions intended to extend control not only over preference, but also over applications, the form of evidence, and the mode of presentation. In addition the Court also laid down the economic terms under which incremental increases in awards and agreements would be adjusted.

Apprenticeship and the Incompetent Worker: Further Causes of Conflict.

The employer response to the limitations imposed by apprenticeship regulations was basically to ignore them, through a combination of deliberate design or neglect, until apprehended by a Inspector, or to

manipulate the rules to their own advantage. They were frequently assisted in this by the vagueness and ambiguities frequently to be found in award clauses relating to apprenticeship. A common weakness for example was failure to specify the number of apprentices to be employed in relation to the number of journeymen in a firm, while a second problem was created by the frequent failure to impose an upper age limit at the point of entry.

The overall situation was complicated by the existence of special provisions under the IC and A Act relating to the employment of aged, infirm or 'incompetent' workers, whose failure to meet the standards of efficiency required by the trade was offset by provisions whereby they could be employed at a lower rate than that prescribed in the award or industrial agreement.³³ This was anathema to skilled tradesmen, who by historic tradition exercised control over entry to the craft by specifying the number of apprentices to be controlled by one journeyman. In their view, the employers were taking advantage of a loose labour market for skill, by, in many cases, overmanning with apprentices, who were in wage terms a cheap source of labour. This practice was reported to Tom Mann, the British union leader on his first visit to New Zealand in 1902. As a paid-up member of the Amalgamated Society of Engineers, he made a habit of visiting overseas branches of the union whenever he could. He found in Wellington, considerable anger and frustration at the high level of unemployment to be found among local members. On a further visit to Christchurch, he talked with the local secretary, who blamed a similar

33. IC and A Amendment Act, 1898, c.6. It should be noted that the legislation did not use the term 'incompetent' in a derogatory sense, but simply as a semantic device to demarcate the skilled from the non skilled.

unemployment problem on the employers deliberate misuse of the apprenticeship regulations:

Instead of having about one boy to three men, it was the common thing in some firms to have two or three boys to one man... With regard to establishing the proper ratio of men to boys they had requested the Court to deal with the matter, and had submitted proposals on the subject; but the employers strongly objected to legal interference on the grounds that the union could not speak for the whole of the industry in the district, but only for the local members Yet it was an urgent matter, for so many more boys entered the trade than there was room for as journeymen, that when they were out of their apprenticeships, a large proportion of them had to leave the trade altogether³⁴

This concern at the abuse of craft tradition was shared by other union officials who saw that the question of adequate apprenticeship rules was linked with the matter of under-rate permits, and that employers were using both to their own advantage.

Evidence to support this view was offered to the Labour Bills Committee of the House of Representatives on 13 July 1904. W. F. Hampton of the Wellington Trades Council stated that employers were deliberately circumventing the system by the following means. If Conciliation Board Chairmen refused to grant under-rate permits, the employers would tend to:

... go outside that altogether by indenturing these incompetents as apprentices, notwithstanding the fact that the men may be twenty-seven, thirty, or forty years of age; he may be over eighty years of age but the employer is still able to indenture him as an apprentice to the trade .

34. Tom Mann, Memoirs, London, 1967, p.135.

35. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 13 July 1904, p.8.

Hampton went on to argue that the obvious solution to this problem from the trade union point of view, was for the legislation to be amended by the inclusion of a provision that prevented the Court from allowing an apprenticeship clause to go forward without an upper age limit imposed on candidates. Hampton was followed by his colleague W.T. Young who proceeded to introduce an example of what the trade unions considered to be a pernicious side effect of under-rate permits.

Apparently an application had been recently made to the Secretary of the Carpenters' Union in Masterton by some thirteen or fourteen men who had never been competent in the trade, for permits to work as under-rate carpenters. He had refused to proceed with the application, and a further application to the local Stipendiary Magistrate had also led to a refusal. At this point the men had approached the local member of Parliament, A.W. Hogg, who took the matter straight to the Premier. As a direct consequence, the earlier decisions had been overturned and the permits granted.

It was Young's contention that such a parlous situation had arisen because the Arbitration Court had shown a marked reluctance to control the issue of under-rate permits. He went on to support Hampton's ~~had demanded~~ rhetorical statement:

As to what is going to be done with the incompetents if they are to be prevented from going to a trade, my consideration is, what is going to become of the men who have spent years making themselves efficient ... what is to become of them if they have to go outside the trade and the incompetents and amateur tradesmen are allowed to fill their places³⁶

It appeared that trade union dissatisfaction with the way in which permits were being issued was beginning to be shared by the Arbitration Court. In December of 1905 Judge Chapman used the Nelson Carpenters' Case, previously cited, as a model for future applications together with the following supporting argument:

(a) The expression 'worker' is used in place of 'journeyman' because in dealing with applications for permits too narrow a construction has at times been placed on these expressions and permits for work at a lower wage have been refused because the applicant was not a journeyman who had become slow through age or infirmity, [but a man who had never learned a trade. While the Court has itself recognised that such men are journeymen, though imperfectly trained journeymen, it has thought it best to so word the clause as to leave it clearly open to the Chairman [of a Conciliation Board] or other appointee of the Court to hold such persons to be within the intention of the award

(b) The clause now gives some guidance to the Chairman to aid him in his enquiry by pointing out that he may have regard to the applicants capabilities, his past earnings, and other such circumstances Chairman thinks fit to consider

(c) It will be observed that the way in which the clause is framed removes the source of confusion, by showing more clearly than formerly that it is not the union which grants the permit, but the Chairman [of a Board, or other independent person appointed by the Court.... The essential feature of the present clause is that the workman shall go directly to the Board [or to a Stipendary Magistrate] while power is given to come to an agreement with the union officials which shall render this unnecessary....³⁷

It appears that the practice of trade union secretaries exercising the authority to issue permits had arisen as a custom without specific definition in law, since the IC and A Act of 1898 created no categorical

37. Nelson Carpenters' Award, c.5, JDL, 13, 143, pp. 45-46, January 1905.

responsibilities regarding under-award rates save that they should be granted "... on the application of any of the parties at any time during the currency of an award."³⁸

From the trade union point of view, the restriction imposed on their role by the re-definition of the terms under which permits could be issued was a high price to pay for loss of authority over the process of application. For the model clause simply gave the individual applicant greater freedom to approach officials outside the trade. In legal terms, the President of the Court was acting with perfectly legitimate intentions in clarifying this point of law. But he was also breaking the cardinal and unofficial rule of 'custom and usage'. In other words since 1898. the practice of trade union secretaries issuing permits had become a part of the network of quasi-official behaviours which employers and trade unions alike follow in their day to day relations.

Judge Chapman's motives were not purely the result of his zeal for administrative tidiness and standard rules of behaviour. For in making his wage pronouncement in the Nelson award, he pointed to the fact that in the Nelson district, the need for fully trained men was not large, as he stated in his summation:

In Nelson a fully competent carpenter is undoubtedly worth the minimum wage of 1s.3d. per hour, but it is found that by far the greater number are receiving less, and we are satisfied that this is because many of them are not capable of earning the minimum rate for competent men. The class of work in Nelson is not such as to create a large demand for first class tradesmen. The Court has met with constant difficulty in dealing with under-rate men and their employers
....³⁹

38. IC and A Amendment Act, 1898. c.6.

39. Nelson Carpenters' Award, p. 45.

Thus his response in drawing the terms of under-rate permits was influenced by the fact that the local labour market was unable to support a body of highly skilled tradesmen. But this important fact, of supply and demand, that the claim for fully trained men could not be sustained outside the urban centres, given the nature of the local work in many smaller towns and country districts, was ignored by the trade unions. The Nelson decision was not seen as an attempt by the Court to respond to the immediate realities of labour demand, but as a direct attack on the role of the trade union secretary in the matter of permit applications.

As far as the Trades and Labour Councils were concerned, the Nelson decision simply granted incompetent workers free access to permits, and it was claimed at the 1906 Conference, that as a consequence of this freedom, workers were now being discharged by employers because they refused to accept an under-rate status.⁴⁰ It was the considered view of the Executive Committee that the:

... the words 'incompetent worker' should be used in awards instead of the words 'under-rate worker' and in all awards made for skilled labour the words 'journeyman' who has served a full term of apprenticeship' should be substituted for the word 'worker'⁴¹

Concern was also expressed at the deleterious effect the new permit rules were having in other areas. McLaren claimed that the employers were now scouring the countryside in search of men who could be classified as

40. Trades and Labour Councils Annual Conference Report, 1906, p.6.

41. ibid.

under-rate workers, while J. Barr was of the firm opinion that no further discussion should be allowed on the grounds that the situation confirmed "...what has been said from time to time by employers, that the minimum wage has become the maximum wage, and that workers accepted the position".⁴² In other words, the growing number of under-rated employees in the labour force was making the established minimum rate of an award, the maximum rate prevailing, instead of a base rate from which the trade union could bargain prevailing rates upward.

The Trades Council's assumption that employers were deliberately manipulating the under-rate principle to their own advantage, seemed to gain statistical support from Labour Department returns for the period 1904-1907, and from sources published in the Journal of the Department of Labour during the same time. The data will be discussed in somewhat more detail subsequently, but for the moment it is important to notice that the offence of paying below the award rate without a permit, was the largest single offence reported before the Court in the period.⁴³

A further impression of the resultant effects of the expansion of the availability of under-rate permits was contained in an editorial in the Dunedin Evening Star for 1 July 1908. In discussing proposed amendments to the IC and A Act, the paper attacked the confusion now rampant through the apprenticeship system as a result of the wide application of the under-rate procedure, it asserted:

42. *ibid.*, p.8.

43. Department of Labour Annual Report AJHR, H-11D, 1906

As a result there in in Dunedin today, a number of half learned tradesmen, whose sole ambition is to get a permit to work as an incompetent tradesman, so that under present conditions the question of boys learning a trade is a perfect farce with the present machinery. The sooner the Arbitration Court realises this mistake and repairs it the better for both the employer and the employed⁴⁴

By then, however, the whole question of apprenticeship and under-rate permits had been relegated as an issue to a relatively minor item for government attention, as Millar strove to maintain the credibility of the IC and A Act against a background of industrial unrest.

The Effect of Arbitration Court Policies on Preference Apprenticeship and Under-rate Permits.

It is clear that the policy of standardisation of preference clauses put in train by Justice Chapman, had permeated the entire IC and A system some three years after he took up his position on the Court. By 31 March 1906, of some one hundred and fifty-nine awards in operation, one hundred and fifteen contained such standard clauses, preference had been refused in fifty cases, no application had been made in four cases and three unions enjoyed a form of unconditional preference.⁴⁵

A further indication of the importance of the issues discussed in this chapter was their high incidence as the cause of offences revealed by the statistical returns referred to below. The relative number and

44. ES, 1 July 1908.

45. AJHR, H-11D, 1906, p. iii.

frequency of Court actions involving these issues will now be analysed in the following tables. The available data covers the complete term of Justice Chapman's appointment and is subdivided into ten categories of offence under the terms of industrial awards and agreements:

- (a) Failure to pay award rates;
- (b) Worker accepting less than an award rate;
- (c) Failure to give preference under the terms of an award or an agreement;
- (d) Irregularities in the observation of Apprenticeship Regulations;
- (e) Failure to pay holiday money as prescribed under an award or agreement;
- (f) Failure to pay overtime for work completed, and reciprocal failure to claim on the part of an employee;
- (g) Dismissal without cause, for apparent trade union activities;
- (h) Failure to observe award conditions regarding the work environment;
- (i) Other offences not covered by previous categories.⁴⁶

46. Sources for all data used in tables are, Department of Labour Annual Report, AJHR, H-11D, 1906, and JDL, 12-16, 139-178, September 1904 to December 1907.

Table Four (a).

Number of Enforcement Actions heard by the Arbitration Court: September 1904 - December 1907.

LOCATION OF HEARING	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
(1) Wellington City	131	61	108	12	48	44	4	0	1
(2) Wellington District	121	41	29	9	0	24	0	0	0
Auckland City	36	26	16	16	6	6	0	1	0
Auckland District	15	20	16	0	0	0	0	0	0
(1) Christchurch City	50	28	10	32	15	14	1	1	14
(2) Christchurch District	17	4	0	2	0	33	0	0	4
(1) Dunedin City	49	23	7	29	0	16	0	5	3
(2) Dunedin District	1	0	0	0	0	0	0	0	0
(1) Others City	7	4	15	0	0	2	0	0	0
(2) Others District	0	0	0	0	0	0	0	0	0
TOTAL ACTIONS (NATIONAL)	427	207	201	100	69	139	5	7	22

Table Four (b)Aggregate Number of Enforcement Actions by Industrial Districts.

DISTRICT	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
(1) Wellington	252	102	137	21	48	68	4	0	1
(2) Auckland	51	46	32	16	6	6	0	1	0
(3) Christchurch	67	32	10	34	15	47	1	0	18
(4) Dunedin	50	23	7	29	0	16	0	5	3
(5) Other Districts	7	4	15	0	0	2	0	0	0

Table Four (c)Aggregate Number of Actions by Category in All Industrial Districts.

Category	Number of Cases	Ranking
(a)	427	1
(b)	207	2
(c)	191	3
(d)	100	5
(e)	71	6
(f)	139	4
(g)	5	9
(h)	6	8
(i)	22	7

Table Four (d)Ranking of Districts in Terms of Aggregate Number of Actions
Heard by the Court in Each District.

DISTRICT	AGGREGATE NO. OF CASES	RANKING
Wellington	633	1
Christchurch	230	2
Auckland	157	3
Dunedin	133	4
Other Districts	28	5

A number of important conclusions arise from the data that give weight to the trade union argument that employers were taking advantage of the regulations appertaining to apprenticeship and under-rate permits. Failure to pay the rate prescribed in the award is tantamount to employing a worker without an under-rate permit as prescribed by the law. With four hundred and twenty-seven actions falling into this category, it is logical to assume, given the further figure of two hundred and seven cases involving workers who were willing to accept below-award rates, that a considerable number of employers were ignoring the regulations altogether. It is also interesting to notice that these two categories of offence account for over half the number of enforcement actions taken before the Court in the period. If we add to these the two hundred and one actions involving preference, and the hundred cases involving

apprenticeship, then the significance of the three issues discussed in this chapter come clearly into focus. Statistically they account for nine hundred and thirty-five actions out of an aggregate total of one thousand one hundred and seventy-six. It is therefore safe to assume that in terms of offences against the IC and A Act, the questions of preference, apprenticeship and under-rate permits had by 1907 taken on a national significance, with the matter of abuse of the provision for under-rate permits dominating the whole scene.

This impression is reinforced by an important administrative side-effect, for the centralisation of the reporting and processing of offences under the Labour Department also created a filtering process with the decision to proceed with an action dependent upon official approval. The actual number of offences proceeded with therefore bears no relationship to the potential number of offences reported. Given possible further limitation on the reporting system at the local level, it is probable that the number of offences occurring was higher than even the Department of Labour realised.

It must also be borne in mind that a given citation for an offence could cover either a single employer or a number of employers, which meant that a judgement given in one case could cover a number of employers under the same penalty. Thus, the actual number of employers found guilty was probably larger than the number of cases actually cited before the Court. Ultimately, what was demonstrated in the period after the Nelson case of 1904, was the fact that Justice Chapman's attempt to

assist the employer through the granting of greater freedom of application for under-rate permits had no real effect upon employer conduct as measured by the number of offences they committed against the rules laid down in awards.

An even more significant issue was raised by this statistical record of employer behaviour in the period; the fact that employers were, some ten to twelve years after the passing of the IC and A Act, still treating the law with a combination of intransigence and disregard. That this general attitude concerned the Arbitration Court was demonstrated on 15 December 1904 at the conclusion of the Court's proceedings in Napier. The President on this occasion found it necessary to warn employers in the following strong terms:

I must say we have felt disappointed with what has transpired. Last February we sat in Napier for a considerable time, and found that employers constantly raised their own ignorance of awards and agreements they worked under as grounds... for either the dismissal of charges or for mitigated penalties. Over and over again we spoke to them on the subject. Our remarks became public, and ought to have been noticed by the employers, but what was said on that occasion and the leniency we showed seems to have had little or no effect.... Under the circumstances it seems to us that the employers have been, to say the least inattentive to the terms of awards and agreements [by which they are bound] and we wish them to understand that the leniency we have shown on this occasion will not be shown on future occasions....⁴⁷

It is indicative of the intention of the President on this occasion, that he summoned the local secretary of the Employers' Association to the Court to hear his comments.

47. Remarks of Mr Justice Chapman, JDL, 14,143, pp.60-61, January 1905.

It appears however, that the strictures of President on this occasion had little or no effect upon the employers, for they continued to commit those infractions of which, the President had complained.

There can be no doubt that in the period between 1900 and 1907, preference, apprenticeship and under-rate permits were not only outstanding matters of conflict between employers and trade unions, but on the labour side, symbolic issues of principle. From the tactical point of view, the IC and A system appeared to be a logical weapon for the extension of trade union control over the employment process, and preference was intended to be the cutting edge. Inevitably //, both the Court and the government reacted strongly to the growing call for some kind of statutory preference with President Chapman in particular, anxious to preserve the rights of employers : in those cases where preference had been granted.

The apprenticeship and under-rate issues were inextricably linked in the sense that they emerged as matters of national contention from the original growing concern in the skilled trades at what was believed to be the erosion of the status of the tradesman. After 1904, the trade unions took the line that the Nelson Carpenters' Award, which extended the terms of under-rate applications, reduced the responsibilities of the trade union secretary, and formalised the powers of Conciliation Board Chairmen and Stipendiary Magistrates to receive direct application from individuals, was in fact an open invitation to employers to abuse the principle.

In this matter there can be no doubt that Justice Chapman's decision to permit the extension of the terms of under-rate permits to virtually any employee who wished to apply, must have tended to increase the incidence of employers who would see this move as a license to reduce labour costs, by increasing the number of under-rated men in their employment.

But these matters, important as they were as causes of frustration and concern to the trade union movement, and as symbols of the growing tendency of the Court to standardise and centralise its decisions, were subsumed by a larger issue - the effects of the Court's policy upon the functions of the IC and A system as a distributor of income. It is this question that aroused both employers and trade unions, and demonstrated a fundamental cleavage between them. For while the trade unions tended to see the award system as a process whereby labour's relative share of income could be incrementally increased at the time of re-negotiation, the employers in turn saw the process as a needless extension of labour costs and demanded that wages relate directly to industrial efficiency and increased productivity. It is now time to examine the Court's approach to wage questions in the context of the 'state of the economy, state of the industry' policy adopted first by Justice Chapman and carried on by his successor, Judge Sim, in the terms of the divergent responses from employers and trade unions to such initiatives.

CHAPTER SIX

The Underlying Economic Issues: 1900-1908.

The fundamental questions of employer and trade union responses to the various initiatives taken by the Arbitration Court in the matter of an evolving wages policy, can only be fully understood within the context of economic development in New Zealand.¹ It is therefore necessary to consider first in descriptive priority, some of the structural economic problems facing the country prior to 1900.

In examining the period from 1860 to 1895, Hanham has suggested that a number of important limiting factors contributed to the cyclical nature of the booms and depressions which distinguish economic progress during that time. He has classified these as:

a shortage of goods for export which led to balance of payments difficulties, a shortage of indigenous capital which led to a dependence on the London capital market, fluctuations in world prices for primary produce, the prevalence of a boom mentality among the directors and managements of banks and other financial institutions which caused over-lending and an excessive rise in land prices, and the tendency for immigrants to crowd into the towns rather than to join in the risky and difficult fight to open up the country. To these factors should be added two others, a marked shortage of capable men of business and of economic ideas Governments from the early sixties

1. The standard general work on the economic development of New Zealand is J.B. Condliffe, New Zealand in the Making, London, 1963, second imp. In addition, M.F. Lloyd-Pritchard, An Economic History of New Zealand to 1939, Auckland, 1970, has much useful statistical data on that period. The fact remains however, that apart from graduate research, and a number of official banking histories, much work remains to be done on various aspects of economic development in the period down to 1914.

were only too ready to borrow money... but they showed little awareness that government expenditure could be used to give a sense of direction to the whole economy Treasurers like Reader and Vogel were incapable of the close application to administrative details which enables a glorious vision of the future to be transformed into a detailed programme for development²

To this pattern of directional confusion at the centre of policy making might be added the various structural problems the country faced. Small scale markets and a pattern of settlement that made for regional rather than national consciousness; a physical terrain that made communications difficult with roading systems and railways subject to a spasmodic rather than a continued policy of government spending. In the North Island, the Maori land wars of the 1860s and early 1870s, also tended to delay the growth of rural population - that was the prerequisite for a viable pattern of closer settlement. Finally, there was the underlying problem of the need for an export staple that would give the country a long run income and finance the need for imports required by the newly settled country.

In the 1880s and 1890s, this latter problem was being resolved as the natural asset of highly productive pastoral land came steadily into use. . . . At the same time, the international economic depression that had adversely affected prices for agricultural products on world markets, began to lift during the early 1890s. The result, according to Lloyd-Pritchard, was that the national average of total trade per head in the period 1896 to 1913 was more than thirty per cent higher than in

2. H.J. Hanham, 'New Zealand Promoters and Investors: 1860-1895', in R.Chapman and K. Sinclair (eds) Studies of a Small Democracy: Essays in honour of Willis Airey, Auckland, 1963. pp 56-57.

the seventeen year period before 1896.³

Thus by 1900, under the stimulation of government policies, notably the Advances to Settlers Act of 1894, the future of the agricultural industry as the prime source of export income was established. But by the same token, so was long term uncertainty. For while primary agricultural production and associated processing for export were and remain, the fundamental source of export income to this day, the nature of the external market has required that the New Zealand producer accept the fact that the level of final export market prices are outside his control. In consequence, fluctuations in the international price level have resulted in a traditional pattern of instability in gross export income with both short and long run imbalances in the national current account an inevitable result. This has consequently led one leading economist to characterise the economic history of New Zealand as one which reflects "... the instability of a dependent economy".⁴

In order to sustain his argument for structural instability, Simkin examined available data on population, trade and income trends, and on this basis, developed the following argument. In the period from 1850 to 1914, the New Zealand economy went through a series of cyclical movements of the following durations. From 1850 to 1870 the periods are decennial and marked by fluctuations in economic activity that range from weak to moderate. From 1870, the cycle period became one of fourteen

3. Lloyd-Pritchard, p. 203.

4. C.G.F. Simkin, The Instability of a Dependent Economy, Oxford, 1953.

years to 1882, turning downward into a period of depression that lasted until 1895.

By contrast, he categorises the period after 1895 into the following distinct sub periods:

- (a) 1895 - 1904, Steady Progress
- (b) 1904 - 1907, Accelerating Progress
- (c) 1907 - 1909, Moderate Downswing
- (d) 1909 - 1911, Moderate Upswing

More recent studies of national capital formation, using different statistical techniques, have tended to support the hypothesis that Simkin was putting forward, that the period from 1900 to 1907 was one of first steady, then accelerating economic progress, followed by a slight downswing after 1907 and a moderate recovery after 1909.⁵

The question of the general level of economic activity in the country had very important ramifications for the Arbitration Court after 1903, for while the IC and A Act had imposed responsibilities upon the Court in the matter of wage fixing, it had said nothing about the economic criteria the agency should employ as a matter of general policy in carrying out such duties.⁶ As one contemporary observer put it ".... The

5. J.A. Dowie, 'The Course and Character of Capital Formation in New Zealand', NZEP, 2, 2, 1966. pp. 38-58.

'A Century Old Estimate of the National Income of New Zealand', Australian Economic History Review, 7, 2, 1966, pp 117-131. G.R. Howe, 'Income Estimation from Monetary Data', The Review of Income and Wealth, 21, 3, 1975, pp 301-307.

6. It appears that Reeves himself had not clearly anticipated the Court's role in this regard because he publicly expressed surprise in 1900, at the degree of intervention in pay fixing now required of the Court. See his introduction to H.D. Lloyd, A Country Without Strikes, New York, 1900, p.9.

original Act was silent in regard to the principle of wage payment and could therefore afford no guidance in this matter to the Board or the Court".⁷

It will be the main purpose of this chapter to examine the Court's attempts to evolve an effective wage policy in the light of the economic background which has just been described above, and its approach the overall issue through three important areas of analysis.

First consideration will be given to the position taken by the Court toward its duties as a general policy maker in wage matters. This will be followed by an examination of trade union responses to Court initiatives in the vexed areas of minimum and living wage decisions. Finally, attention will be turned to the employers' countervailing demands that wage fixing relate more directly to productivity and that premium rates based on effort form the core of the wage fixing process.

The Economics of Cautious Pragmatism: the Court and its Wage Policy.

The point has already been made that the actual process of wage fixing as defined in the original statute, was subsumed under the term industrial matters, but never fully enunciated as a set of administrative procedures. In consequence, the Court's early attitude toward its function as a wage fixing tribunal was one of caution in seeking an

7. Cited in H. Broadhead, State Regulation of Labour Disputes in New Zealand, Christchurch, 1908, p.58.

appropriate balance between worker demands and the ability of the employer to pay. In a letter to the London Times, Sir Joshua Williams, the first President of the Arbitration Court, described the duties of the Court as regulated by the need to:

... pronounce such an award as will enable the particular trade to be carried on, and not to impose such conditions as would make it better for an employer to close his works, or for a workman to cease working rather than to conform to them⁸

It was this search for an effective policy that was to link Judge Williams in a line of lineal descent to his immediate successors in office.

At the same time, the Court did attempt on one occasion to devolve the wage fixing function upon the parties in a quasi-experimental way. Thus in the New Zealand Bootmakers' Award delivered in Christchurch in 1896, permission was granted to form a special Conciliation Board to meet each September during the term of the award. This allowed for a multi-lateral and independent process of Conciliation, because the Board was also empowered to deal with outstanding questions of remuneration. Unfortunately what could have become a promising model for other industries was abandoned in 1897.⁹

The decision to discontinue this experiment was a clear indication that the Court had decided to take upon itself the primary right to resolve wage matters. In the process of developing this role, the Court

8. ibid, . p. 59.

9. JDL, 5, 43, p.477, April 1896.

added a further emphasis to the doctrine of the public interest for there subsequently emerged the belief, carried to new dimensions by Justice Chapman and Justice Sim after 1903, that in wage fixing, the Court owed a duty not only to the parties but to the industrial economy.

In other words, the Arbitration Court when considering an application for an increase in an award rate, would take into consideration as a basic principle, what can be called the 'prosperity of the specific industry' as a factor in judgement. This was first enunciated as an award making principle in 1901, when Justice Cooper refused a further award increase in the Thames Miners' Case, on the grounds that:

We are satisfied that the gold mining industry is notwithstanding the increased output from the Waihi Mine in a languishing and depressed condition The Court is not in our opinion justified in so increasing the rate of wages as to destroy or in some measure cripple an industry, upon which so many workers now depend for their livelihood and in which so many individuals have invested their money....¹⁰

One consequence of this policy, was the inevitable assumption on the trade union side, that where profits were being made, a case for a wage increase was self evident. Indeed this view was endorsed by Justice Cooper in the Christchurch Tanners' and Fellmongers' Award of 1901, when he said:

10. Book of Awards, 3, p.24.

The official history of the gold industry tends to support the judgement of Judge Cooper in this case. By 1912, the production level had dropped by one third of what it was in 1909, and remained virtually frozen at that level until the 1930s. Ironically in the author's view the Waihi Strike of 1912, occurred at a time when deposits in the mine were beginning to fail. See J.H.M. Salmon, A History of Gold Mining in New Zealand, Wellington, 1963, p.240, and p. 263.

It is quite clear that a good deal of the information upon which the union must necessarily rely to base a claim for higher wages is in the possession of the other side, and that is the profits you are making in your business 11

It is obvious from the President's comments, that he believed that there was a need for financial information of this kind so that award rates could be more realistically adjusted, but his suggestion was received with polite silence by the employers.

In a case later in 1901, Justice Cooper made the relationship between industrial prosperity and wage increases even more explicit when he ruled in the Auckland Iron and Brass Moulders' Award, that the wage rate should remain at the level set by the Court in 1899. In deciding this he was satisfied that:

... the effect of the evidence reveals that the trade if anything, is in a less prosperous condition than it was in 1899. The union has therefore failed to establish a case justifying the Court in increasing the minimum wage established 12

The use of the term 'minimum wage' is important here because Judge Cooper was virtually telling employers and trade unions alike, that as far as the Arbitration Court was concerned, the award rate was the minimum wage.

Nor was Judge Cooper finished with definitional decisions at this point, for in the Wellington Book Binders' case of 1901, he again refused to increase the award rate on the grounds that such an increase would:

11. Broadhead, p.58.

12. Book of Awards, 3, p45.

... compel additional importations and go far to destroy an industry which at the present time affords employment to a considerable number of women who are not technically journeymen 13

In other words, the Court in developing its economic criteria for wage policy, would now not only consider economic performances in the context of profit or loss as the basis of a decision to grant a wage increase, but also the effects of such a decision upon the ability of local firms to compete against foreign competition in the local market. In other words, the Arbitration Court was willing to take a protectionist view of the effects of a wage decision where possible ill-effects from cheaper overseas products might affect local business.

At the same time, one must appreciate the Court's difficulties in trying to evolve a consistent policy because it was faced with a variety of problems created by the nature of the local market and by factors in the statute itself. There was, first, the problem of relating specific local and regional wage levels set by agreements and awards to some national overall trend in wage levels so that intra-award conflict did not occur. This problem was made more difficult by the fact that the Act deliberately discriminated against the principle of national agreements which would have assisted the Court to establish a national basic wage for an industry. The activities of the Tribunal were further complicated by the fact that the employers consistently refused to reveal information on trends in profitability while they were always willing to claim higher costs. Yet despite this, certain practices did creep in that tended to 'tidy up' the general pattern of awards. Thus in the case of the Seamen's Union, while the Court would not make a composite

13. ibid., p. 349.

award, it traditionally began to process award decisions for the ports by making its first judgement in Dunedin. As a consequence, the Dunedin award rate became the established minimum for all other branches throughout the country.¹⁴

A further consequence of the inadequate economic terms of reference under which the Court operated, was the fact that in interpreting the wage fixing function, a President could if he so wished, cut right across tradition and 'custom and usage' without the need to justify his action and unrestricted by formal administrative rules.

For example, in 1893, the New Zealand shipping companies as a group had unilaterally reduced the monthly wages of seamen by the sum of ten shillings, under the pretext that terms of trade were bad. At every subsequent award hearing, formal requests for a restoration of the lost income was made by the trade union in each port, and equally formally refused, despite the fact that it was also admitted that economic conditions were back to normal. In the case filed late in 1906, Judge Sim who had just succeeded Judge Chapman, refused to make the grant yet again. But what was important this time, was not the act of refusal but the reason for it. In his judgement the President said:

Evidence was given as to the prosperity of the Union Steamship Company, the chief employer of the colony. Such evidence is usually admitted by the Court as part of the general enquiry, but the Court does not settle wages on a profit sharing basis as that might in many industries involve the necessity of fixing differential rates between employers, and would certainly lead to confusion¹⁵

14 . See Book of Awards, 7, 1906, p.60.

15 . Dunedin Seamen's Award, JDL, 15, 169, p.233, March 1907.

What Judge Sim was doing in effect, was abrogating the principle laid down by his brother Judge Cooper, that profitability should be a yardstick in establishing whether or not an increase in an award rate was justified. Thus his decision, while within the terms of reference permitted by the Act, emphasised the failure of Parliament as the only body superior to the IC and A Act to realise that appropriate codification of wage fixing principles by statutory amendment was a real necessity. For this type of decision simply confirmed a growing belief among trade unionists that the Court was deliberately acting to restrict any upward movement in wages as a general policy. According to Le Rossignol and Stewart, who investigated wage fixing procedure during this period, progressive employers were also concerned at the way in which the Court was tending toward conservatism in the matter of award change. One large employer advised them that an excessive rigidity seemed to be prevalent within the IC and A system, and blamed the multiplication of awards for this with the words:

When the awards were few it was easy to make a change without any serious disturbance to the industry, but now they are more numerous and their scope has been extended, it is difficult to make a change There is therefore, a temptation to abide by established conditions¹⁶

The researchers also identified a considerable degree of impatience among the employers they interviewed with the small and marginal employer who in the opinion of some of the respondents was:

Another stumbling block ... who, hanging on the ragged edge of ruin, opposes the raising of wages on the grounds that the slightest concession would plunge him into bankruptcy. His protests have their effect on the Arbitration Court, which tries to do justice to all the parties and fears to make changes for fear of hurting somebody....¹⁷

16. J.E. Le Rossignol and W.D. Stewart, 'Compulsory Arbitration in New Zealand', Quarterly Journal of Economics, August, 1910, p. 686.

17. ibid., p.684.

How far these comments are indicative of the opinion of the large mass of employers is difficult to assess, given the paucity of real evidence on employer opinions, outside those expressed in formal submission before Parliament, and in public statements for the press but they do reveal that dissatisfaction at the way in which the Court was behaving was not restricted to trade unions alone.

From the trade union point of view, the Court's conservatism in matters affecting wage increases was simply a part of a larger policy intending to restrain them, and this belief was confirmed for many in an important case involving the Westland Miners' Unions. For during 1905, the Court was to be involved in a test case that was to have ramifications not only for the mining industry, but for the future role of radicalism in the trade union movement.

Central to the combined union submission on this occasion was the question of the 'bank to bank' clause. It should be explained that under the system of wage payment in common use on the West Coast and in other mines in New Zealand, actual payment of wages related only to the time spent at the coal face. Under the bank to bank system, miners would be paid from the time they left the pit head until the time they reached work and then back again to the surface. Imbedded in the claim was the question of overtime because, under existing rules, the payment of overtime depended on a precise definition of what constituted an eight hour day underground.

Employer opposition to the bank to bank clause predictably centred around the question of overtime. It was their claim that overtime rates should only come into operation after the miner had spent eight hours actually at the coal face. Since the provision demanded by the workers would incorporate travelling time into the eight hours, they feared that time at the face would be shortened and that the amount of overtime would rise sharply.

In their argument before the Arbitration Court, the combined miners unions put forward the strong case that since their conditions of employment were defined by the Mining Amendment Act of 1902 and the Coal Mines Amendment Act of 1903, in making its judgement the Court should be aware that the mining laws were currently under review, and that a Coal Mines Amendment Bill currently before the House of Representatives contained the following clause:

Subject to the provisions of any award now or hereafter in force, a miner shall be entitled to be paid overtime when he is employed underground in a mine for more than eight hours in any day, counting from the time he enters the underground workings of the mine to the time he leaves the same¹⁸

The trade unions thus argued that the principle was in fact about to be granted in law, and that in its decision, the Arbitration Court should take cognisance of the fact.

¹⁸. JDL, 13, ¹⁸ 144, p.266, February 1905.

By contrast, the employers concentrated their arguments on the current conditions of the industry, pointing out that profit rates were marginal and that the current state of trade was not good. Their case rested on the further assertion that the industry was totally incapable of absorbing the large rise in labour costs that the introduction of 'bank to bank' would entail.

After hearing both arguments, Judge Chapman began a lengthy summation of the case. His opening statements aimed at clarifying definitions, for example, what constituted underground work. This he defined by telling the parties that:

A man is employed underground when he is sent underground in his employer's service, though he may not be engaged in mining operations 19

This was an important point because under these terms of reference the job categories involved in the bank to bank argument were effectively extended beyond those of coal cutting. He also recognised the argument put forward by the trade union that:

The common clause which we are accustomed to find in demands of miners' unions, asks that the hours of labour shall be hours computed from bank to bank, and we are satisfied that enactments now under consideration mean the same thing²⁰

At this stage of the summation, the trade union representatives in the Court must have felt that victory was at hand but they were to be bitterly disappointed by what followed. Having dealt with definitional matters, the President then went on to consider the economic arguments

19. ibid.

20. ibid.

put forward by the employers and it was at this point that Judge Chapman began to voice arguments of his own for, as he said:

We have been asked to deal with the question of evidence put forward by the various parties. As to this evidence, it is... sufficient to say that it did not tend to show a general increase in the cost of living during the last few years, and in this respect it stands in marked contrast with evidence we have received in other parts of New Zealand ... it was shown that there is no increase either in house costs or board 21

At this point any hopes that the unionists had of a favourable judgement began to disappear, because, having established that the rise in cost of living had not affected employees in the industry, the President then went on to ignore the legal aspects of the case, and to concentrate almost solely upon the economic effects of the granting of a bank to bank clause. These were contained in the following memorandum attached to the Court's decision not to make an award in the case.

- (1) Any award must necessarily greatly disturb the existing state of affairs, which is the result of recent settlements either by the Court or by the parties, and we can see no way of making an award which will not cause grave injustice to some class of persons
- (2) To curtail the hours of men working in mines on tonnage rates or fixed wages would materially decrease the earning power of the men, unless the rates were correspondingly increased

21 . ibid., p. 267.

According to R. Sinclair, consideration of the cost of living as a factor in establishing award rates was first made by Judge Cooper in the Auckland Carters' Case of 1902, when he stated "... in fixing the minimum wage we have regard to the cost of living in Auckland". R.S.M. Sinclair, 'An Examination of the Basis of Wage Fixing in New Zealand under the IC and A Act and its Amendments with particular reference to the General Reduction Order of the Arbitration Court 1931', Unpublished MA thesis, Otago 1935, p. 28.

- (3) So to increase the rates would merely result in reversing the previous action of the Court, without adequate proof of need, but it would operate with such absolute inequality in different jobs and parts of the mine as greatly to increase the difficulties of the employers without any corresponding advantage to the men
- (4) So great a change would largely increase the costs of production, unless an all round reduction of wages was made, a reduction which we could not make without reversing the previous action of the Court
- (5) There is every reason to fear that to materially increase the costs of production would, in some cases at least, result in the closing of the mine, with the inevitable consequence of reducing the number of men employed on the West Coast, and thereby presumably affecting the general prosperity of the industrial district
- (7) In our opinion it is almost certain that the output of the mines, would be diminished were awards made in these cases, that would stimulate competition from abroad, diminish employment in New Zealand, and operate detrimentally to the interests of the many
- (8) Moreover we felt that such injustice as would ensue in the making of an award would produce great discontent that would lead to results of the most injurious character to the industry affected, and that probably both of these consequences would emerge with the result that in the end the greatest sufferers-if any indication can be drawn-would be the employers or a large section of them
- (9) Apart from the difficulties arising out of the impossibility of deliberately doing injustice, we find it impracticable to make a workable award
- (10) For the foregoing reasons we find that the only course open to us in each of these cases is to make no award 22

The Court's decision, since some nine trade unions and nine coal companies were joined under the application, virtually regulated the industry in Westland and had large ramifications for coal miners everywhere in New Zealand. Given the intensely symbolic nature of the bank to bank issue, there can be no doubt that this decision was a major contributing factor in the development of militant hostility within first the Miners' Federation and later the 'Red Fed'. It is also clear that by 1905, questions of the effects of the Court's decision on the climate of industrial relations and the important matter of a continuing trade union confidence in the officers of the Court was subservient in the President's mind to what he perceived to be the larger economic questions of the employers' ability to pay, and the industry's ability to stand the increased cost.

Unfortunately the Court's willingness to make judgements of the type just described, amounted in trade union eyes to little more than the acceptance of employer evidence on face value. There might also have been less suspicion of the Court's motives, if it could have been demonstrated that the qualifications required in the President included evidence of training in economics and commerce. The anomaly inherent in the situation was described by two contemporary observers in the following manner:

The President is a Supreme Court Judge, a barrister with all the conservative devotion of a legal mind to form and precedent called upon to decide intricate technical questions which may be strictly legal or not, in a Court whose procedure is not to be fettered by

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precedent and to embody his decisions in awards
which must avoid technicalities 23

Given the inherent contradictions in the President's role, it was inevitable that the incumbent would tend to err toward caution, and precision, wherever and whenever it was possible.

An example of this tendency to observe the letter of the law when considerable doubt appeared in a case was offered in 1903, as the consequence of changes in an award promulgated in Auckland. The furniture union had originally been covered by an award in 1899, and was requesting renewal and an increase in the award rate.

On 19 February 1903, the Court convened and in due course ruled that the award rates for workers in the job categories of cabinet making, chair and picture frame making, and upholstering, were to be increased from the 1899 rate of 1s 1d to 1s 3d per hour, this new scale to come into operation on 28 February 1903.

The first indication that trouble was brewing came on the day that the new award rates went into operation. As a consequence, thirteen employees of the Tcnson, Garlick Company and four employees of the Direct Supply Company were duly dismissed on the grounds that they were incompetents and unable to earn the new rate. Following this, on 6 March the action of the companies involved was endorsed by a special meeting of

23 . R.F. Irvine and O.J.T. Alpers, The Progress of New Zealand in the Century, London. 1902, p.350

For adverse comment on the minimum wage question in New Zealand and the need for the British to consider the issue as subject for special legislation see 'The Case for a Legal Minimum Wage', Fabian Tracts, New Heptarchy Series, 5, July 1906, p.7.

employers in the trade who passed a resolution intended to recognise:

... the obligation of supporting in every way any member who may in the judgement of the union, through lockout and labour dispute be placed in the circumstances needing assistance²⁴

It appeared that the employers in Auckland were ready to make a test case of the issue, and in due course, after being given notification

Tregear appeared to lead the prosecution in an action filed by the Department of Labour. The charge asserted that a breach had occurred because in dismissing the employees concerned, the company was discriminating against men because they were trade unionists. This was a tactical error on Tregear's part, because in order to make the breach valid, he then had to prove that it was the employers' intention in each case to discriminate against the men as unionists 'qua' unionists. This he signally failed to do, for as Justice Cooper pointed out in his decision, under the terms of the charge and the evidence presented, the employers had no case to answer.

It is possible that if Tregear had avoided reference to the union matter and pointed out to the Court that the dismissed employees had given satisfaction at the old award rate, despite the fact that the employers, if they wished, could have applied for an under-rate permit, and that the question of incompetence had only come up after the award rate had increased. The Court might have listened with some sympathy to the charge. But in the event, the style of approach led to an embarrassing public humiliation for Tregear, when Judge Cooper censured him for the way in which the action was brought.

²⁴ . JDL, 11, 122, p466, March 1903.

The case's importance however lies in the fact that during the incumbency of Judge Cooper, his successor, Judge Chapman, and finally Judge Sim, the Court was to give increasing emphasis to the formal presentation of the evidence, and revealed an increasing unwillingness to go outside its formal terms. Yet in matters affecting the economic state of an industry, this formality was somewhat contradicted by each President's willingness to make large hypothetical assumptions about economic causes and effects based, usually, on the employers' evidence that the state of business did not warrant a change in award rates.

An example of the Court's inconsistency in its apparent determination to control wage movements is offered by a case taken by Judge Sim in 1907. On 18 February of that year, the Court gave its decision in the renewal application of the Otago and Southland Miners' Union, which contained a claim for an award increase. In refusing such an increase the Judge said:

The evidence satisfies us that the market for the employer's coal is likely to be reduced in the near future, and that decreased output will mean increased costs of production. In these circumstances the Court did not feel justified in altering the existing conditions except in some small respects. For this reason, shift wages have been maintained at ten shillings per shift, although it is clear that the standard rate in the neighbourhood is eleven shillings a shift 25

Judge Sim appeared to be oblivious to the fact that the employer's argument of a declining market was offset by the fact that prevailing

25. Otago and Southland Miners' Award, JDL, 15, 169, p. 303, March 1907.

market conditions in the district had already raised the shift wage by one shilling over the old award rate, and that if the employer's case on its merits demanded wage restraint, then the trade union just might have been persuaded to accept what amounted to a freeze, at the prevailing level. In fact, his judgement could only be construed by the trade union in one way - as an open invitation to the employers in the district to cut back shift rates by one shilling. Small wonder then that trade union leaders were by this time frankly despairing of the Court's attitude toward award renewal particularly in the matter of rate increases.

This feeling was given tacit expression at the Trades and Labour Councils Annual Conference for 1906, where the opinion was formally recorded that:

While it may not be the present duty of the Court to adjust the economic value of money wages, we consider that until very recently the Court had attempted to do so. Now with the IC and A Act tying the hands of the unionists, and the Court ignoring the economic value of wages, some steps must be taken to secure economic justice for the workers26

The message intended for the Legislature was clear, given the Court's current policy toward award increases, there was now the necessity to consider wage fixing, not only in terms of skill and reward, but in relation to the fact that the cost of living was rising as measured by upward movements in consumer prices. The result was, as we shall see,

26 . Trades and Labour Councils Annual Conference Report, 1906, p.9

an emerging demand for what can be described as a two-tiered wage policy, the first requiring that government introduce a minimum wage standard, the second that wage increases be seen in relation to any movements upwards in the cost of living. It appears then that the Court's policy of basing award increases upon economic conditions was having an important side effect, for during the rest of the period covered by this thesis, we shall see an increasing trade union emphasis upon the question of adequate compensation for movements in the cost of living.

Unfortunately these changes of emphasis demanded by the trade unions placed the Court in a new kind of dilemma.²⁷ For as the central wage fixing agency in the IC and A system, it now had to define what a minimum wage was, if its policy in this direction was to have any meaning, and do so without any real guidance from government. The result was that the Court proceeded to develop what it considered to be a minimum wage policy, and this initiative can now be considered in detail.

27. By 1907, the demand for a national minimum policy through appropriate amendment to the IC and A Act was an official policy plank of the Trades and Labour Councils. Trades and Labour Councils Annual Conference Report, 1907, p.7.

The Cost of Living Issue: Worker Demands and the Court's Response.

It is a matter of no small significance that when the Trades and Labour Councils Conference of 1906 called for a manifestation of formal discontent at the way in which the IC and A Act was being administered, strong support should have been forthcoming from seamen, wharf labourers and stevedores. The repeated problems of the seamen in their relationship with the Court has already been described, but what of the groups that in later history of industrial conflict in New Zealand were to play a leading part?²⁸

In industrial terms, 'watersiders' in New Zealand share much in common even now, with their counterparts in Australia and Britain, and in the period under discussion, their daily work reflected all that is meant by the term 'casualisation': physically arduous, irregular in hours, lacking in job security, with attendant low average earnings.²⁹

Some indication of the slowness of upward movement to be found in award rates in this industry is given by the comparison of wage patterns in four ports during this period.

28. It is a fact of labour history, that the seaports of New Zealand have been at the centre of major industrial conflicts in 1890, 1913 and 1951. See H.O. Roth, Trade Union in New Zealand, op.cit., ch.2, C.V. Bollinger, Against the Wind, ch.2, and G.M. Bassett, Confrontation 51, Wellington, 1969. M.E.R.

29. For a comparison of British and New Zealand conditions see D. Wilson, The Dockers: a Study in Change, London, 1971 and P.M. Pettit, The Wellington Watersiders: the Story of their Industrial Organisation, Wellington, 1948.

In Gisborne, an award was first granted in 1904 which laid down an hourly rate of 1s 4d and an overtime rate of 2s 1d. By 1908, a second award had increased the hourly rate by 2d leaving overtime stationary. In Wellington a first award of 1901 established an hourly rate of 1s 3d and an overtime rate of 2s 0d. At the second award hearing of 1908, the increase on both the hourly and overtime rates was 1d in each category. At Napier, a first award of 1904 established an hourly rate of 1s 4d and an overtime rate of 2s 1d. When this rate was first reviewed in 1912, the hourly rate was increased by 2d and the overtime rate by 5d per hour.

In the case of Dunedin, a first award of 1899, established a general hourly rate of 1s 3d for most hands and an overtime rate of 1s 6d, with the exception that the overtime rate for workers handling meat was 2s 0d per day. When the award was first renewed in 1908, the general level of hourly wage rates and overtime rates was left stationary, and the award permitted an increase only in the case of meat handlers whose new rates were 2s 0d per hour plus 2s 6d per hour for overtime, and for guano workers, whose rate was lifted from the basic general hourly rate of 1s 3d to 1s 6d with overtime raised from an original level of 1s 6d per hour to 2s 0d per hour.³⁰

30. Department of Labour, Annual Report, AJHR, H-11D, 1912, p.18.

A number of important limitations on the award system became apparent when the data was examined, first the fact that, despite the original intention that awards should be of three years duration, two out of the four awards cited ran for four years before renewal, one ran for seven and one ran for eight. Again the evidence reveals that even within the framework of one award, rates for jobs differed very considerably within a single port's labour force, where men were not designated by occupational skill but called upon to meet specific loading and unloading demands created by the type of vessels they were servicing. Thus within an ostensibly homogeneous occupational group, earnings could vary very considerably depending upon job allocation over a period of time.

The watersiders' situation must also be seen in the context of what can be termed the economic effects of a widening of award provisions to cover industrial as opposed to skilled workers, for as the IC and A system developed, lower paid workers came increasingly under the conditions of awards laid down by the Court.³¹

The strong feeling that the bulk of workers now joined under the IC and A Act, were not receiving an equitable share of the prosperity that accompanied current economic buoyancy in the country was put on record at the Trades and Labour Councils Annual Conference of 1907, when

31. For a further elaboration of this argument see M.B. Hammond, p. 414.

a report was tabled that purported to express trade union views on the current effectiveness of the IC and A system. It concentrated solely on wage matters and asserted:

That whereas it is most difficult to say whether any increased remuneration received by the wage earning class or improved conditions of employment are [sic] due to the very active state of trade and the general conditions of prosperity prevailing, we are confident that of the enormous increase of wealth produced, the workers have received an entirely inadequate proportion, and in the case of the Unions of Workers which have received awards from the Arbitration Court during the last seven years, we find that these Unions have every time been refused advances, although the purchasing power of the workers' earnings have been continuously decreased, and are still on the decline; this being due to the general increase of the prices of commodities and rents.

There seems little likelihood of the workers receiving any future increase in wages from the Arbitration Court. The workers in general must recognise that while their proportions of the profits of an industry are fixed by the operations of the Act and scarcely ever rise above the rates fixed, the minimum rate of pay being in general the maximum rate, the Act makes no provision on limiting the proportion of profits that shall go to the employer The Conciliation and Arbitration Act is not even a partial solution of the economic and social troubles of the wage earning class, nor can it ever touch the matter unless the Court is given power to adjudicate on the matter of interest, rent and profit, at the same time as they deal with wages³²

Clearly from the official trade union point of view, the real solution to the problems posed by the Court's wage fixing policy was not to abandon IC and A, but to extend its controlling mechanism to cover all aspects of economic activity that impinged upon the wage process. Indeed

32. Trades and Labour Councils Annual Conference Report, 1907, p.69.

the report concluded with the fervent wish that precipitate action by trade unions, of the kind that New Zealand had experienced with the slaughtermen's strikes of February 1907, would be avoided in the future. The trade union response to the effects of centralisation of the wage fixing function under IC and A can thus be described as a paradoxical call for the strengthening of the process of centralisation, on the popular assumption that it was not the IC and A process itself, but its administration that was at fault. For in the collective minds of the trade union leadership the major purpose of the legislation was the re-distribution of income, through a constantly increasing level of wage rates based upon a constantly increasing level of national income. When the Court began to default upon its responsibility in this regard, it followed that attention then turned to the question of income maintenance in the face of what was generally regarded as a mistaken policy on the part of the Court.

In its attempts to develop criteria through which the principle of a living wage could become an administrative reality, the New Zealand Arbitration Court drew heavily upon the Australian experience. In 1907 the President of the Commonwealth Arbitration Court, Justice Higgins, had handed down a key judgement in the International Harvester Case.

Under the terms of the action, the Court was asked to define what constituted a 'fair and reasonable' remuneration for an employee. Justice Higgins therefore ruled that:

The provision for 'fair and reasonable' remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers The standard of 'fair and reasonable' must therefore be something else, and I cannot think of any other standard appropriate than the normal needs of the average employee, regarding as a human being living in a civilised community³³

This judgement had an important influence upon Justice Sim, who stated in an interview with M.B. Hammond, that Judge Higgins had "... expounded more fully than anyone else, the doctrine of the living wage".³⁴

Under the terms of what it called an 'Excise Standard', the Commonwealth Court proceeded to make provision for a basic wage in every award that came up for judgement as a matter of accepted procedure.³⁵

By contrast, and despite his avowed procedural debt to his Australian colleague, Judge Sim continued to demand, as a pre-requisite for such a decision, clear evidence that the cost of living had risen in the district within which the award applied. Indeed in the Gisborne Painters' Case of 1909, he went so far as to assert that the evidence

33. The Harvester Judgement-Ex Parte H.V. McKay, 1907, CAR. 1, cited in H.J. Glasbeek and E.M. Eggleston, Cases and Material on Industrial Law in Australia, Sydney, 1973, p.162.

34. M.B. Hammond, 'The Regulation of Wages in New Zealand' Quarterly Journal of Economics, 31, May 1917, p.421.
See also 'Judicial Interpretation of the Minimum Wage in Australia', American Economic Review, 3, 2, June 1913, pp.259-286.
'The Australasian System of Compulsory Arbitration', Proceedings of the Academy of Political Science in the City of New York, 7, 1917-1918, pp.13-34.

35. The Higgins policy continued in force until 1911, when rising discontent at the prevailing standard rate led finally to the decision to use precise measurements of the cost of living as the criteria for the basic wage. This led in turn to the introduction of what was called the 'A' series index, based upon movements in the cost of rent, food and groceries. Glasbeek and Eggleston, p.173.

presented pointed to the need to lower the prevailing award rate rather than to increase it. On this occasion he warned the trade unions that:

Much expense and disappointment will be avoided if the executives of unions will ponder well what we have said, and if before originating a dispute they will ascertain that there is some definite and reasonable grounds for asking for an alteration in the terms of an award, and will recognise that without such grounds it is useless to ask for an alteration....35

Unlike his Australian colleague, Judge Sim was not prepared to treat the demand for a living wage as a special case, requiring that a wage standard be set up outside the normal context of wage-work bargaining. Indeed, according to Hammond, Judge Sim's approach was based on the following principles:

In the absence of any reliable statistical statement as to the cost of living in New Zealand, the Court considered that 8s. 0d. was sufficient to guarantee a living to workers in unskilled occupations....To this minimum wage of 1s. 0d. an hour, which in the opinion of the Court constituted a living wage, it was the custom of the Court to allow from 3d. to 4d. per hour in addition, as a minimum wage for skilled workers....36

Clearly the twin issues of the minimum and the living wage were confused in the President's mind, since it had become the function of award rates to set minimum levels, with local labour market conditions influencing the prevailing rate. By contrast, the living wage principle aimed at

35. Book of Awards, 10, 1909, p.192.

36. Hammond., p.423.

setting a floor level below which wages should not be permitted to go in the interests of people on marginal incomes who were being pushed down into real poverty. The adoption of eight shillings as the standard was in fact a direct borrowing from the prevailing rate in the state of Victoria, irrespective of the fact that there was no automatic correlation between needs in Australia and in New Zealand.³⁷ The preservation of a relativity between skilled and unskilled workers was also indicative of the fact that Judge Sim could not perceive of a wage structure based on social needs and existing outside the central wage fixing system.

In his policy of wage restraint, the President of the Arbitration Court was to receive tacit support from an unexpected quarter. The British Fabian Ramsay MacDonald, visited New Zealand during 1906, and examined the IC and A system. In a later article published in this country, he criticised the trade unions for placing pressure on the Court in the matter of wage increases arguing that:

They have in the past concentrated too much on the amount of wages received and as a consequence have overlooked the fact that while wages have increased the cost of living has gone up out of all proportion to wages It would be foolish if they tried to force up wages in keeping with the cost of living, for such a step would only further increase the cost of living³⁸

37. See N.S. Woods, 'A Study of the Basic Wage in New Zealand prior to 1928', Economic Record, 9, December 1933, pp.233-270.

38. J.R. MacDonald, 'Arbitration Courts and Wage Boards in Australasia', JDL 6, 184, p449, June 1908.

As far as MacDonald was concerned, the real effectiveness of the IC and A system as a protector of industrial peace, had never really been put to the test, because a general policy of protection coupled to prosperous economic conditions had enabled the Court to operate with:

... a fair amount of latitude for the manipulation of nominal wages Wages have been high, rents high, and profits have been by no means meagre. Under such circumstances, it was easy to prevent disputes, and until the margin of such circumstances have been reached no real test can be placed upon the New Zealand method of arbitration as a guarantee of industrial peace39

He also accused the trade unions of practising a policy of selective criticism in their attacks upon the President of the Court asserting:

That Mr Justice Chapman was making law not administering it was a grievance voiced at the Annual Conference of Trades Councils in 1906. But when Mr Justice Williams on considerations of equity, put into his awards a provision that preference should be granted to trade unionists, he was legislating and not administering, and when the employers attacked Mr Justice Williams, one of the unionists wrote, it is something extraordinary that enemies to the workers should be permitted to traduce the Labour Courts with impunity40

Unfortunately MacDonald could offer no alternatives to the status quo and his criticism therefore lost its edge. He also gave no indication indeed, he appeared to be surprisingly unaware, that the Court after the accession of Judge Chapman in 1903, had begun to embark upon a policy of wage restraint, and that during his visit, award rates were certainly not increasing but tending to stand still.

39. ibid.

40. ibid., p.450.

The enormous problems inherent in any attempt to design an effective policy to resolve the needs implicit in the demand for a living wage, still remained even after government was prompted to act in the matter. A Royal Commission on the Cost of Living, set up in 1912, under the chairmanship of Edward Tregear, proceeded to take voluminous evidence, some highly subjective, and reached the tentative conclusion that between 1896 and 1911, the level of general money wages had increased by a total of twenty-four per cent, while the rise of real purchasing power had risen by eighteen per cent, indicating a general increase in prices of the order of six per cent.⁴¹

However, a later and more comprehensive study completed by G.W. Clinkard in 1919, contradicted the 1912 findings and asserted that:

... despite the nominal increases in award rates, the level of real wages as measured by award rates corrected by the Government Statistician's index number of retail food prices, was falling rapidly
....⁴²

The answer to the interpretative confusion that accompanied attempts to measure the cost of living in this period, awaits more detailed studies of the general economic conditions that prevailed between

41. Royal Commission on the Cost of Living Report, AJHR, H-18, 1912, p.1 and Table 35.

42. J.B. Condliffe, 'Experiments in State Control in New Zealand', International Labour Review, March 1924, p.339.
G.W. Clinkard, 'Wages and Working Hours in New Zealand 1897-1919', New Zealand Official Year Book, 1919, pp.893-935.

1900 and 1914.

But from the point of view of this thesis, the growing unpopularity among trade unions of the Court's attempts to restrain wage movements in the general economic interest, may have been influenced by the existence of a growing rate of inflation, which undoubtedly affected real purchasing power.

The appointment of Judge Sim in succession to Justice Chapman, marked more than the continuity of a developing policy of wage restraint. It ended a traditional assumption among trade unionists that industrial and company profitability was a legitimate criterion for a demand that the award rate should be increased. For as the new President ruled soon after taking office:

Any attempt to bring about a better distribution of wealth must be outside the sphere of the Court and by such means as profit sharing, co-operative production and socialism43

This statement of policy, for that is what it really was, consequently destroyed any hopes that the trade unions still entertained that the Court would return to the practice of income re-distribution through the medium of increasing wage rates in awards and agreements.

Thus the Arbitration Court's approach to wage restraint stands alongside its other policies with regard to preference, under rate permits and precision in the pleading of cases, as evidence of a

43. . . Hammond, p.423.

growing tendency for the Court to centralise and control the major functions of the IC and A system. The question inevitably arises, how did the employers respond to the Court's initiatives in wage matters during this period? The rest of the chapter will be devoted to a consideration of employer attitudes toward minimum wages and to some of the countervailing suggestions they brought forward as alternative means of wage fixing.

The Court's Wage Policies and the Employers Attitudes and Responses.

In his study of the Australasian labour movements, V.S. Clarke observed that the attitude of employers toward their responsibilities under the awards of the Arbitration Court varied greatly in accordance with "... the more or less perfect adjustment in the individual awards to the conditions and customs of the industry they covered".⁴⁴ That this conclusion also had relevance with regard to their attitudes toward the minimum wage provision, implicit in an industrial award was borne out by various interviews he conducted during his investigations, as illustrated by the following comments:

A Manufacturer:

The maximum and the minimum wages become equal and the Court establishes an average for the minimum wage

A Building Contractor:

We have to raise our maximum wage in the building trade when the minimum is raised, or the better men would not care to do more work than the poorest

⁴⁴. V.S. Clarke, The Labour Movement in Australasia, Sydney, 1908.p.350

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An Employer and Conciliation Board Member:

The greatest weakness of the Act, is the dead level of wages, it creates, and the dead level of mediocre workmanship resulting

An Ironworks Superintendent:

The maximum wage is not the maximum wage for us. We sack a poor man when we can get a good man, and pay him more than the award. That is most profitable for us and keeps the men cheerful⁴⁵

It is thus clear that individual employers were adapting the wage conditions laid down under industrial awards and agreements to meet their particular circumstances.

By contrast, the first indication of the New Zealand Employers' Federation antagonism toward the principle of a minimum wage in awards and industrial agreements, was publically announced on 23 April, 1907 at the quarterly meeting of the Canterbury Employers' Association. The speaker was G.T. Booth, by now National President of the Federation, and he began his address with the assertion that the IC and A Act had been a qualified success in the sense that it had settled industrial conditions and to some degree, brought industrial peace. But in wage setting, it was his contention that the IC and A system had been an unmitigated disaster for:

45. ibid., p.351.
in New Zealand',
49, 1907.

. See also V.S. Clarke, 'Labor Conditions',

I am sadly afraid that the establishment of artificial wage rates is leading us in the wrong direction from the economic standpoint. It is the economic efficiency of labour that counts. We cannot hope to develop our manufacturers or successfully resist foreign invasion, if we are to continue paying three times as much for labour as is paid elsewhere. That is not to say that we should seek to reduce wages. No sane employer would do that except under pressure of bad times or excessive competition. We must find some plan that will bring out the latent possibilities of our factories, and this, it seems to me, can best be accomplished by encouraging our most capable workers instead of discouraging them⁴⁶

Booth then went on to criticise the wage system in more detail with the claim that:

The time wage system is inadequate. The piece work system is objected to not entirely without good reason. The premium plan is probably the best yet devised, under which a standard rate of pay is fixed for a standard output, and a premium is paid for excess production. Under this system the average workman is assured a standard wage, while the superior man is enabled to add to his earnings and encouraged to use his wits and his superior ability to his own advantage. Of this I am convinced, that the present system of uniform wages and rigid conditions imposed by a state authority is not conducive to industrial efficiency, and

⁴⁶, G.T. Booth, The Labour Movement: An Address, Christchurch, 1907, p.8. Booth's fear of 'foreign invasion' was a form of pleading, for as an agricultural implements manufacturer, he was keenly aware that the International Harvester Trust had established a branch in Christchurch in 1906. In addition he had been one of the moving spirits in a combined employer-trade union delegation to Parliament to request a forty per cent tariff on American farm machinery, as a form of protection against the cartel. See AJHR, I-9, 1906, p.1-22. Local fears at the effects of foreign competition were supported by the fact that during 1907, despite the tariff, farm machinery and tools to the value of \$461,936 were imported from the United State. New Zealand Official Year Book, 1908, p.416.

while there is much to be said in favour of our Arbitration system, in this important matter it stands condemned47.

What Booth was calling for was a freedom for employers to develop their own wage fixing system, by negotiation with the workers, with a view to establishing a more direct link between wage levels and industrial productivity. Given the ability to manipulate premium rates in this way, it followed that the successful employer would be able to skim off the best labour from the local labour market, simply by adjusting standard and prevailing rates above those of their competitors.

His remarks, obviously intended to test the wind, were published and circulated widely, Inevitably they drew a response from the trade unions who condemned the whole idea with tremendous fervour:

There again speaks the sweater. Where is the proof that the top price for your slaves would not have been the minimum, and your other prices controlled by the nearness to the starvation line of the others? Can we not draw plenty of example from other parts of the world ...? What is the result of the power to pay what they choose being left in the hands of the

47. Booth, p. 8.

It appears that the idea of a premium wage was not without support from some trade union leaders, for as Clarke's interviews demonstrate:

The President of a Trades Council:

The employer makes the minimum wage the maximum. It would be better to have a real maximum if it could be done without injuring the better workman

The Secretary of Several Unions:

I should prefer to have wages scaled as near as possible to output, and some system of bonuses established for better workmen under the award

Clarke, p.352.

employers? Is it not the creation of slums, with all their accompanying drunkenness, and vice and misery ...?

And again on the question of the premium plan:

It is a grand system which will [sic] set man against man, and there is no doubt that under the lash they will produce more, at any rate for a time. True the men will wear out sooner, but it costs nothing to the individualist to replace them⁴⁸

Despite this vigorous trade union response, the New Zealand Employers' Federation continued to make an issue out of premium wages. Thus, on 28 August 1907, in an address to the Federation's National Conference, W. Scott, Secretary of the Otago Employers' Association told the assembled members, that the system of fixing high minimum wages through awards and agreements had proved a disaster as far as New Zealand was concerned. After reiterating with approval Booth's argument in support of the superior worker he went on to suggest that real improvements in the relationship between wages and productivity could be attained:

If the workers would only realise that if they are to have . . . increased wages on a permanent and lasting basis, they must earn them in some way, or otherwise economic laws would reduce them again in spite of legislation The general increase in wages all round coupled with extra wages for overtime, reduced hours and other altered

⁴⁸. The authors H.R. Rusbridge and R.T. Bailey, were respectively President and Secretary of the Christchurch Trades and Labour Council. See The Labour Movement in Australasia: the Views of the Workers; a Reply to Mr Booth, Christchurch, 1907, pp 3-4.

conditions have largely contributed to the enormous increase in the cost of production and the increased cost of living, which the workers instead of trying to remedy, propose to still further aggravate⁴⁹

In other words, Scott was obliquely blaming the IC and A Act for setting too high a 'wage floor' in the making of industrial awards and agreements.

The employers' argument was to receive powerful public endorsement from a leading member of the Ward Cabinet when, on 17 June 1908, Sir John Findlay, the Attorney General, addressed a meeting of the Liberal and Labour Association in Wellington. He began with an historical resumé of the main principles of wage theory, and said that an important question had to be decided:

... whether or not the operation of the Act is merely to increase the nominal wage leaving the minimum wage stationary, or in other words to take away the benefit it confers as higher wages by causing a corresponding increase in prices If this is truly its operation, then I admit that the Act as it stands is of no value to the workers as an instrument for getting them a better wage⁵⁰

Findlay was describing what today would be called a wage-price spiral which assumes that any increase in wages carried over in terms of additional costs to an employer is then transferred to the consumer by means of the employer raising the price of his commodities. He then

49. W. Scott, The Industrial Conciliation and Arbitration Act: its Past, Present, and Future, Wellington, 1907, p. 7

50. Dr. J. Findlay, KC, LL.D.
Labour and the Arbitration Act: An Address, Wellington, 1908, p.5.

went on to tell his audience that no statistical process had been able to demonstrate that there was a correlation between wage increases and price movements, a suggestion that must have confused the more perceptive members of his audience. The way out of the dilemma he went on to suggest was to introduce the principle of 'gain sharing' which involved:

sharing the gain or saving of the cost of production irrespective of the rate of profit realised by the employer, and is definitely to be distinguished from the scheme of profit sharing under which the amount of bonus is dependent upon realised profit⁵¹

After thus suggesting a wage system based on what looked suspiciously like Marx's theory of surplus value, Findlay moved on to condemn the recent strikes that occurred in the freezing industry, suggesting that:

... the sanity, fairness and the industry of the great body of our workers is not to be judged by the silly demands and violent designs of the noisy few We must not confuse noise with numbers
.....⁵²

This latter part of his address raised substantive issues that will be discussed in more detail consequently, but for the moment the importance of Findlay's address lay in the fact that a senior member of government appeared to support the employers' suggestion that the wage fixing process under IC and A was not doing its work.

51. ibid., p.13.

52. ibid., p.14.

The employer's case was given some impetus by the fact that a number of the more vociferous advocates for effort wages, were already introducing changes in wage setting into their firms. For example, G.T.Booth, as a partner in Booth and MacDonald of Christchurch had developed a premium wage system, while in the Legislative Council, T, George A., a Director of the Waihi Mine, told his colleagues:

I am a believer in the energy wage. It is very difficult of course to have any system in which energy is paid without creating some unfairness as regards other workers, but we do not want to see all labour on exactly the same level. And now I must speak of a mine with which I am acquainted - the Waihi Mine. We have got over the question there. There we have got the energy wage and the result is we have got the pick of the miners in the Dominion. We have got the contract system there, and we had great difficulty getting it introduced.... I would guarantee that if any man goes up there he will find that with the exception of a few... the miners would not go back to the old system....53

The events of 1912 in Waihi would tend to prove George wrong, but at the moment when he made his speech, he was reflecting employer discontent at the way in which the IC and A system confined them and raised their labour costs.

The underlying belief that superior labour should be given the opportunity to earn more, was reinforced by the experience of the New Zealand employers as a group. Since many successful business men had lifted themselves from the ranks of the masses, it was easy to assume that the protection of the vast mass of the workers by the industrial law, however morally appropriate, could only hinder the progress of men of ability.

53. NZPD, 145, P.635, 30 September 1908.

Thus the prevailing opinions of employers on wage fixing questions were by 1907 running counter to the philosophy of state control, and ironically, the Court gained scant recognition from the employers for trying to ensure that the upward movement of wage rates should not outstrip the employers' ability to pay.

The point has already been made, and will be further elaborated in some detail below, that while employers as a strategic principle aimed to limit the functions of the IC and A system whenever possible, the trade unions saw their main task as the extension of the control exercised by the award system over as many employers as possible. Many trade union leaders even in times of adversity, imposed by what they felt was an unsympathetic Arbitration Court, remained consistently loyal to the principles of IC and A. Psychologically, the award system as the apex of the labour laws had freed workers from the age old fear of exploitation. To return therefore to the manifest uncertainties of collective bargaining with the employer would not only involve a shift in thinking, but the abandonment of the solid achievements that the trade unions had registered since 1894. Thus they strongly opposed this type of employer' innovation.

It is therefore necessary at this point to consider the legislative changes that had occurred between 1903 and 1907, as indicative of an increasing tendency to both centralise functions and to regulate administrative industrial behaviour in a more punitive fashion. Since the process of legal amendment was accompanied by a consistent

tendency toward an 'official employer' and an 'official' trade union position. Attention will also be paid to the way in which these groups were developing divergent expectations from the IC and A system while finally the scene will be set for the events of 1907 and 1908, a time when not only major legal change, but also the validity of the IC and A system was both challenged and debated.

CHAPTER SEVEN.

Legislative Changes and Employer-Trade Union Reactions: 1903-1907.

It has been established that the process of amendment to the principal legislation that began in 1896 became a regular item on the legislative agenda, as government strove to translate the law into the practical world of industrial relations. It has also been established that in terms of the period under consideration in this thesis, 1901 stood as a watershed. For with the decision to make access to Arbitration easier, at the expense of the Conciliation process, it is clear that new kinds of administrative problems were bound to emerge.

This chapter will first examine the process of legislative change that took place in the period 1903 to 1907 in terms of the tactical responses of both employers and trade unions to the new legislation as it was passed by Parliament and administered by the Department of Labour. Attention will then be directed toward first the Auckland Tramways' dispute of November 1906, and then the Slaughtermen's disputes of February 1907 as manifestations of industrial direct action within the IC and A system and as symbolic events signalling the end of the long period of industrial peace. Finally, consideration will be given to the initial response of government to what was ultimately seen as a challenge to the principles of IC and A before the question of political initiatives for changes in the law and the reactions of employers and trade unions are discussed in the final chapter of the thesis.

With the passing of the IC and A Amendment Acts of 1903-1904, the Arbitration Court became the major agency of the IC and A system. In consequence by 1903, it was faced with the task of developing the administrative support necessary to cope with the heavy volume of formal hearings that it faced after the Willis Amendment began to take effect. The administrative situation was complicated by the fact that Justice Chapman had firm views as to the role of the Court, not only in its legal work, but as we have seen, in the matter of the economic framework within which the wage fixing function should be carried out.

The extension of the Court's duties to embrace economic as well as industrial matters did not go unchallenged by the parties concerned. Both employers and trade unions began to develop collective responses both to changes in the legislation and toward the initiatives taken by the Court in policy interpretation. It follows that any analysis of legal changes in the period 1903 to 1907 must include some discussion of the way in which the parties measured the effects of such changes upon their notions of self-interested expectation from the IC and A system.

Both employers and trade unions found that there were strategic advantages to be gained from the adoption of a consistent policy and what can be described as a 'national' position on the outstanding matters raised by the legislators in their proposals for changes in the IC and A Act.

The forum for such action became the Labour Bills Committees of both Houses of Parliament, and the act of making submissions, enabled parties to demonstrate tacit support or propose countervailing arguments, with impressive indications of collective unity. The strategic value of group consensus dminated employer' tactics at this time, as demonstrated by the opening statement made by H. Field to the Labour Bills Committee of the House of Representatives on 13 July 1904. When questioned about his authority he said:

I should like to explain that the deputation represents not simply the Wellington Association but all Employers' Associations of the colony. It is the Parliamentary Committee of the New Zealand Employers' Federation, which is a federation of all the associations formed in different parts of New Zealand. 1

On being asked to clarify the future status of employer delegations he replied:

The strong probability is that any representations they may have to make subsequent to this interview will be made to us. That has been the understanding and was the practice last year. All communications from the Associations go...through the Parliamentary Committee of the Federation, and the Parliamentary Committee is represented here this morning....2

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1. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1904, p.1.
 2. The delegation of 1903 had in fact proved the value of a single delegation with authority to speak for all employers. As a consequence of employer submissions clause six of the ICand A Amendment Act had been modified so that any charge of discrimination brought by a trade union against an employer had to be 'conclusively proved'. See, AJLC, 2, 1903, p.1.

In the trade union case, plans to organise a national approach to the matter of parliamentary delegations did not mature until 1907, when the Annual Conference resolved that:

For the purpose of safeguarding the interests of the workers, the District Council in Wellington shall be empowered to annually elect, and from time to time, fill vacancies on a Standing Parliamentary Committee. The duties of such Committee to be:

to carefully investigate all legislative proposals and measures brought forward affecting labour; report from time to time to the Executive (and the Federal Council when in session); make representations to Ministers and Parliament on behalf of the Federation, -and generally act for the Federation in watching over the legislative interests of its branches and members....³

The fact that both parties developed the same type of policy toward the question of formal approaches to Parliament is indicative of the importance with which legislative change was regarded during this period. But if this approach to legislative change also indicated a polarisation in attitudes based upon fundamental differences in employer and trade union expectations, they were in one particular linked. For their decision to organise delegations to Parliament stemmed from a mutual anxiety at the way in which the IC and A system was developing into a centralised administrative machine with both the Court and the Department of Labour enjoying increased powers.

They differed only in the targets for their animosity for if Justices Chapman and Sim aroused the wrath of the trade unions, Edward Tregear had the same effect on the employers.

3. Trades and Labour Councils Annual Conference Report, 1907, Resolution 12, p.68.

Thus the responses of the parties to the process of centralisation demonstrated two important developments. On the one hand the need to adopt a defensive attitude toward change, and on the other, a growing awareness of sectional interest. Both developments in turn, indicated that the aims and objectives of employers and trade unions no longer coincided with the governments's assumptions that the parties were joined by a general consensus of interests.

It was the Liberal party's dilemma that they could not recognise the fact that sectional interests were polarising, this despite the fact that employer and trade union attitudes towards the legal changes that occurred between 1903 and 1907, provided evidence of sectional bias.

Liberal Initiatives and Employer-Trade Union Responses.

It has already been noted in chapter four that the IC and A Amendment Act of 1903 marked the highpoint of Edward Tregear's influence on the IC and A legislation. This made clear by the fact that clauses four and five of the IC and A Amendment Bill of 1903 were aimed at preventing employers combining with intent to defeat an award, and also at preventing employers discriminating against trade unionists in their employ.⁴ The purpose of the proposed changes stemmed from Tregear's embarrassing failure of 1903. to convince Judge Cooper in the Auckland Furniture Trades Case, that the dismissal of workers was a deliberate collusive act on the part of the employers concerned.

4. IC and A Amendment Bill, 1903, c.4. and c.5

The employers response was simply to endorse the Auckland judgement through a statement made by Mr Field who said:

We believe that this measure is designed to prevent a repetition of the Auckland experience, at any rate we believe this to be the case with respect to clauses 4 and 5. Our contention is that these provisions of the Bill are entirely unnecessary I entertain no doubt as to the power and jurisdiction of the Court to effectively enforce its awards, and to carry out in all matters within its jurisdiction the true meaning and spirit of the Act...5

In the event, Field could afford to be magnanimous since as has already been noted, skillful advocacy before the Labour Bills Committee of the Legislative Council, would so modify the final form of the discriminating clauses as to make them very difficult to enforce.⁶ In fact the employers were only marginally interested in the matter of clauses four and five and much more concerned with proposals to extend the powers of the Inspectors of Factories. It was also proposed that:

- (1) Every Inspector appointed under the Factories Act of 1901, shall be an Inspector of Awards under the principal Act, and shall be charged with the duty of seeing that the provisions of any industrial agreement, or order of the Court are duly observed:
- (2) Every Inspector of Mines appointed under the Coal Mines Act of 1891, or the Mining Act of 1898, shall be an Inspector of Awards, and shall be charged with the duty of seeing that the provisions of such agreement, award or order duly observed in any coal mine within his district7

5. Evidence before the Labour Bills Committee of the Legislative Council, JLC, 2, 1903, p.8. In the final draft the clauses became: IC and A Amendment Act, 1903, c.5 and c.6.

6. ibid., c.7 (1) and 7 (2).

7. ibid., c.4.

Employers were concerned that the process of centralisation already underway would be strengthened by this increase in the number of officers available to police awards and agreements, particularly since the right of entry coupled to wide powers of search already existed in the legislation.

The extension of centralising powers did not end there however for what became clause four of the IC and A Amendment Act of 1903, authorised the Arbitration Court:

... to join and bind as parties to the award any specific trade union, industrial union, industrial association or employer, where the award relates to a trade or manufacture, the products of which enter into competition in any market with those manufactured in the industrial district where the award is in force⁸

The real target of this clause was the employer who operated in an industrial district but outside the framework of an award. It meant that if his product came into competition with other firms who were so bound, he could be joined under the award, despite the fact that he was not an original party, if the Court thought such a joinder necessary. This gave the powers of the Arbitration Court a new dimension for not only were they empowered to regulate the wage-work relationship, they could now insist that all employers in a particular industry be joined under the same basic conditions, thus minimising any advantage a single employer might have in the labour market.

⁸.ibid.

The employers' tactics before the Labour Bills Committee of Council were not to challenge the clauses at this stage, but to focus attention upon the powers of trade unions. Their leader, Field, thus began by proposing that the practice whereby fines levied for breach accrued to the parties bringing the action, should be changed so that such monies could be paid into the Consolidated Fund, he said:

We contend that these fines should not go to the unions. We hold further that the giving of these fines to the unions- to some of them -is of a most villanous [sic] character. We contend that the Committee ought to ask, that provision should be made that all fines inflicted under this Act should become part of the Consolidated Fund....⁹

Field was immediately challenged at this point by the Chairman, on a point of procedure. He countered the suggestion that his request lay outside the terms of reference of the current Bill, by arguing that it was within the constitutional jurisdiction of the Legislative Council to amend legislation coming to it from the Lower House, this, even after members in that chamber had voted a clause stand part of the final Bill. In the event, the Committee accepted his argument and as a consequence Field was able to move substantially new evidence before the Committee.

What followed must have sounded suspiciously like an employer's manifesto for comprehensive changes in the ICand A Act. Field began

9. Evidence before the Labour Bills Committee of the Legislative Council, AJLC, 2, 1903, p.8.

by calling for the abandonment of preference, and the removal of all clauses from awards and agreements that required employers to be so bound. He also suggested that no trade union be permitted to proceed with an action in any dispute until it could demonstrate to the satisfaction of the Court that it had the full concurrence of the rank and file. Further suggestions were made that an appeal procedure be introduced and that employers be granted the right to take a decision of the Arbitration Court to a higher tribunal. Finally, modification to clause twenty-one of the IC and A Act was requested, to remove the constraints upon recourse to arbitration, by no longer requiring the full concurrence of all employers under an award as parties to the decision to go to the Court.

By contrast, only one trade union officer appeared before the Legislative Council Committee at this time. W.R. Naughton of Wellington spoke on behalf of his Trades Council and trade unions in general when he said:

The general opinion is that it makes the Act a compulsory one, that is in regard to Arbitration. If there was any doubt of it before, we do not think there is now under this Bill10

10. ibid., p.10.

The absence of large trade union representation before the Committee was indicative of widespread support for the legislative proposals contained within the Bill for it endorsed a major strategic principle of the labour movement: the extension of IC and A authority over the employer. In the event, the proposed changes stood a part of the final IC and A Amendment Act and the provisions cited above extended the administrative powers of the IC and A system.

The year 1904 was to see yet another Amendment Bill before the House which was significant not only for what it did, but for what it did not do. In its final form, the Act contained three clauses. The first involved problems inherent in the definition of employment that had first arisen after a judgement of Justice Edwards that Wellington Tram Drivers and Grocers Assistants did not come under the terms of the law since they could not be designated as industrial workers.¹¹ Subsequent formulations had all failed to satisfy the precise definition of industrial employment and doubts consequently still existed as to the definition of an employer. Clause two of the IC and A Amendment Act of 1904 resolved this problem by defining an employer as a person who:

... shall be deemed to be engaged in an industry when he employs workers who are by reason of being so employed themselves engaged in that industry, whether he employs them in the course of his business or not¹²

11. Department of Labour Annual Report, AJHR, H-11, 1900, p.3.

12. IC and A Amendment Act, 1904, c.2.

The issue that excited most debate before the Labour Bills Committee of the House of Representatives during 1904 did not find its way into the final legislation. It involved suggestions that the Arbitration Court's duties be modified in view of the fact that its case load now resulted in serious delays with regard to final decisions.

The proposed modification contained both legal and administrative elements, and emanated from the fertile mind of Tregear. In short, he suggested that in cases involving penalties of a sum less than fifty pounds, the matters should be heard in a Magistrate's Court in each industrial district, and decided without recourse to higher authority.

The employer response was both hostile and illustrative of the ambivalence with which they regarded the Court. For they strongly attacked the idea that power should be so dispersed, and their spokesman, Field, was adamant that: the Court:

is the only fit authority to deal with it [sic] in its enforcement and administration.... It is to be remembered that these awards are the outcome of a very considerable amount of evidence and information supplied to the Arbitration Court.... It comes to be practically an expert in industrial matters; and in the matter of these awards there is necessitated a considerable balancing and adjusting in view of all the facts of a case brought before the Court.... We therefore think that the Arbitration Court is the only Court that is competent to enforce and administer awards....¹³

13. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1904, p.1.

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The employers' answer to the heavy caseload the Arbitration Court was facing was to suggest that two such Court's be set up, one in each island, this to spare the officers their peripatetic wanderings through the industrial districts and to divide the burden of the work. Field also raised the argument of the previous year that fines for breach be paid into the Consolidated Fund.

This return to the implication that prime motive of many trade union secretaries in bringing actions was profit, received endorsement from C.M. Luke, a member of Field's delegation, who argued that employers were bewildered by the IC and A system and its rapid rate of growth. He said, he had knowledge of:

many instances where persons have been cited before the Arbitration Court who had no knowledge at all that they had committed a breach of the Act. This was due in a measure to the fact that certain awards were made and certain changes in these awards are being made continually - and it takes time for the knowledge to filter through, and for the owners of industry to be seised of all the changed conditions in those awards. Therefore I think that when the machinery is better grasped... and let me say that when there are fewer changes in awards, then I think there will be fewer cases in the Court14

At first impression, it would be easy to forget that on 31 August 1904, the IC and A Act celebrated its tenth anniversary. Luke's argument that employers were still bewildered by the ramifications of the award system thus becomes difficult to sustain. What he was really calling for was a static situation where conditions and wage levels remained constant over long periods. His argument was ill-

14. AJHR, I-9, 1904, p.2.

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founded for two basic reasons. First the IC and A Amendment Act of 1901, through the Willis Amendment, had shifted the centre of gravity of the bargaining process. The task of employers and trade unions alike was no longer to argue a case within the context of the need to make a mutually acceptable decision, under the direction of a conciliation board, but to plead before the Arbitration Court which had powers to legally enforce a decision without right of appeal. The second important change had been put in train through the extension of the classification of industrial workers to cover most occupational groups in the private sector of the economy, with natural consequences for the growth of awards and industrial agreements. Nor is it easy to sustain Luke's further argument that awards were constantly changing. Quite the contrary, for apart from the fact that the Arbitration Court tended to be conservative in its judgements and cautious in its general policy, returns for the period 1894 to 1912, indicate a larger degree of stability in wages and conditions than Luke realised.

For example, in the matter of hours worked, the figures reveal that out of two hundred and twenty-four awards handed down by the Court between 1894 and 1901, sixty-four occupations had their hours of work actually decreased, five had them increased, and one hundred and fifty-five had them unchanged during this period. With regard to terms and conditions, by 1910, seventy-seven occupational groups were still bound by awards that were originally ratified before 1900. In one specific occupational category, that of tramways employment, changes

in wage rates recorded between a first award and its renewal were measured in most job categories in farthings.^{14a}

Thus when placed against hard evidence, it seemed that Mr Luke's employers appeared to be the victims of wilful refusal rather than honest bewilderment at the way in which award rates and conditions were changing. If we add to this the fact that after 1903, standardisation of preference clauses and a policy of wage restraint were signal factors in the Arbitration Court's approach to its duties, then the real cause of employer complaint seemed to stem from an abiding scepticism as to the efficacy of the IC and A system more than anything else.

By contrast, the submissions made by the trade unions during 1904 were more specifically directed toward the actions of the President of the Court. While sitting in the Auckland industrial district Judge Chapman had caused some anxiety among trade union officers by changing the traditional form of citation under an award proceeding. He had advised the trade unionists appearing before him, that, in future when they brought an application involving a number of employers to the Court, it would no longer be sufficient to specify the employers in the trade as a group. The Court now demanded that each specific employer engaged in the trade to which the award applied be joined as an individual in the application, and warned that failure to do so would invalidate the application.

^{14a} Summary of Awards under the Industrial Conciliation and Arbitration Act, AJHR, H-11D, 1912, pp.1-19.

The trade union view of the President's decision was put to the Labour Bills Committee of the House of Representatives in the following manner:

Judge Chapman in Auckland lately stated that he thought (and that practically means that it is his ruling, from which there is no appeal nor do we wish there should be) it was not the intention of the Legislature that the union should have the power to attach an employer and bring him before the Court. He has distinctly laid it down that the unions have to practically start de novo ... file a case before the Conciliation Board and then send it on to the Court15

The Department of Labour was also taken by surprise at the Court's action, as witnessed by the statement made by Edward Tregear when he appeared before the Committee on 29 July 1904. He began by expressing the view that the principle of joinder under the terms of clause eighty-six of the principal statute, permitted the Court to join any party it so wished. The effect of Judge Chapman's statement was fundamentally important according to Tregear because:

Mr Justice Chapman has considered that many of the sections of the Arbitration Act as it is being worked at present will not hold water and has given a ruling in Auckland which traverses what we understand to be the very nature of the Arbitration Act16

15. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1904, p.9.

16. AJHR, I-9, 1904, p.16.

Like many trade union secretaries, Tregear was obviously concerned at the action the Court was taking, for if the President's decision was applied it would mean that in the preparation of an action for an award, the trade union would have to seek out every individual employer in the trade or occupation and join him singly to the application. He was very much in favour of colonial awards since in his considered opinion what Judge Chapman proposed could only lead to fragmentation and great difficulty for the trade unions.

At this point, Tregear placed a supplementary paper before the Committee which had been prepared with such haste that no time had been available for printing. In it he suggested that a simple solution would be for each trade union to signal its intention to join employers by advertisement in daily newspapers. The employers who were quick to see the advantages accruing to them from Chapman's proposal, countered this opening ploy by demanding that of right "... every employer should have the opportunity of being heard by the Court, before being bound to observe the award".¹⁷

17. ibid., p.27.

In his decision not to proceed with an award on behalf of the Auckland Engineers, because the employers were incorrectly joined, Judge Chapman was overturning previous decisions taken by his brother Judge Cooper, who had as a point of law, always distinguished between an industrial agreement as a contract limiting the application of conditions to the signatory parties, and an award, as a unilateral decision of the Court, binding on all parties.

On the grounds that he believed Judge Chapman's decision to be connected with the large backlog of cases before the Court, Tregear then suggested that clause twenty-one of the IC and A Act be repealed and that a strengthened form of Conciliation procedure be put in its place. But again Field countered with the categorical statement that:

We want to say very plainly, and as strongly as language will allow us, that we have no confidence whatever in the Conciliation Boards of the colony. Employers have had a good deal of experience of them... throughout New Zealand, and there is only one opinion amongst employers with respect to Conciliation Boards ~~and that is ... that they could be wiped out entirely....~~¹⁸

It is clear that as far as the employers were concerned, any decision that would materially create greater difficulty for the trade unions to use the IC and A system against them, was to be supported as strongly as possible.

In their attempt to influence the political process that underpinned the IC and A system, the employers had a natural advantage denied the trade unions. The fact that the Legislative Council membership had a large employer component meant they could be assured that government would give them a good hearing at any time, at least in the Upper House.

By contrast, labour was represented in the House of Representatives by a small number of members who claimed they were standing in the labour interest, but who were ostensibly Liberals in terms of party identification, and therefore subsumed within a larger group. It followed that the main thrust of labour efforts to ensure that changes

18. ibid., p. 23.

in the industrial law favoured the workers, came from a group with developing vested interest in state control of employer-employee relations. This group comprised the trade union secretaries who offered a professional service to trade unions in exchange for a wage or salary. Their sense of personal self-interest limited the advance of state power however to the general extension of IC and A authority to cover as many employers as possible. Men like W.T. Young, Secretary of the Federated Seamen's Union and Chairman of the National Executive of the Trades and Labour Councils Federation, shared with Henry Field of the Wellington Employers Federation, a desire to curb the administrative powers of the Department of Labour, in the professional interest of the peer groups they represented.

Thus Young, giving evidence on the question of the extension of Inspectorial powers before the Labour Bills Committee of the House of Representatives, suggested satirically that if the process of administrative centralisation continued:

... the probability is that Parliament will be asked to pass a special Act to enable Mr Mackay, or the Deputy Registrar to take the chair at all union meetings and also to move the machinery of the law, to obtain the awards of the Court, and settle all industrial disputes, because that is what it will probably resolve itself into if all these amendments are put into effect as they appear here19

19. ibid., p.28.

Even if we ignore Young's obvious sense of professional pique this comment reflected a side effect of the almost constant process of legislative amendment that had been going on since 1894, the tendency for changes in legal and operational elements within the system to create fresh roles for the professional civil servant at the expense of the employer's advocate, and the trade union secretary.

But if the deprivations, both real and imagined, of the increasing power of Inspectors of Awards aroused the suspicion of both professional employers' representatives and trade union secretaries, and joined them in common distrust of the Labour Department, the question of the Willis clause drove them apart. For while Field on behalf of the New Zealand Employers Federation demanded amendments to the legislation to make it easier for employers to go to arbitration, Young attacked the clause on the grounds that:

Mr Willis's amendment was the means of cutting the heart out of the whole principle of this Act. The labour party believes in Conciliation, to do everything possible to conciliate and that amendment undoubtedly cut the heart out of that principle. We contend that Parliament would do a good thing... if it repealed that amendment so that all disputes would go to Conciliation Boards in the first place, and then by the proposals in these amendments we believe a large number of cases would be settled by the Boards20

20. ibid.

It is to Young's credit that he was a consistent supporter of conciliation at all times, and had expressed strong opposition to the Willis amendment when it was being discussed. See Evidence before the Labour Bills Committee of the Legislative Council, AJLC, 1900, 2, p.3.

What Young was careful to avoid mentioning at this juncture, was that such a move would restore trade union power to influence the form of industrial agreements as they were being developed. His use of the term 'labour party' is also interesting because it reflected the steady growth of political consciousness among trade union secretaries at this time. It was a consciousness made necessary by the difficult task of marrying a belief in a socialist future, in which workers would come into their own, with the hard fact that industrial labour was forced to exist within the framework of a capitalist society that was, if anything, burgeoning rather decaying. The problems of raising working class consciousness in order to move toward a socialist future were made more difficult by the fact that the trade unions could not claim discrimination by a hostile state as a rallying point for action. For after 1894, they were recognised in law as bona fide institutions within the labour market. Success had come, not after blood had been shed, but at the stroke of a legislator's pen. It followed that those who would offer a socialist alternative to the electorate had to contend with a tradition of pragmatism in politics that sought to maintain a consensus within the electorate by the appropriate combination of social and industrial laws.

Inevitably the political situation affected the way in which the Independent Labour Party of 1904 approached the task of defining aims. The first objective was to:

... organise and secure proper representation in Parliament and municipal and other bodies; so as to secure such legislation as will ... benefit the people of the colony as a whole, and to preserve and protect the rights already secured to the people²¹

The willingness to use parliamentary means to obtain radical ends was a contradiction that bedevilled the Trades and Labour Council movement between 1900 and 1908. It resulted in the adoption of a political stance that affirmed the need to build society in a new image, while actively collaborating in a state system of industrial relations that aimed at sustaining the status quo.

In other words, the trend toward political moderation in the approach to problems raised by changes in the IC and A system was largely influenced by an unwillingness to forego the economic advantages that already accrued to the labour movement from the IC and A system.

The relative calm that had surrounded the industrial scene in New Zealand since 1894, was to be abruptly broken in 1906 and 1907, with the emergence of direct industrial action in pursuit of specific trade union aims. The end result was a re-examination of the principles and functions of the IC and A system in a way that had not been undertaken since Reeves first announced his intentions to introduce the legislation in the early nineties. The remainder of this chapter will examine in some detail the strikes that precipitated such a reaction from government and the parties.

21. Platform cited in R.K. Newman, 'Liberal Policy and the Left Wing 1908-1911', MA thesis, Auckland, 1965, p.175. The difficulties that parties of the left faced in attempting to gain worker support against established parties, even in centres assumed to be radical, is illustrated in L.E. Richardson, 'The Workers and Grey District Politics during War-time, 1914-1918.' MA thesis, Canterbury, 1969.

Industrial Direct Action: the Opening Phase, 1906-1907.

The tramways dispute that occurred in Auckland in November 1906, and the twelve strikes that took place in the meat freezing industry during February 1907, were an immediate challenge to the IC and A system. In 1905 an Amendment Act had been introduced, which defined the terms under which parties taking strike or lockout action could be punished. Under clause fifteen, these penalties were defined as follows:

- (1) Any industrial union or industrial association, or employer, or worker, whether a member of any such union or association or not, which or who shall strike or create a lock-out, or propose, aid, or abet a strike or lock-out or a movement intended to produce a strike or lock-out, shall be guilty of an offence, and shall be liable to a fine...
- (2) No worker shall be subject to a fine because he refuses to work or announces his intention to refuse to work, at the rate of wages fixed by any award or agreement, unless the Court is satisfied that such a refusal was in pursuance of any intention to commit a breach of this section.
- (3) This section shall only apply when there is an award or industrial agreement relating to the trade in connection with which such strike or lock-out has occurred or is impending, in force in the district where the alleged offence is committed, or some part thereof.
- (4) The Court may accept any evidence that seems to it relevant to prove that a strike or lockout has taken place or is pending....22

22. IC and A Amendment Act, 1905, c.15, (1) to (4).

This new legislative departure was soon to be tested, but first it is necessary to consider the implications of its terms.

In defining the conditions of the offence, the law made no distinction between workers as a corporate membership in a trade union and the single worker as a member, for the purpose of apportioning fault. In addition, the Court was vested with the right to consider not only evidence of overt direct action but the much more ambiguous question of premeditation. This power to define evidence of intention was to prove a bone of much contention, as was the limitation in the terms of enforcement to workers covered by an industrial award or agreement, when the legislation was put to the test.

On 9 November, 1906 the New Zealand Herald reported a small item on an inside page, the fact that two conductors in the employ of the Auckland Electric Tramways Company had been dismissed without notice the previous day.²³ By 13 November, the same matter was being discussed at a public meeting in which their leader, advised the management representatives present, that unless the men were reinstated forthwith, the matter would be referred to the Auckland Trades and Labour Council for appropriate action.²⁴

The ostensible cause for the action taken by the company was that the men were assumed to have written obscene comments on a window in the Ponsonby tram depot as an expression of discontent with the terms

23. NZH, 9 November 1906.

24. NZH, 13 November 1906. For a detailed description of the events that took place see H.A. Roth, 'When Auckland's Trams Stopped Running', New Zealand Tramways Journal, 7,6, September 1960, pp.11-15. For the official version of the dispute, see New Zealand Official Yearbook, 1912, p.687.

of the recent award.²⁵ In fact the event was to trigger off both an industrial and a public response, for on the afternoon of 13 November sixty-six employees of the company stopped work for three hours in protest. According to the local press, public sympathy was with the men, particularly since one of them, Tom Beatson, was an active Baptist lay preacher and a trade unionist of some distinction in the Auckland community.²⁶ The matter was settled fairly quickly, though the victory for the union was bought at the cost of Beatson's job. He was formally reinstated after meetings between the trade union and the Managing Director of the company on 14 November, but only on condition that he resign at the end of the current month, with good references from the employer. The dispute thus ended almost before it had begun and the New Zealand Herald was able to note with some satisfaction that:

From the beginning the sympathy of the public was with the men For the peculiarity of the trouble lay in the fact that it was entirely outside the arbitration award. In reality it was not an industrial dispute at all. The men made no complaint against the award, did not ask for higher wages or shorter hours, or for a change in working conditions²⁷

25. Roth, p. 11.

26. NZH, 13 November 1906.

Roth in his essay on the dispute does not refer to the fact that Beatson resigned, largely at the bidding of the secretary of the union, Arthur Rosser, who urged Beatson to think of the men with families who would be forced into a strike if he did not agree. See NZH, 14 November 1906.

27. NZH, 15 November 1906.

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It is doubtful if the general public saw the issue in quite the same way, since a crowd of some four thousand apparently enjoyed the novelty of Queen Street filled with silent trams, and later assembled to hear the official settlement outside the company's offices with much cheering, and a rendition of God Save the King.

In fact the real importance of the strike lay in its value as a demonstration effect, that by concerted and effective industrial action, a trade union had very quickly forced an employer into a situation of compromise, without the formal machinery provided by the state for the resolution of industrial disputes.

The events of November 1906 were to prove a prelude to real industrial unrest, beginning in February 1907, as slaughtermen employed in the meat freezing industry took direct industrial action over a period of four weeks.

What was to prove a long month of industrial discontent opened on 12 February 1907, when one hundred and forty slaughtermen employed at the Gear Meat Company in Petone demanded an increase in the killing rate for sheep from one pound per hundred to one pound five shillings per hundred. Management refused, and the men walked out, to return after five days with a compromise increase of three shillings per hundred. The demand for five shillings became the main issue in the eleven disputes that followed, and in each and every case, management compromised for three shillings.

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On 15 February, two days before the Petone settlement, the managements of five freezing plants in the Christchurch district, were faced with similar demands, all of which led to strikes. By 26 February, strike action had spread to the far south, as Ocean Beach, Matuara and Wallacetown all struck on the same day, with Burnside in Dunedin joining them as they walked out. The following morning, Picton and Gisborne joined the ranks of the strikers, the last plants to make their demands known to management during the cycle of disputes.

In strategic terms, the men had chosen their time well. The season was at its height, and the companies in each case were faced with three alternatives: meet the full demand for five shillings, face a long strike with subsequent loss of production, or compromise. What followed was a series of direct negotiations of various lengths in which the standard compromise rate of three shillings per hundred was hammered out. By 16 March 1907, the industry had returned the following strike statistics for the period beginning 12 February:

TABLE FIVE

Statistics of Strikes in the New Zealand Meat Industry, 1907.

Works	No. of Strikers	Duration of Strike in Days	Total Plant Labour Force Affected By Strike	Strike Period
Petone	141	5	360	12 February-17 February
Belfast	58	17	237	15 February-4 March
Islington	70	17	211	15 February-4 March
Smithfield	43	17	166	15 February-4 March
Fairfield	46	17	130	15 February-4 March
Pareora	43	20	165	15 February-7 March
Gisborne	48	5	134	27 February-4 March
Mataura	15	8	43	26 February-6 March
Wallacetown	17	16	33	26 February-14 March
Ocean Beach	11	16	83	26 February-14 March
Burnside ⁺	14	1 + 7 hrs	14	26 February-27 February
Picton	11	16	61	27 February-15 March
TOTALS	527	155	1,637	

28. Table compiled from returns in New Zealand Official Yearbook, 1912, pp.687-691.

+ Note: In the case of the Burnside strike, it is difficult to escape the conclusion that management saw the strike coming and acted accordingly in settlement.

The workers involved in the strikes had thrown down a challenge to the IC and A system that the Court was bound to answer, if credibility in the IC and A Act as a controlling influence upon industrial conflict was to be maintained. Thus on 28 February, Judge Sim convened a special session of the Court to hear actions brought against the Wellington Slaughtermen's Union for breach of clause fifteen of the IC and A Amendment Act 1905.

What followed was totally unexpected, for the trade union concerned freely admitted that a strike had taken place, but challenged the legality of the industrial agreement under which they were supposed to be working. According to their evidence, negotiation for an industrial agreement had commenced in June 1904 and an instrument was developed with a commencing date of 1 August 1904. This was later changed to 11 August at the request of the company. Under the rules, formal acknowledgement that a party was willing to be bound had to be filed with the Registrar of Industrial Unions at least thirty days before the instrument came into effect. The trade union had duly filed on 11 July 1904 but the company in apparent confusion between the original date and the modified date, did not file until 30 July.²⁹ It was the trade union's case that the industrial agreement under which the Wellington slaughtermen had been summoned was therefore not valid in law. Judge Sim, to everyone's surprise, agreed with the trade union, and dismissed the case.³⁰

29. See NZH, 1 March 1907; EP, 1 March 1907; Dom, 1 March 1907.

30. For the President's summation and judgement see JDL, 15, 169, pp. 207-208, March 1907.

Shaken, but undaunted by the Court's decision, the Department of Labour then proceeded to bring further actions against the other trade unions involved. The result was to demonstrate the very serious anomalies contained in clause fifteen of the IC and A Amendment Act of 1905. For sub-section three of the clause only permitted action to be taken against strikers, if at the time of the strike, they were bound either by an industrial award or an industrial agreement. This disqualified Burnside, Ocean Beach, Mataura, Wallacetown and Picton, because they had all been working under private agreements.

The deterrent effect of the penalty clauses was thus seriously undermined by the fact that, while twelve strikes had occurred, the Department of Labour could only take action in six cases. This the Department proceeded to do, and the Court in due course ruled that the strikers should each pay a fine of five pounds. In all, some two hundred and sixty out of five hundred and seventy strikers were found guilty and the Court imposed an aggregate fine of one thousand, three hundred and thirty-five pounds.³¹

The task of collecting this sum from each individual striker now devolved upon the Department of Labour, and what followed became a saga in the history of that institution. Despite thoroughness and application in pursuit, the total sum of fines collected by 1909, amounted to some seven hundred and seventy-six pounds, seven shillings and sixpence. The

31. Department of Labour Annual Report, AJHR, H-11, 1909, p.35.

the sheer problem of finding men who were members of a peripatetic labour force and who tended to scatter after the season was over, daunted even such dedicated public servants as Lomas, who admitted that:

In respect to the amount unpaid, £553. 12s. 3d., sixty-seven slaughtermen, owing penalties totalling £286. 6s. 3d. cannot at present be located....³²

In fact, as his later comments revealed, Lomas had little or no hope of finding and imposing penalties upon each and every worker fined for taking part in the strikes. He admitted as much when he said:

In March those men that had been traced were given a final opportunity to pay their amount by instalments, but few availed themselves of this offer. Orders of attachment on wages were served on several of those who ignored the final notice, and by this means, about £100 has been recovered... It is expected that shortly all outstanding monies due by these men whose whereabouts are known will be recovered.³³

The Department was never able to find and punish all of the strikers for as late as 1912, the record reveals that the sum of three hundred and four pounds, two shillings and ninepence was still outstanding in unpaid fines.³⁴ This meant that on the basis of a fine of five pounds

32. AJHR, H-11, 1909, p.xxv. Lomas was able to report, in 1909, that that a staff member had collected twenty-five shillings, from a slaughterman who had, between 1907 and 1909, been to the United States and back, AJHR, H-11, 1909, p.35.

33. AJHR, H-11, 1909, p.xxv.

34. Department of Labour Annual Report, AJHR, H-11, 1912, p.ix.

per person, some sixty-six slaughtermen succeeded in escaping from the Departmental net.

There can be no doubt that the strikes of February 1907 and the failure of the IC and A system to enforce tough penalties against the offenders had a profound influence upon the way in which the government approached the need for legislative changes that industrial direct action had created.

As a consequence the Minister of Labour, J.A. Millar, was faced with two kinds of problems as he prepared during 1907 to unveil yet another series of amendments to the IC and A Act. There was first the problem of the administrative changes needed to offset the heavy case load facing the Arbitration Court, with a consequential further need to examine yet again the relationship between Conciliation and Arbitration, as growing criticism of what the trade unions now called the 'Willis blot' became evident. Again obvious discrepancies in penal provisions, made manifest by the February strikes and the administrative aftermath, raised serious doubts about the IC and A system in its primary function; that of controlling industrial behaviour in the interests of peace.

Government was also faced with the problem of uncertainty created by the strikes, for there could be no guarantee that the events of February were not the first manifestation of long term industrial unrest. The context was thus established for what became a prolonged

and sometimes stormy debate on the efficacy of the IC and A system, as the parties reacted sharply, in the case of the trade unions, to what can only be described as attempts to make major changes of a kind not seen since 1894.

In retrospect the period from 1903 revealed several distinct and important trends in the way in which the IC and A system was developing. The polarisation of special interests and the taking up of tactical positions by the parties was one feature, the independence demonstrated by the Court toward its functions in the matter of wage fixing was another. Again, institutional changes, particularly those which gave the Department of Labour increased centralised power, became a focal point of employer discontent as the authority of professional officers was extended. Finally, the period also gives us clear evidence that, quite irrespective of all these issues, the gap was widening between trade union and employer perceptions of what the IC and A system was intended to do in all of its various functions.

Small wonder that when J.A. Millar brought forward his proposals for major changes in the IC and A Act late in 1907, reaction and debate was so intense on all sides, that the measure was postponed for further consideration until the following year. This was, as later events were to reveal, to prove a testing time for the Liberal government, for it was their task to hammer out a compromise on the legislation where no real grounds for such a compromise existed. They were led by a Minister who was determined that the IC and A Act would be saved, and it was one of the political ironies as we shall see, that a Liberal who had been

spurned by Seddon, was destined to make the last major contribution of the Liberal party to the system of industrial law it had first conceived and nurtured in the days of reforming zeal.

CHAPTER EIGHT

Industrial Conflict and the Political Response: the IC and A Controversies of 1907 - 1908.

The slaughtermen's strikes of 1907 marked the end of the period of industrial peace that had commenced with the passing of the IC and A Act in 1894, and from that year until 1913, New Zealand was never to be entirely free from either the threat or the reality of industrial conflict.¹ The strikes represented a challenge to the IC and A system in its peace keeping role, and at the same time created an example for other frustrated and disaffected trade unions who might have been tempted by the relative success of the slaughtermen to abandon IC and A procedures for direct collective bargaining. Government's problems in developing a response to the challenge were further complicated by the fact that, on application, the penal clauses in the existing legislation had proved to be sadly limited.

1. While it is true to say that the period from 1894 until 1906 was one of industrial peace, it is not strictly accurate to say that strikes did not occur. Both Reeves and Parsons report short strikes on public works projects. Since the workers concerned were non-unionised, they did not represent a challenge to the IC and A system. See W.P. Reeves, State Experiments II, p.139.
and F. Parsons 'The Abolition of Strikes and Lockouts in New Zealand', The Arena, 31, 1, January 1904, p.85.

As a consequence of the pressures now being placed upon the IC and A system, the question of amendment to the law that was precipitated by the events of February 1907 involved not only the traditional matters of the efficacy of proposals for change. As the debate developed and feeling ran high, the very viability of the IC and A system itself came under review.

In the event, the final legislative result of nearly two years of protracted and acrimonious discussion not only ensured the longevity of the IC and A Act, but included measures that aimed to outlaw industrial direct action in New Zealand. From 1908 until the present, a tradition of punitive action against strikers has prevailed as an enduring psychological legacy in industrial relations.

The immediate task facing the Ward government in 1907 involved two pressing needs. Employer and trade union confidence in the system had to be restored by legislation that satisfied some combination of common needs, an impossible task given the divergent nature of the parties' collective goals. It is an indication of the barrenness of Liberal thinking that they could not look beyond such a consensus approach in their investigation of new legislative devices. The second task involved the restoration of public confidence in the ability of the IC and A system to control industrial behaviour and to enforce compliance, by punitive means if necessary.

The industrial problems that beset government were further complicated by deep divisions within the administration. With the

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death of Seddon in 1906, power had passed to his most senior colleague, Sir Joseph Ward, but Seddon's administrative style had made no provision for the development of a logical successor for Ward. In consequence "... the rivalries that divided the backbench Liberals also had their counterparts in Cabinet"² It appeared that the only politician in the administration who was close to Ward was Sir John Findlay, the Attorney General, who was described by one historian, after he attended the Imperial Conference of 1911 as "... a close confident of Ward who appeared to dominate his leader"³

The change of leadership had, in the view of one disgruntled member of the Ward Cabinet, not resulted in a change of leadership style. A.W. Hogg, the member for Masterton, who entered Cabinet in 1909 has left a vivid subjective impression of Ward as a leader:

Cabinet meetings were not very frequent, and I cannot say that I was sorry. To me they were a frequent source of dissatisfaction. Most of the business was routine, sheaves of paper, comprising letters, vouchers and authorities were laid on the table and initialed by the Premier without in any way consulting his Cabinet colleagues. What

2. R.K. Newman, 'Liberal Policy and the Left Wing: 1908-1911', MA thesis Auckland, 1965, p. 36.

Newman also notes that J.A. Millar, the Minister of Labour, and James Carroll were intense rivals who frequently vied with each other for the role of Deputy Prime Minister when Ward was overseas. Millar's biographer also confirms that his subject had strong ambitions to succeed Ward. See P.A. Mitchell, 'John Andrew Millar and the New Zealand Labour Movement', MA thesis, Victoria, 1949.

3. J.E. Kendle, The Colonial and Imperial Conferences, pp.172-173. Kendle records that Lionel Curtis one of the main ideological influences on Imperial Federation, always believed that Findlay and not Ward was the author of the famous 1911 speech calling for an imperial political system.

amazed me was that large votes and important issues appeared to be dispersed without the slightest consideration At the conclusion of each meeting, Sir Joseph was besieged by the press and he gave an epitome of what had been done to the reporters4

Even allowing for Hogg's personal antipathy toward his leader, his accounts of Cabinet proceedings substantially agreed with those of a more objective assessor of the Liberal administration in its later period. It was Newman's conclusion that:

The only thing which permitted Cabinet to function at all was the dominance of Sir Joseph Ward. As the arbiter and often the source of Liberal policy he... held in his own hands the most controvertial powers5

It was in such a political environment that the newly-fledged Minister of Labour, J. A. Millar was required to carry out his duties. A man of strongly independent spirit, he had gained fame in 1890 as one of the leaders of the Maritime Strike, as Secretary of the Seamen's Union. Possessing considerable administrative energy, he was also a staunchly independent personality as befitted the son of a general officer in the Indian Army, who had enjoyed a middle class upbringing, followed by service as a master mariner. Elected for one of the Dunedin constituencies in 1893, his abilities had been sadly neglected by Seddon who marked him with others as too strong minded and independent to be trusted with Cabinet responsibilities.

4. A.W. Hogg Papers, n.d., p.19, misc.1207.

They consist of speech notes in loose order, written after he had resigned in August 1909.

5. Newman, p.36.

Millar came to power with one advantage which he was to prove unable to sustain. As a veteran trade unionist and a legendary figure from 1890, he enjoyed the residual good feeling of the labour movement. But it was a feeling qualified by expectation, as J. Rigg, the Labour MLC, put it on hearing of his appointment:

I am exceedingly pleased to see for the first time in the history of the colony, a labour representative holding the position of Minister of Labour, and I have great expectations from his knowledge of the workers and also of the employers that he will be able to do something in the interests of the workers6

But the new Minister was a proud man whose sense of probity and independence would not permit him to become the tool of a special interest, despite his traditional connections with industrial labour.

Isolated in Cabinet he was undoubtedly antipathetic to his leader whose rather flashy style and dubious business record offended his own sense of honesty. But Millar was also shrewd enough to realise that if he was to lead the party, he would have to demonstrate firmness and initiative in his portfolio where the first priority was a rapid restoration of confidence in the IC and A system. Thus it was against a background of industrial unrest, political in-fighting, and a divided government that had lost interest in radical legislative experimentation, that Millar went off to the industrial wars,

6. NZPD, 138, p.571, 25 October 1906.

The Prelude to Controversy: Millar's Response to the Strikes.

On 23 February 1907, the conduct of the slaughtermen had come under the public censure of Sir John Findlay who, at a public meeting in Wellington, attacked the men with considerable vigour. The real cause of the industrial troubles he asserted was the itinerant Australian worker who came across the Tasman seasonally and was a trouble-maker and a 'bird of passage'.⁷ His colleagues' pre-empting of a labour issue, not for the last time, was to cause Millar problems since Findlay's behaviour tended to give his own role a degree of ambiguity in the public mind. But for the moment he took his cue from the Attorney General, and on 28 February made a speech while visiting his constituency.

He advised his listeners that he intended to deal with the strikers with firmness and that they would regret flouting the law, finally taking up his colleagues' assertion that the real cause of the problem was the overseas element. He assured his audience that he was " ... not going to have these Australians coming here and defying the law and upsetting things generally"⁸

7. EP, 13 February 1907.

8. ODT, 1 March 1907.

For an examination of the role of Australians in the industrial affairs of New Zealand during this period see R.D. Arnold, 'New Zealand in Australasia: 1890-1914, MA thesis, Melbourne, 1952, and 'Some Australasian Aspects of New Zealand Life: 1890-1913', NZJH, 4, 1, April 1970, pp.54-77. See also R.P.Davis, 'New Zealand Liberalism and Tasmanian Labour, 1891-1916', Labour History, 21, November 1971, pp.24-36.

While the employers kept a discreet silence on the behaviour of Findlay and Millar, trade union reaction was sharp when it came. Findlay was already the target of hostility because of his earlier defence of the exertion wage principle in 1906, but Millar's attitude was something of a shock to those who saw some advantage from his appointment to the Labour portfolio.

Both Ministers succeeded in embarrassing the Trades and Labour Councils at an awkward time, because a major item on their Annual Conference agenda for April of 1907 involved the question of closer ties with the Australian Labour Movement. The aggression of the two parliamentarians also served to illustrate the ambivalence with which the Trades and Labour Councils viewed the actions of the slaughtermen in the disputes, for while there was firm belief that the men had economic right on their side, this was tempered by the feeling of a body of delegates that the decision to strike was both 'hasty' and 'ill-conceived'.⁹ But at the same time, the situation required that the public statements of both ministers be commented upon by the Trades and Labour Council movement.

The first response to the ministerial statements came from the Wellington delegates. On 2 April, while a Congress was debating a proposal to hold an Australasian Labour Congress, David McLaren rose

9. For example, W. Patterson, President of the Otago Trades Council, was on record as saying that if the Burnside workers had advised his executive as to their intention, Council would have strongly advised against direct action, ODT, 1 March 1907, and ES, 1 March 1907.

to propose a rider to the motion of approval. This took the form of a resolution deploring the comments made by the Ministers with regard to the actions of the Australians involved in the strikes.¹⁰ McLaren was followed to the platform by A.H. Cooper, Secretary of the Wellington Slaughtermen's Union. He asserted that he was fully informed of the real facts and:

He challenged anyone to prove that there were more than twenty per cent of the total number of slaughtermen employed in New Zealand who were natives, or who had been taught in Australia. The bulk of the men were New Zealanders - men born, bred and taught their particular business in New Zealand. These men left, perhaps, and spent two or three months in Australia, returning for the next season In the trouble that occurred in Wellington the men who were associated with the speaker in trying to settle the dispute and who acted the most reasonably were the Australians - men who had had experience of bitter strikes in other parts of the world¹¹

Despite the strength of Cooper's argument a number of delegates remained unconvinced that the motion was either right or proper. In the debate that followed, H.W. Brookes of Auckland and J. Haymes and R. Breen of Otago objected to both the motion and the strong language used. They were particularly concerned that terms like 'offensive' and 'contemptible' should be used about Ministers of the Crown. Sensing the ambivalence of the meeting McLaren then moved in and defended the resolution:

... the use of the words ... did not make the motion offensive. It simply expressed what he meant to say. He was not surprised at the remarks coming from Dr. Findlay, whom he designated the 'harlequin of New Zealand Politics'. The Ministers and employers' knew that the Australians were good Unionists and endeavoured to discredit them by slinging mud¹²

10. Trades and Labour Councils Annual Conference Report, 1907.p.9.

11. ibid., p.10.

12. ibid.

The conference remained divided on the wisdom of the motion expressing strong feelings at the conduct of Findlay and Millar, and after the motion was put, a vote of ten to nine in favour reflected this division of opinion.

For Millar, his display of firmness in attacking the Australians was a tactical error, for while McLaren's motion was designed to deliberately lay the blame on Findlay, suspicion had been aroused as to his own intentions in the matter of amendment to the law. The process of change was to prove harder than he could have anticipated before he made his comments on the Australian slaughtermen.

The IC and A Amendment Bill of 1907: Trade Union and Employer Response.

Government intentions were opened to scrutiny during the last week of August 1907, when the IC and A Amendment Bill was finally published. The pattern of the clauses revealed a determined effort by the Liberals to deal with all of their problems in one session by the introduction of ~~major~~ and controversial changes.

The first proposal called for the abolition of Conciliation Boards and their replacement by Industrial Councils consisting of three members from either side, under an independent Chairman appointed as a permanent officer.¹³ In addition, Stipendiary Magistrates were to be empowered

13. IC and A Amendment Bill, 1907, c.4. to c.15.

to enforce penalty for non-payment of fines by a term of imprisonment of up to three months.¹⁴

The problem of permits for under-rate workers was to be resolved by making their issuance a duty of Inspectors of Awards in each industrial district. While the question of preference was neatly side-stepped by a proposal that non-unionists be forced to pay unions fees despite their status as non-members.¹⁵

In addition, the Bill contained clauses that clearly aimed at restricting the trade unionists' ability to avoid financial penalties. Power was granted to enable a fine imposed on a specific union to be the responsibility of each member if not paid within one month. Each member then became liable for a fine up to ten pounds maximum with the employer further required to attach wages in the appropriate amount if payment was not forthcoming.¹⁶

Further restrictions were imposed upon full-time trade union officers who were now required to be employed personally in the trade in order to be eligible for office.¹⁷ Limitations were also introduced upon the right to register under the Trade Union Act of 1878, a move clearly designed to bring all trade unions under the IC and A system.

14. ibid., c. 22.

15. ibid., c. 47.

16. ibid., c. 29.

17. ibid., c. 53

The Minister also made it clear when speaking first on the Bill, that he was considering further limitations to be imposed upon a trade union's ability to administer its funds.

Millar was clearly determined to show the trade unions that he intended to deal with recalcitrants with a firm hand, a strategy that seemed to stem from the belief that the strikes that had occurred were the actions of a dissident minority and did not signal large scale discontent with the IC and A system. The 'foreigners' from Australia were the real cause of industrial unrest and he intended to deal firmly with them.

But the Bill threatened moderates as well as radicals and such noted supporters of the IC and A principle as Arthur Rosser of Auckland loudly denounced the measure. In fact the proposals were to unite all trade union leaders under the strongest possible cause, that of self-preservation in a hostile legal environment.

On 5 September 1907, two days before the Labour Bills Committee of the House of Representatives met to take evidence, the Auckland Trades Council met in an aggressive mood. Anger at the details of the Bill had been further exacerbated by the fact that the Chairman, H.W. Brookes, had that very day publicly extolled the virtues of the proposed measures. To make matters worse, Brookes had singled out 'trade union agitators' as the prime target expressing full support

for the Minister with the words:

I suppose they must do it to show they are earning their money, but the workers as a whole are well able to manage their disputes without agitators, and if the agitators are dispensed with, I fancy the disputes will be easier of settlement18

The response of his colleagues was a furious demand for his immediate resignation, which they obtained. The temper of the meeting can be gauged by Rosser's following statement that, as Secretary of the Carpenters' Union, he was convinced that his members were:

... not going to knuckle down to the Act, and rather than submit to such proposals they would cancel their registration, and carry on the union afterwards without responsibility to government. They could still turn to their weapon the strike19

Ambivalence now gone, the Parliamentary Committee of the Trades and Labour Council waited upon the Minister on the morning of Friday 8 September and laid their complaints before him. In his reply, Millar was equally vigorous, claiming that a Miners' Union, and he was careful not to specify which one, had already telegraphed strong support for the Bill. But his real anger was directed toward the suggestion that he was proposing by means of the Bill to do away with trade unions altogether.

The delegation then proceeded to leave him in no doubt as to the consequences should the Bill proceed, with Andrew Parlane of the Wellington Drivers' Union asserting that if the Bill became law "... there would not be six unions that would remain in affiliation

18. NZH .,5 September, 1907.

19. ibid.

with the Bill".²⁰ The same threat came from McLaren who in turn asserted:

If some of the clauses in the Bill become law, there would be only one course open to organised workers, viz, to repudiate any assent to the Bill whatsoever. His own union had already taken that position as the only door open to them. The New Zealand rank and file are not going to see their leaders cut down²¹

There followed a sharp exchange between Millar and an unidentified member of the delegation who asserted that the Attorney General had told the Legislative Council in debate, that "... he would shoot them down, if they protested"²² Millar immediately came to his colleague's defence:

I think you are putting words into my colleague's mouth that he did not say. He said it in reply to an interjection by the Hon. Mr Rigg²³

Rigg who was present, also hastened to put the record straight:

That is hardly right. I asked how he could enforce the strike provisions of the Act under certain circumstances and he replied the law already provided for that by the Riot Act. It was not a question of shooting down²⁴

What was interesting about this interchange apart from the fact that it defused the delegation's anger, was the fact that Findlay's name was raised. Its use reflected the ambiguity of Millar's political position in the eyes of trade unionists who were beginning to believe the popular rumour that he was really the prisoner of the employers, and that the decision making power rested with Findlay. In the event,

20. ibid., 7 September 1907.

21. ibid.

22. ibid.

23. EP, 7 September 1907.

24. ibid.

Millar remained stubbornly firm that the Bill would be committed, as it was without prior amendment and the meeting adjourned.

The Labour Bills Committee of the House, with the Minister sitting as a member, convened on 7 September 1907. The initial witnesses gave their evidence in an atmosphere of relative calm, until the morning of 9 September, when James Thorn of the Canterbury Trades Council submitted a manifesto he had been asked to write on Council's behalf. The text attacked the whole purpose of the Bill and called upon the Canterbury unionists to resist its implementation. Their particular anger was directed toward clause fifty-three, that required officers of unions to be members of the trade or occupation that the union represented.²⁵ For the first time, the Minister came under direct attack with Thorn's claim that such a legislative initiative:

... comes ill from a Minister who gained publicity and prominence by trade-union agitation, that he should lend himself to the action of restricting the work of trade-union agitators by penal provisions. What right has he or anybody else to say whom a trade union shall employ? 26

The manifesto concluded:

Practically speaking, the Bill is a concoction of pernicious principles, seemingly dictated to the Government by the association of men whose activities in the past do not suggest to us that they have any sympathies for the cause of unionism or a desire for its progress. Most of the provisions are entirely new to us and were never asked for by us. On the contrary, they seem to have given intense satisfaction to the employers throughout the country. This is unsatisfactory, and should not inspire trade unionists with confidence27

25. IC and A Amendment Bill, c.53.

26. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9A, 1907, p.18.

27. ibid., p. 19.

The angry tone of the manifesto carried an underlying note of unease, and the voice of protest was that of the professional trade union officer under threat for his livelihood. At the same time the document did cause a tremor in the Canterbury Employers Association which responded to the trade unions with a statement that questioned the sweeping nature of the proposed changes "as they caused an unsettled feeling to pervade all classes of the industrial community and raised a doubt as to the future"²⁸

But if the Canterbury manifesto had left the question of de-registration, raised earlier in Wellington by the delegation of 7 September, out of its statement, a firm programme for direct action was soon to be forthcoming. On 17 September, the Wellington Trades Council submitted its own manifesto to the Committee and its final statement concluded:

It is most difficult from a mere recital of the principles of this amending Bill to get at its hidden depth and meaning. After a most exhausting scrutiny of every detail of the Bill we have no hesitation in saying that it is the most cunningly devised, insidious, and dangerous measure, from the standpoint of the workers, and the public well-being, which has ever been submitted to our House of Representatives If it is carried out our organised labour will do well to consider whether we cannot condemn this Bill too strongly; and if it is passed into law we must advise the unions to withdraw their sanctions to this kind of legislation, and to use all means of passive resistance to make the legislation null and void²⁹

28. LT, 11 September 1907.

29. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9A, 1907, p. 57.

This message was carried to the Committee by individual witnesses as well as by manifesto. For example, W.T. Young in his dual capacity as Chairman of the Executive Committee of the Trades and Labour Councils and Secretary of the Seamen's Union, warned the parliamentarians that:

Labour will tolerate a great deal, and as one of their leaders I think I am safe in saying, and I do so without desiring to influence by threat, that if this and other matters in this Bill become law, they will create one of the greatest industrial upheavals that has ever been seen in Australasia
30

If Millar had any doubts as to his personal standing with the Trades and Labour Councils they were soon to be put to rest, for on the same day the Wellington Trades Council presented its manifesto the Otago Trades Council joined their brothers in condemning the Bill. This gesture of solidarity must have shocked Millar for it was in that self same Council that his reputation had been made, and his political career had started. Erstwhile supporters made no bones about where responsibility lay should real trouble arise and prophesied that:

If the Minister of Labour insists on pushing through this Bill ... and anything serious happens, the responsibility must rest on him and not on the shoulders of the trade union movement in New Zealand
 ,...31

30. ibid., p.10.

Young's reference was to clause fifty-three.

31. ODT, 17 September 1907.

Yet despite the angry language a degree of ambivalence still remained. The Trades and Labour Councils were clearly trying to express their anger before the Labour Bills Committee while asserting their continued loyalty to the basic principles of IC and A. This point was sheeted home by Young when he assured the Committee that:

Labour is perfectly satisfied with the principle of the present system, and we believe that with a few amendments to the Act, as suggested by the last and previous Labour Conferences ... the present system of Conciliation Boards and a Court of Arbitration is the best that could be devised by Parliament for the settlement of industrial conflict and the prevention of strikes
³²

In other words, the Trades and Labour Councils' real concern was not directed at the system itself, but at the proposals to change it in a way that would severely restrict the role of the full time official. The message was clearly that if direct action in the form of massive de-registration was forced on the trade unions, the real cause would be government meddling, not radicalism.

That the real concern of the Trades Councils was with the suggestion that the role of the trade union secretary be restricted, was made clear when James Thorn returned to the stand. At that time his work as an organiser for agricultural labour in the Canterbury province was leading up to the largest case ever presented before the Arbitration Court, an attempt to get all the farmers of the Canterbury province joined under an award.³³ Thorn fitted the stereotype of the

32. AJHR, I-9A, 1907, p.9.

33. See B.J.G. Thompson, 'The Canterbury Farm Labourers Dispute, 1907-1908', MA thesis, Canterbury, 1967.
 Under the terms of the action, 7,221 farmers were joined in a case lasting eighteen months. The Court finally ruled that the agricultural industry lay outside its terms of reference.

foreign agitator except in one important regard - he was a native born New Zealander a distinction that Millar, Ward and several other members of Cabinet could not aspire to.

Thorn concentrated his attention on clause fifty-three, pointing out candidly, that the New Zealand labour movement suffered from a "... great lack of men of intelligence and intellectual development to enable them to meet their employers in conference and win".³⁴ This dearth he argued had resulted in the growth of the situation where many workers were represented by men who were not technically members of their given trade. The reason for this was that many likely candidates for union office were afraid to come forward for fear of victimisation by employers. This led many unions to "employ paid secretaries, 'paid agitators' as they were called, because it is dangerous for anyone to take an official position in any union...."³⁵ It was his final contention under cross-examination that the main reason why paid officers were the only people able to take cases before the Court was that they were financially independent of employers in the matter of income.³⁶

At this juncture, Young returned to the stand to reiterate his argument that the trade unions still had real confidence in the principles of IC and A. Under cross-examination from Millar, he was asked his opinion as to the true source of innovation, and he relied "I should say the Employers' Federation and whipped into shape by Dr Findlay"³⁷

34. AJHR, I-9A, 1907 , p.22.
35. ibid.
36. ibid.
37. ibid. p.35.

At first glance Young appeared to be offering a calculated insult to the minister, until one remembers that such an action would have been foreign to Young's style as a punctilious and polite witness. Clearly he was reacting in an off-guard moment, as a trade unionist who was aware that Findlay enjoyed a special relationship with the Prime Minister at the expense of his colleagues. Only moments later Millar left himself open for a further thrust when he tried to impress upon Young his determination to deal firmly with law breakers. Young's reply was laconic and reflected the doubts and uncertainties that the trade unions now had about Millar when he said "Yes that may be so, but you must remember that this is a proposed statute, and you may not always be Minister of Labour"³⁸ Thus ambiguities surrounding Millar's role as the instigator of the proposals for reform continued throughout the entire period.

On the trade union side, 1907 failed to see the emergence of a concerted and concrete plan of action should the government determine to push forward with the legislation. Nor was there at this point, an alternative and radical group ready and willing to lead the workers away from the IC and A system. It is true that 1906 had seen the first stirring of an alternative industrial labour movement based upon the West Coast mining industry, but the miners were to reveal until 1908 a willingness to act constitutionally that belied real militant intentions. For example, on 21 October 1907, a delegation from the

38. ibid., p.36

embryo Miners' Federation waited upon the Minister of Labour and advised him that what they proposed was the largest organisation of labour in a single industry that the country had ever seen. They requested formal recognition by government and a subsidy for the payment of travelling expenses to the first of a proposed series of national conferences. Millar objected on the grounds that such a move by the Miners would mean secession from the Trades and Labour Councils Conferences and would be viewed with official disfavour. He also refused to countenance payment of expenses on the grounds that the government already subsidised the Trades and Labour Councils Conferences, and invidious precedents as well as additional expense would be created if he complied.

There can be no doubt that in his refusal to accede to the Miners' requests, Millar missed an opportunity to influence future events. For what is remarkable about this episode is the fact that the Miners' Federation continued to act constitutionally until 1908, and even sent delegates to the Trades and Labour Councils Conference of that year.

An argument can be made that, if Millar had in fact recognised the body in 1907, the radical reaction that emerged with the 'Red Fed' might have been channelled into constitutional forms. Indeed, when one realises that the Miners had been looking for redress in the matter of the Court's failure to grant an award since 1905, their patience and faith in an approach to government raises a fundamental question that lies outside the ambit of this thesis, but relates to it. Was the 'revolt of the militant unions' in 1912 and 1913 less a question of ideological motivation and more the result of persistent failure on the part of government to give public recognition, and therefore legitimacy to their cause?

Strategically, the trade union leaders who gave evidence on the new Bill seemed to retreat after the first angry reaction to a defensive position around two important issues. The first involved special pleading for the retention of the status quo for the trade union secretary, given employer hostility toward unionists in their companies and firms, and the consequent dearth of good men offering for duty in office.³⁹ The second involved attempts to demonstrate that in practice the amendments simply would not work. Their resistance did stiffen however, as J.A. Hardy, a member of the Committee, revealed in the mode of questioning a deep hostility toward the trade union professional.⁴⁰

But the general level of excitement the Bill had generated began to subside as the hearings dragged on into October. There was a brief rekindling of public interest when on 4 October a farmers' delegation appeared before the Court to suggest that while they were in broad sympathy with the aims of the trade unions, and recognised working men's rights to be so organised, the IC and A Act should not be permitted to apply to the agricultural industry because of its special nature.⁴¹

39. In a defence of his role David McLaren said of his incumbency of the Wellington Watersiders secretaryship: "I took it up in 1899 and carried it on for five years at the magnificent salary of £2.5s Od. per week, and I smile when I hear people talking about the paid agitators as if they were rolling in wealth." AJHR, I-9A, 1907, p.46.

40. This was revealed when he used the term 'trade union agitator' in five consecutive questions to P.J.O'Reagan, a former Chairman of the Wellington Conciliation Board, and future Arbitration Court Judge. This despite the fact that O'Reagan had in his first reply suggested that professionalism in the labour movement was an inevitable by-product of the increasing technicality of the IC and A system and that 'agitator' was a vague term. ibid., p.92.

41. In fact the Arbitration Court hearings had opened on the Canterbury Farm Workers dispute on 5 August 1907, and farmer reaction was building up at this time. See B.J.G. Thompson 'Ploughboys of the Plains Unite', The Listener, 74, 1780, 22 December 1973, p.18.

By contrast with the other parties, the initial response of the employers to the proposed legislation was muted. It was not until 11 October 1907, that William Pryor the National Secretary of the New Zealand Employers' Federation appeared before the Committee. He began his evidence by reiterating the need for standardisation in awards and the urgent necessity for two Arbitration Courts to carry out such duties and then went on to express a degree of general agreement with the form and intention of the legislation, assuring the Committee that:

The Federation having in view the request of the Minister for a trial of the Industrial Councils, and his expressed intention of giving the system a trial has agreed to the setting up I would like to say that the Federation, and I am sure I am speaking for the employers of the Dominion generally, will give the system a thoroughly honest trial, and if it is successful there will be no stronger supporters of the system than the employers of labour throughout the Dominion⁴²

Pryor's attitude confirmed the worst suspicions of those trade union leaders who were convinced that the employers and the Minister were in collusion. As early as 1 November 1906, correspondence had been exchanged between the Auckland and Wellington Trades Councils with regard to a rumour that Edward Tregear had promised to submit all breach actions to the Employer Association Secretary in Wellington before citing cases and had instructed his officers to act in such matters in the same way.⁴³

42. AJHR, I-9A, 1907, p.97.

43. NZH, 1 November 1906.
NZT, 30 October 1906.

This was further confirmed by Pryor's next statement in which he said:

... there are sufficiently confidential relations between the Association Secretaries and the Inspectors, so that they know before a case comes on, as a matter of fact, what is going to be done; and so far as the Federation is concerned...I have for some time been doing what I could to foster such a spirit44

Pryor's general satisfaction at the form of the proposed amendments was only disturbed once during his evidence. He was adamant that the extension of the terms of IC and A to various occupational groups that had been going on steadily since 1900, should stop short of people who held positions of responsibility in industrial organisations. To do this he argued would be:

... to force them into the unions, and sooner or later there is bound to be some difference of opinion between the employers and the unionists as a union, and you have these people in the position of having to serve two masters....45

The remainder of this, the sole employer submission, was devoted to the suggestion that the National Federation and its regional affiliates be permitted to levy employer members for a financial contribution, and that this be given the weight of legislation. This argument was based on the fact that the trade unions were permitted to receive membership fees, and the same advantage should be allowed the Employers' Associations. His reason for this was purely professional and it was not without some edge that he asserted:

44. AJHR, I-9A, 1907 , p. 98.

45. ibid., p. 99.

The employers' associations throughout the Dominion are doing a similar class of work for the employers that the trade unions are doing for the workers. Anyway it is the employers' associations and the Federation that have borne the heat and burden of the day for the employers, and the Federation feels that if there is any financial advantage to be gained... special provision should be made for the employers' associations to take advantage of it....46.

It is ironic that Pryor was prepared to claim the rights of remuneration for professional services for the associations, while supporting the government's attempts to restrict that right to his opposite numbers, the trade union secretaries under clause fifty-three of the Bill. But no one on the Committee challenged the dual standard that Pryor was using in this matter.

With the completion of Pryor's evidence the employers rested their case. They had every reason to be satisfied at this point since government was committed to two policies that most employers would endorse; the restriction of trade union professionalism through mandatory requirement that officers be elected within the trade or occupation, and a punitive line with regard to industrial direct action. In consequence employers could sit back and watch the trade union movement attempt to convince government that such proposals were not in the general industrial interest.

46. ibid , p.100.

Such argument was soon forthcoming when Young appeared for the third time before the Committee on behalf of the Tramways' Federation with a list of telegrams from affiliates condemning the proposed measure. Further messages of protest were also lodged by Young on behalf of Trades and Labour Councils with one in particular having personal significance for the minister.

Apparently while on a private visit to Dunedin, Millar had claimed that he had received a delegation from the trade unions which had expressed strong approval for the proposed measures. This was now countered on behalf of the Otago Trades Council by R.G. Breen who stated that Council had investigated Millar's claim:

I have since heard that the deputation consisted of three members of the Carpenters' Society, but they had no authority to appear on behalf of the Society I have no doubt that Mr Millar will not forget them when there are appointments to be made⁴⁷

Nothing marks Millar's declining popularity as much as this statement which bluntly implied that the Minister was not above fabricating evidence, for only the previous April, Breen had been one of the leading lights in condemnation of McLaren's motion of censure against Millar and Findlay. Further, anger against him now came from the stronghold of Millar's political power. If he was given pause by the Otago message, the Minister did not reveal it in Committee, for he continued to challenge evidence that trade unionists were dissatisfied with the whole intention of the Bill. He remained doggedly convinced

47. ibid., p.121.

that such expressions of displeasure were the work of a minority and not the true feelings of the labour movement.

The debate was thus in danger of bogging down into assertion and counter assertion, but Young did have one further important card which he now played. He advised the Committee that if government proceeded with the Bill in its current form, the affiliated branches of the Tramways' Federation would all move for formal de-registration from under the IC and A Act. He went on to suggest that this would be a positive step, for "we would carry on the work of the union very effectively and perhaps more effectively than it is carried out now, because we would relieve ourselves of the Act"⁴⁸ This statement was important because for the first time since the publication of the Bill in late August 1907 a specific trade union had turned a threat of industrial unrest, into a specific statement as to the form such action would take. Young could not have known it at this time, but he was in fact revealing to the industrial world, the basic ground plan to be adopted later by the 'Red Fed' - massive withdrawals from under the IC and A Act through the process of de-registration.

It was clear by late October however, that the momentum for legislative amendment had spent itself, and that no further progress would be made by the Bill in the session, given the weight of business still facing the House. The monotony of the last days of the hearing were however relieved by the appearance of a group of Wellington matrons

48. ibid., p.123.

who were incensed by rumours that the Wellington Trades and Labour Council intended to organise domestic servant girls and register them under the IC and A Act as an industrial union. Their leader, Mrs Catherine Holmes McLeod, whose manner and language bespoke a colonial 'Lady Bracknell' argued that such a proposal struck at the basic decencies of family life. Her cohorts then informed the Committee of the problems of trying to achieve domestic felicity without an adequate supply of domestic servants, because girls preferred the higher wages of the factories rather than the genteel advantages of domestic service.⁴⁹

Thus the hearings which had begun in high temper, petered out with the adjournment of the Committee until the next session. What was significant was the fact that employers and trade unionists were diametrically opposed on the Bill, and that Millar's actions had cost him dear in terms of trade union support. Even more significant was the fact that the exigencies of defence against the threat posed to the professional trade union officer under the proposed legislation had unified the Trade Councils in a way not previously seen in the history of the IC and A system.

The lines were now drawn for further battles in 1908, as a determined Millar returned with a new Bill, and parties on all sides questioned not only legal amendments, but the whole raison d'etre of the IC and A Act.

49. ibid., p.109.

The Amendment Debate Continued: Conflict, Politics and the IC and A Amendment Bill of 1908.

Observers of the industrial scene in New Zealand in February 1908 must have been given the strong impression that history was repeating itself, for on the the 27th of that month, a strike began at the Blackball Mine on the West Coast.⁵⁰ This event was to be immortalised by one of the leaders, P.H. Hickey, as the first symbolic blow struck by the miners against the IC and A system. But the description of the Blackball strike as a victory depends entirely upon the side from which one views the conflict. It is true that the mine management conceded the men's demands after an eleven week strike that demonstrated community solidarity. But it is also true that the fines imposed under Magistrate's order were paid in full. More important, the legal action taken to the Court of Appeal by the Miners' Union to test the validity of the warrants issued by the Magistrate's Court resulted in a judgement against the strikers.

The decision of Stout C.J. and his brothers highlighted yet again the unique status of the IC and A Act in law. For the bench ruled:

50. P.H. Hickey, Red Fed Memoirs, Wellington, 1925.
P.W. O'Farrell, 'The 1908 Blackball Strike', Political Science, 11, 1 March 1959, pp.53-64.

... however erroneous in fact and in law the decisions of the Court of Arbitration might be, so long as it purported to be acting in pursuance of the Act creating it, and confined itself absolutely to the subject matter of the Act, the effect of section 96, was to place it beyond the control of, or interference by, the Supreme Court....⁵¹

In other words the Court of Appeal was carefully pointing out that no higher tribunal had the authority to overturn a judgement of the Arbitration Court or any decision carried out by a duly authorised party under its direction, even if such an action was in error.

The Blackball strike was the precursor of further industrial direct action during 1908. By 4 May, the Gisborne Bricklayers were out for three days and only went back to work when their demand for a rate increase was met.⁵² On 29 June, the Wellington Bakers began a strike lasting some seventy-six days until the employers broke it with non-union labour. The action had been taken for a basic minimum wage and a forty hour week, and was in direct defiance of an award of the Court handed down only days before the strike started.⁵³

When Parliament convened in June 1908 it was against a background of industrial direct action which had been going on intermittently since February. The question of amendment to the IC and A Act thus took on importance when on 1 May the Leader of the Opposition publicly expressed the view that the IC and A Act had broken down and that unless government acted quickly, he would call for its repeal during the

51. NZLR, 27, C of A, 14 July - 30 July 1908, p.905.

52. New Zealand Official Yearbook, 1908, p.685.

53. ibid.

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session.⁵⁴

The Prime Minister took up the same point when speaking in the Address-in-Reply debate he said:

... we have either got to put an Act on the statute book to ensure the speedy settlement of strikes, upon a fair and equitable basis in the interests of both employers and employees, or we will have to seriously consider whether it is possible to keep the IC and A Act upon the statute book at all⁵⁵

The result was to place heavy pressure on Millar to get a Bill through as quickly as possible in spite of trade union hostility.

Some of the problems facing the legislators were outlined by the New Zealand Herald in an editorial a week before the new draft Bill was made public. The writer pointed to the fact that the advent of industrial action had demonstrated serious anomalies in the legislation as it stood. He went on to argue that while the employers were bound by the terms of the Act, trade unions were now ignoring it at will when it suited them to do so. The article concluded with suggestions as to the alternative courses of action now facing the government. To repeal the legislation entirely; to so amend it as to force the trade unions to come under provisions imposing restraint upon industrial direct action; or finally to remove the element of compulsion inherent in the principle of registration and simply permit the parties to join themselves voluntarily under the statute or remain outside its terms if they wished.⁵⁶

54. NZH, 1 May 1908.

55. NZPD, 143, pp.35-36, 29 June 1908.

56. NZH, 2 July 1908.

Such gratuitous advice was ignored when the Bill was tabled on 8 July. It was immediately seen as a deliberate move not only to incorporate the most controversial elements of the previous Bill of 1907, but to further extend them. Thus the clauses dealing with Industrial Councils had the powers of the Chairmen endorsed by making them Commissioners under the Commissioners Act. The punitive measures for dealing with strikes and lockouts now influenced the first fifty clauses of the new Bill, and included provisions to make the act of sustaining a striker by any means an offence liable to penalty. In addition clause fifty-seven of the new Bill admitted the application of the exertion wage principle as part of an award procedure.⁵⁷

The response of the newspapers to the new Bill was both reserved and critical. The New Zealand Times, in a somewhat uncharacteristic attack on the government, saw serious danger in the intention to extend penalties beyond the immediate parties, and expressed grave concern for the principle of civil liberties.⁵⁸ The New Zealand Herald was of the opinion that government was getting desperate and suggested that the penal clauses were evidence that:

The Minister of Labour has embodied the idea of compulsion in his amending Act with what unfriendly critics might well term the energy of despair....⁵⁹

The Otago Daily Times and the Christchurch Press both echoed the Herald by rhetorically wondering whether it was really possible to impose compulsion through legislation on all the parties, in the way Millar intended to do.⁶⁰

57. IC and A Amendment Bill, 1908, cc.1-50, and 57.

58. NZT, 9 July 1908.

59. NZH, 9 July 1908.

60. ODT and CP, 9 July 1908.

Discussion in the press of the impending legislation was overshadowed however by events in Auckland during the second week in July. The Tramway Company had continued to be a source of industrial unrest and the management had suddenly been faced with trade union action in the matter of the dismissal of a conductor, T. Herdson. As a result the parties, with government sanction, had decided to go to independent arbitration and a panel had been convened under Dr A. McArthur of Auckland. The decision was startling, with the Arbitrator condemning company practice of spying on the men by using Inspectors as a bad policy. The dismissed man was reinstated with the further suggestion that over zealous company inspectors who were responsible for such conflict be restrained and if necessary dismissed for persecuting workers. The reaction was immediate with both the the Auckland and the Wellington Employers calling the decision a breach of employers' rights.

The Evening Post immediately saw the decision as a threat to the IC and A system and argued editorially that:

Deliberately to go behind the back of the law as the government did, in order to secure a settlement of the dispute was to create a position and precedent, which may cost the country more than fifty such disputes would cost....61

Thus Millar became the target of employer hostility at the critical point when some degree of harmony was necessary in order to see the Bill through. The result was that when the Labour Bills Committee of the House of Representatives met to take evidence it did so in an

61. EP, 25 July 1908.

atmosphere of hostility from both employers and trade unions.

The Trades and Labour Councils who had met in Conference just before the Bill went to Committee, spent some time expressing their concern at the appearance of clause fifty-seven. There was no doubt in their minds that Findlay had had his way and had "...issued a manifesto on behalf of government"⁶²

For many delegates like James Thorn, the clause spelt a return to the days of sweating. Thus the prevailing trade union mood was extremely hostile when on 24 July the Committee called its first witnesses. The consequence was that trade union evidence early in the hearings constantly reiterated the same theme, the virtual impossibility of devising legislation that would totally contain industrial conflict. To this witnesses added a second argument, that even if trade unions voluntarily accepted the limitations proposed, they would oppose to the end any penal provisions that took away their ultimate right to take direct industrial action. This point was sheeted home by J. Jackson, a Westland delegate, when he said "While we disbelieve in the efficacy of strikes, we hold that we have the right to withhold labour whenever we consider it necessary"⁶³

Millar who had fought for the same principle in 1890, was prepared to concede this point, but insisted that the act of registering under IC and A, involved the voluntary abrogation of such a right.⁶⁴ He made

62. Trades and Labour Councils Annual Conference Report, 1908, p.14.

63. Evidence before the Labour Bills Committee of the House of Representatives, AJHR, I-9, 1908, p.11. Jackson was endorsing what was now official Trades and Labour Councils policy.

64. ibid., p.10

this clear in a speech to delegates before the Committee when he argued:

If men desire to make their own conditions of labour they can but they cannot possibly remain under the Arbitration Act and strike, and this Parliament will not dissolve until that matter is settled. We can amend the Act to provide that as soon as a strike takes place registration will cease, and the award will cease to exist. If men should wish to keep outside the Act, no law should compel them keep inside it65

Millar was thus exposing the ambiguity of trade union status under the Act when they took direct action, by pointing out the incompatibility of freedom to take direct action with the fact of voluntary registration under the law.

That confusion still existed in the minds of many trade unionists as to the value of the legislation was demonstrated when P.H.Hickey, a leader at Blackball and delegate to the Trades and Labour Councils Conference, came to the stand to give evidence. Under skilful questioning by Millar, Hickey conceded that he favoured the continuance of the IC and A Act if it could be used more effectively on the workers' behalf. He was also willing to concede, that union powers to take direct action in such matters as wrongful dismissal, victimisation and the right to strike should be limited in law66

But we must be fair to Hickey and point out that he appeared as

65. ibid., p 8.

66. ibid., pp. 18-21. The Masséy government in 1913 during the waterfront strike, was to use the tactic of deregistering a striking union, and replacing it with a 'scab' union duly registered with great effect. The tactic was to reappear again in 1951, during the waterfront dispute with the tacit support of the Federation of Labour President, P.F. Walsh. See M. Bassett, Confrontation '51, Wellington, 1972.

a delegate witness on behalf of the Trades and Labour Councils, and was asked only one question on his ideological principles which permitted him to do little more than affirm his belief that the capitalist system in New Zealand should be replaced by a socialist order. Hickey was followed in sequence by the final trade union witness, M.J. Reardon of Canterbury, whose return to the principles enunciated by earlier witnesses caused the Committee Chairman to comment:

[Their statements] were laid before us with such scrupulous exactness that, when one member made a mistake, another one going over the same matter step by step, made the same mistake. In fact it was parrot like and this has made the Committee a little careful about having the evidence duplicated⁶⁷

This comment was unfair for two reasons, first, because the trade unions were clearly intent upon presenting a united front in the matter of opposition, and second, because the employers' approach to evidence differed only in style and not strategy. Pryor, for the New Zealand Employers Federation, presented the main argument and his supporting witnesses took care to advise the Committee whenever they appeared to deviate from the 'party' line.

There was little that was new in the employer submissions with stress on inspectorial rights to award permits, magisterial rights to hear small cases and other matters that had been submitted previously.

Only one employer struck out on his own, the ubiquitous Booth, who begged the Committee's leave to speak in a personal capacity.

67. AJHR, I-9, 1908, p.60.

He immediately launched into an attack upon the whole philosophy upon which the IC and A system was based claiming that:

... it embodies and expresses or even implicitly sanctions what I believe to be false and vicious industrial and social ideals. It is to blame, for instance, in so far as it sanctions [sic] the theory that work is not a thing in which a man should engage cheerfully and manfully, but that it is a curse - a hateful and degrading necessity - imposed on man for his sins, a penalty which it is not only justifiable but creditable to a man to dodge68

Booth's anger was compounded by the fact that his much vaunted personal experiment in exertion wage setting had been countered by the workers engaging in 'ca canny' or working to rule, the deliberate and careful restraint of production to counter increased managerial demands.⁶⁹

His concern at what he saw as the demise of the work ethic in New Zealand then led him on to dangerous ground, for he went on to argue:

After all strikes do not seem to me to be such a terrible bugbear as some people would have us believe. The loss that falls upon a country by reason of strikes, is the loss consequent upon the withdrawal from active work of a certain number of men, the idleness of a certain amount of machinery, and the paralysis of a certain amount of business organisation. Such a loss has never so far as I am aware, been a very serious thing in the Dominion70

68. ibid., p. 35.

69. ibid., p.37. James Thorn had in fact reported the failure of the Booth plan to the Trades and Labour Councils Conference. See Trades and Labour Councils Annual Report, 1908, p.37.

70. ibid.

At this point, Booth suddenly mindful perhaps that he was in danger of demonstrating that the 'Emperor had no clothes', switched rather confusedly to a defence of Conciliation. He argued:

I think everything should be done to make Conciliation effective, and would not suggest the sweeping away of the arbitration clauses completely. I should like to see the present Bill given a trial. When I say that I am not very sanguine about the results you have to take for what it is worth. What we want is some system of conciliation which would be effective⁷¹

Booth's comments reflect an underlying unease and a confusion which he would be surprised to know that he shared with some trade union leaders, An unease that the whole trend of development of the IC and A system was so centralising the processes that make up industrial relations under standard procedures, that freedom of action was being constantly eroded.

Unfortunately the government was also in an impasse, because to admit that the IC and A system was failing in its first purpose, the control of industrial conflict, was tantamount to admitting that the basis for the law, the assumption that there was a consensus of interest among the parties, was no longer a fact of economic, political and social life in New Zealand. To admit the existence of sectional interest would further require recognition of a brutal fact, that sectional interests required sectional representation and the actual exercise of sectional power. This the Liberals could not do, for recognition would signal the death of the party as it existed.

71. ibid., p.38.

The hearings before the Labour Bills Committee ended in early August with the parties in virtually the positions they had occupied in late 1907. The trade unions were if anything even more determined to resist the Bill, and they were unified as never before in that intention. The overall air of uncertainty that the issues had engendered was witnessed by the fact that before the Bill was re-committed to the House, the Committee itself overruled the Minister in the matter of clause fifty-seven by five votes to three, a decision that added if anything to Millar's problem of credibility as the debate moved into its final stage.⁷²

The IC and A Amendment Bill of 1908: the Final Phase.

On 10 September 1908, six days before he was due to open the House debate on the IC and A Amendment Bill, the Minister of Labour addressed a public meeting in Carterton. He began by affirming his faith in the IC and A system and went on to express his further belief that industrial unrest was really caused by radical agitators. This was an old theme but with one difference - Millar was now prepared to ascribe ideological motivations to such people when he warned his listeners:

We are face to face with a movement in New Zealand that requires to be dealt with The workers have had their position very naturally improved during the last ten to twelve years. But there is growing in our midst an import from Germany originally, and latterly brought in from Australia, who are now trying to upset everything that has been done, and because I won't fall in with them and say that their lines are my lines, of course I am everything that is bad⁷³

72. NZH, 14 September 1908.

73. EP, 12 September 1908.

It is clear that all of the arguments of the trade unions had really amounted to nothing in Millar's opinion. His abiding faith in the IC and A system remained unaltered by industrial reality, since blame for unrest could be placed at the door of a foreign source. Yet the comments, however resolute, have a forlorn ring, indicating the intense pressure the man was under from both sides to change the legislation in favour of one or the other.

The press reported the Minister's speech, but reserved their main attention for the Bill which was now to hand. After observing that the final document appeared to be so hastily assembled that journalists had to work from a single copy, The New Zealand Herald concluded that the central question involved the fact that:

Industrial Arbitration is on trial. Whether it continues among us depends wholly upon the experience of the Dominion during the coming year74

The same pessimistic tone was taken by the Evening Post which concluded:

The results of legislation after fourteen years of Conciliation and Arbitration remain uncertain. The Bill of 1907 has been altered to the Bill of 1908, and the Bill of 1908 has just been altered by the Labour Bills Committee. The radical principle of the law has been so far assailed, first by government's failure to enforce the law and secondly by the Arbitration Court's failure to apply it, that it has become a matter of doubt whether any remnant of the principle can be effectively preserved75

74. NZH, 14 September 1908.

75. EP, 14 September 1908.

The other city dailies in the North Island were to take an equally acerbic line. First the Dominion dismissed the entire Bill as "the last gallant struggle in connection with a dying fallacy"⁷⁶

By contrast, the New Zealand Times took a different line, expressing grave concern that the Labour Bills Committee had been debating the possibility of limiting the freedom of the press in the reporting of pending industrial action. It attacked such a move with the editorial suggestion:

The Labour Bills Committee now seeks to curtail the privileges and powers of the press by prohibiting the publication of opinion 'for and against' in reference to an impending strike or lockout. The attempt to stop newspapers assisting to maintain the authority of the statute can have no justification outside the realms of topsy-turveydom⁷⁶

This comment from a newspaper famous for its tendency to take the government side reflected the tensions now surrounding the amendment process, and the sensitivity of the government to criticism, was demonstrated when on 19 September, the Times reported that the clause limiting press freedom had been dropped at Millar's insistence.⁷⁸

The reaction of the leading South Island dailies by contrast with their northern contemporaries was rather muted. The Christchurch Press contented itself with a resume of the proposals and the reporting of comments from interested parties. Inevitably the Canterbury Trades Council took a highly condemnatory view while the Employers'

76. Dom, 14 September 1908.

77. NZT, 14 September 1908.

78. NZT, 19 September 1908.

Association Secretary, Henry Broadhead, expressed the cautious opinion that the legislation was very experimental.⁷⁹ The responses as reported by the Otago Daily Times found the Employers' Association strongly in favour of the new measures while the Otago Trades Council joined their northern brethren in wholesale condemnation.⁸⁰

The Bill was recommitted to the House on 16 September 1908 in an atmosphere of newspaper scepticism, bitter trade union antagonism and limited employer support, for on the date of recommitment only the Otago Employers Association had come out in strong favour of the proposed legislation. The other employer groups appeared to be waiting for parliamentary reaction before committing themselves although the national Federation had promised to give the legislation a fair trial.

Millar, in opening the debate for the government reiterated his strong belief that the real cause of industrial disturbances in New Zealand was a minority of ideologically inspired radicals who aimed to change the basis of the social and economic system.⁸¹ In implying that the vast number of workers registered under the IC and A Act were really contented with the system and the benefits it bestowed, Millar raised a contradiction inherent in the sweeping proposals for changes. For if the real cause of trouble was a minority of foreign dissidents, why was it necessary to visit the sins of the few upon the many? The most logical explanation appeared to be that Millar was

79. CP, 14 September 1908

80. ODT, 14 September 1908.

81. NZPD, 145, p.91; 16 September 1908.

determined to preserve the IC and A system as the core of industrial legislation at all costs.

In this he was assisted unintentionally by the Leader of the Opposition, W.F. Massey. Instead of taking advantage of the Liberals' obvious discomfort, Massey in his opening address concentrated upon the need to keep trade unionism out of the agricultural sector and then roundly advised the House:

Now Sir, I am in favour of Conciliation, I will go further than that and say that after what has happened during the last few years, I am against compulsory Arbitration and anyone who wants to make political capital out of that can do so⁸²

It is difficult to really know what Massey meant by conciliation, for on 11 July he had been cited as an enthusiast for the Canadian Industrial Disputes Investigation Act of 1907. This law had in fact simply shifted the weight of compulsion away from arbitration and made it mandatory that employees in certain industries submit to a compulsory Conciliation Conference with prior investigation of the causes of unrest before the Conference took place.⁸³

The principle of a delay in strike action coupled to a ballot of members was to be introduced by the Reform government in the Industrial Disputes Act of 1913, which seems to indicate that what Massey really meant was that he favoured compulsory conciliation, in other words control over a dispute before it started, rather than action

82. ibid., p. 95.

83. NZH, 11 July 1908. See also F.A. Acland, 'The Canadian Industrial Disputes Investigation Act', Annals of the American Academy of Political and Social Science, 34, 2, September 1910, pp.165-183.

after a strike was in train.⁸⁴

In the event, a strong Opposition response to the Bill did not really materialise on the other side of the House much to the relief of Millar. Yet despite the somewhat bellicose tones of many Liberals who rose to congratulate the Minister for saving the trade unions from the deprivations of the agitators, government stopped short at the brink, and did not totally outlaw the strike. Millar in fact carefully defined the status of the strike in the following manner:

We have tried to define what is a strike and what is a lockout. A strike is not deemed to be a continuing offence with a continuing penalty. A strike is complete within itself. When a person strikes he will be fined for it and there will be nothing else.... A strike is a breach of civil contract, it is nothing more, there is nothing criminal about it. But the strike can only take place in an industry in which an award exists, and that is only right, because under no other law is a strike made an offence except under the Arbitration Act. If a body of men decline to take advantage of the law it is unjust to say they ought to be punished for an offence they have not committed, except under this Bill.... 85

84. It appears from the political evidence, that the real author of the 1913 legislation was J.A. Herdman, Massey's Attorney-General. Throughout the period of the 1913 waterfront strike, it was Herdman who commanded centre stage on the government side with Massey simply taking questions in the House. The Farmers' Union appeared to have some doubt about Massey's zeal for the task of crushing the trade unions. See H. Lusk to J.G. Wilson, 22 November 1913, J.G. Wilson Papers, misc. corr. ATL.

85. NZPD, 145, pp. 188-189, 16 September 1908. Millar's assertion that an award is a civil contract stands contradicted by Stout's caveat of 1899, that in fact an award implies status and not contract. This anomaly has continued to be debated in New Zealand down to the present. I am advised by my colleague G.J. Anderson, Lecturer in Commercial and Industrial Law at Massey University, that awards are now treated as special types of contract, though they lack the essential civil law component, the right to sue or be sued for breach. I am grateful to Mr. Anderson for his advice on the present position.

Under the terms of this definition, a strike was an offence only if it occurred while the party was duly registered under the IC and A Act. In other words the Minister did not remove the right to take direct industrial action from industrial law. The right to do so outside the framework of the IC and Act was reinforced by the Trade Unions Act of 1908. Under clause three, that law stated:

The purpose of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy

while clause four in turn affirmed that:

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 trust⁸⁶

Millar's intention was to impress upon trade unions registered under the IC and A Act, that registration meant the loss of the right to take direct industrial action and if workers wished to preserve that right other legislation, without the benefits of IC and A, was available for their use.

This dual status under the law with regard to strike action was to have an important tactical effect upon later militancy. For under the direction of the 'Red Fed', de-registration from under the IC and A,

86. Trade Union Act, 1908, c.3 and c.4. New Zealand Statute Reprints 15, 1908-1957, pp.827-830.

and re-registration under the Trades Unions Act of 1908, became the main vehicle for the expression of discontent.⁸⁷

But Millar's main purpose at this time was to demonstrate to the trade unions that the penal provisions against strikes in the Bill, did not mean the total removal of the right to take industrial action in the obvious hope that they would be mollified with regard to the sweeping changes that the Bill proposed.

The general air of self congratulation that emanated from the Liberal side of the House during the debate, was disturbed on one or two occasions. Thus T.K Sidey, the member for Caversham, wondered aloud whether the problems facing the IC and A system went deeper than members supposed and involved perhaps the whole question of income distribution.⁸⁸ J.A. Hanan of Invercargill like Sidey a lawyer by training, thought that the time might be ripe to introduce a highly trained and professional Conciliation Service, since it was his considered opinion that the Arbitration Court had tended to dominate the IC and A system, frequently at the expense of its defined role as a tribunal sworn to act in equity and good conscience.⁸⁹

87. In fact the Federation began this process in 1910, by formally registering its rules under the Trade Union Act of 1908. See New Zealand Federation of Labour, Preamble, Rules and Constitution, Wellington, 1910, p.3.

88. NZPD, 145, p.272, 18 September 1908.

89. ibid., p.273.

Unfortunately the temper of the times made such reflections on the basic principles of the legislation a fleeting phenomenon as Millar pressed the legislation through. There was one particular moment when the deep divisions within the party were allowed to be seen. Millar in endless justification of the IC and A system, was tempted into the assertion that:

If you take away from the record of strikes in New Zealand, the Blackball and the slaughtermen's actions, there has not been a strike worthy of the name since the time the Act came into operation⁹⁰

At this point an unnamed member interjected "that is not the Attorney-General's interpretation", to which Millar replied with some heat "that is the Attorney-General's business, and he is responsible for his own interpretation"⁹¹ The exchange indicated the underlying tension and rivalries that went on behind the door of the Cabinet room for even while the House was debating the Bill, Findlay was using the Upper Chamber to push for the re-introduction of clause fifty-seven calling for exertion wage principles to be introduced into the IC and A system. This despite the fact that the Labour Bills Committee of the House had voted to drop the matter.

The third reading was moved and passed in the House on 26 September 1908, with one forlorn nay vote coming from A.R. Barclay who had earlier committed himself to the task of fighting the Bill on his own. Millar's relief that the battle was coming to an end was reflected in the comments he made to journalists after the vote. He now felt free

90. NZPD, 145, p. 481, 22 September 1908.

91. ibid.,

to admit that:

It had been touch and go that the whole Act was not repealed, and it was only time which soothed irritation which had permitted the present Bill to be brought down. The object of the Bill was to keep the Arbitration Court in the background as a mere spectator, and to provide for a legalised conference of the parties ... if the Bill improved conditions it would be justified⁹²

In the Legislative Council, the debate went on under the guidance of Findlay. He attempted to impress upon members the need for the exertion wage on the grounds that the economy could no longer sustain the current system of profit and income sharing that was the result of Arbitration Court awards. He admitted that he had been the author of clause fifty-seven, and justified it on the grounds that:

Everyone who has got on in life must have been ready ... willing and determined to work a little longer, and a little harder, and more intelligently than the average; and if you are going to offer no reward for that additional effort, you will depress all to one dead level and you will have a poor standard of efficiency in this country⁹³

He concluded his speech by praising the Arbitration Court for what he called "its refusal to pander to cheap popularity, which would have wrecked the honest industrial enterprise of the Dominion...."⁹⁴

Despite Findlay's eloquence, or perhaps, because his speech contained so much economic jargon, the Council remained unimpressed with his reasons for the re-introduction of the exertion wage clause, and the Bill was passed back to the House without such an amendment. The Bill

92. NZH, 27 September 1908.

93. NZPD, 145, p.661, 30 September 1908.

94. ibid.,

in its final form was without another significant clause. For under trade union pressure, Millar had also abandoned clause fifty-three, and trade union secretaries were thus free from the fears that had possessed them since 1907.

The IC and A Amendment Act of 1908, did in fact ensure the longevity of the IC and A system. It also spelled a long tradition of legal and administrative centrality in which compliance was demanded under threat of penalty, and in which trade union growth and development was restrained within the terms of the IC and A Act and not permitted to run wider than matters prescribed in the law. In this the system continued as a constant source of friction. It remains therefore to summarise the final form of the Act, and to make some judgements as to its ultimate effects.

CONCLUSION.

On 10 October 1908 the Amendment Bill which had been so long in gestation became law. It is thus the final task of this thesis to examine some of the changes made in order to demonstrate how far the IC and A Act had shifted from its founder's emphasis upon Conciliation towards coercion in what was assumed to be the larger public interest.

Under clause three, the term strike was extended to include not only action by a union in pursuit of a specific goal, but supportive action by other unions in sympathy. In turn, clause six extended the principle of individual liability to include not only trade unionists but:

Every person who makes a gift of money or other valuable thing to or for the benefit of any person who is a party to any unlawful strike... shall be deemed to have aided or abetted the strike or lockout ... unless he proves that he so acted without the intent of aiding or abetting¹

In other words aiding and abetting was given a wide definition with the onus for proof of innocence falling on the accused and not the prosecution. The intention was clearly to avoid a repetition of the Blackball situation where the community ingeniously frustrated, first attempts by the authorities to fine the miners by collective action in fund raising.²

1. IC and A Amendment Act, 1908, c.6 (3)

2. See P.H. Hickey, Red Fed Memoirs, Wellington, 1925.

Under clause seven the employer demand that actions in breach be only put in train at the behest of the Inspector of Awards, was admitted, and trade union secretaries were thus cut off from the process of taking actions before the Court.³ Clause nine was clearly intended to limit industrial direct action in terms of a wider definition of the public interest than that originally conceived by Reeves. It specified that workers in occupations covered by the clause were to give fourteen days' notice in writing of any intention to take strike action. Occupations covered by this clause were:

- (a) the manufacture and supply of coal gas
- (b) the production or supply of electricity for lighting or power
- (c) the supply of water to the inhabitants of any borough or other place
- (d) the supply of milk for domestic consumption
- (e) the slaughtering or supply of meat for domestic supply [sic]
- (f) the sale or delivery of coal, whether for domestic or industrial purposes
- (g) the working of any ferry, tramway, or railway, used for the public carriage of goods or passengers⁴

Clause ten was clearly influenced by Millar's thinking in the matter of the status of a union that took strike action, for the Court was now empowered where a trade union was found guilty of direct action under the IC and A Act to:

... order that the registration of the union or association shall be suspended for such a period as the Court thinks fit, the term not exceeding two years⁵

3 . IC and A Amendment Act, 1908, c.9.

4 . ibid., c.9 (2).

5 . ibid., c.10, 1.

This meant that the Court could commit a trade union found guilty of contravening the strike legislation to what can only be described as a state of industrial limbo, by withdrawing all of its rights under the Act.

Ostensibly the same clause permitted, under sub-section five, a right of appeal to a Magistrate's Court, but this was offset by a new appeals procedure under clause nineteen. But while the right was admitted, it was carefully qualified, for as the clause stated:

No appeal shall lie from any judgement in any such action to the Supreme Court or District Court, but an appeal shall lie to the Court of Arbitration in the same cases and in the same manner, as in the case of an appeal to the Supreme Court or District Court under the Magistrate's Act of 1908....6

In effect, the Arbitration Court was now empowered to hear appeals against its own decisions, for if a trade union was suspended, and an appeal to the Magistrate's Court was denied, then the only avenue of further appeal was to the Arbitration Court which had imposed suspension in the first place.

Nor did the catalogue of new limitations end there. For the Act had included a provision first mooted in 1907, that where a fine was imposed on a trade union, an order of attachment could be taken out to dock wages before payment, with further proviso in cases of hardship for payment by instalments.⁷

6. ibid., c.19 (1). and 10 (5).

7. ibid., c.24.

These latter clauses were in a sense a personal triumph for Millar for he had pursued the question of enforcement with dogged determination ever since the abortive attempts to levy fines on all the slaughtermen after February 1907. Now the Court could impose fines as soon as the offence was proven and the penalty imposed.

The second part of the Bill locked conciliation and arbitration together in a way never envisaged by the IC and A Act's founders. The chief victim was the Willis Amendment of 1901, for the new law categorically stated:

After the commencement of this Act no industrial dispute shall be referred to the Court until it has first been referred to a Council of Conciliation in accordance with the provisions hereinafter contained
 8

We can thus date the emergence of the modern tradition of professional Conciliation from this clause, for succeeding generations of Arbitration Court judges were to uphold the principle of no Arbitration without prior Conciliation until the day the IC and A was finally repealed. The Conciliation process was also strengthened by the inclusion of a provision that:

Every person so recommended as an assessor, must be, or have been, actually and bona fide engaged or employed either as an employer or worker in the industry, or in any one of the industries in respect of which the dispute has arisen 9

Provision was allowed for this clause to be set aside if the Conciliation

8. ibid., c.28 (1).

9. ibid., c.30 (5).

Commissioner was of the opinion that professional qualifications in the case were either inexpedient or impractical.¹⁰

Thus the IC and A Act of 1908 marks, in principle, a return to the philosophy that had informed the original statute of 1894. For Reeves had conceived of a basic two-tiered regulative system in which the common interests of the parties would require a stress on conciliation with arbitration required only where necessary.

But, 1908 was to see conciliation become mandatory as a prerequisite for admission to arbitration with the parties now restricted in law to the task of preparation of submissions and advocacy at hearings before a Conciliation Council or the Arbitration Court. Other functions of the system particularly in the matter of penalty for breach, were to be handled by professional officers of the Department of Labour, who also had sole rights to issue under-rate permits, file actions for breach and enter and search an employer's premises should a case warrant. Thus the overall stress on the administrative side of the legislation was toward giving the professional departmental officers wider powers at the expense of the parties.

The employers were prepared on the evidence to give the new Act a trial. If it proved successful then as far as they were concerned trade union energies would be contained. Meanwhile their central Federation was developing a relationship with the Department of Labour

10. ibid., c.28,2.

that would prove useful when further industrial trouble commenced.

On the trade union side, the government had strengthened the radical case for a total withdrawal from under the IC and A system, and had antagonised even the moderate wing of the Trades and Labour Councils movement. Increasing hostility toward trade union secretaries and industrial unrest was later to force moderates like Rosser, Young, Breen and others into increasingly militant stances as they sought to control the radical temper of their members particularly in 1912 and 1913. The result was to be a belated alliance between moderates and militants in 1913, which was to split asunder under the heavy pressure exerted by the Reform government to crush radicalism in the labour movement.

The IC and A Act of 1908 marked the high point of Liberal efforts to effect changes in the industrial law. It is true that minor amendments to the legislation were passed in 1910 and 1911, but to all intents and purposes their real contribution to the policy of state regulation that they had introduced in 1894, ended with Millar's great efforts of 1907 and 1908. Their legacy was also a psychological one that left the idea of public interest and penalties for direct action in the public mind. For the doctrine of the public interest now involved the extension of state coercion over those who offended against the law. The result in modern times, is that New Zealand, which was the first country to involve actively the state in a system that sought to control industrial relations behaviour in the common interest, still has a general public which views trade unions with suspicion and their leaders with alarm.

Millar, in his struggle to ensure the survival of the IC and A system, unwittingly created a situation where the Act itself could be used as a double edged device. First in 1913 and again in 1951, a government hostile to the aspirations of the labour movement would use the legislation as a device to isolate and control militant trade unions with devastating effect. Each time, the trade unions would be faced with the task of rebuilding shattered unity from industrial defeat.

In addition the IC and A Act became an instrument for economic regulation on a national scale when after 1945, the duty of establishing the terms and conditions of general wage orders was added to the functions of the Arbitration Court. This paradoxically became a flaw in the system, for when the movement to change the industrial relations system in its entirety began to emerge in the middle 1960s, it was the 'nil' general wage order of 1968 that spelled doom for the IC and A system has men had known it for eighty-four years.

Throughout its history the legislation was to create both the conditions under which militancy would emerge and the terms under which it would be controlled. The result for the labour movement was a long period of 'love-hate' relationship. The IC and A Act was reviled in good times as an unwarranted intrusion restraining workers' freedom and cherished in bad times when a hostile government or an economic recession, made it appear a safe harbour for embattled trade unions seeking refuge.

Bibliographical Notes

The main sources for the study are listed in the following categories. The bibliography is essentially selective and refers to materials that have been used in the research. The stress is thus on official documents, and published sources.

A comprehensive search for employer association and trade materials proved disappointing. Discussions with historians who have worked extensively in the period down to 1914 endorsed this conclusion. This lack is reflected in the decision to attempt to demonstrate 'national' employer and trade union views on the evolution of the IC and A system. At the same time such an approach had an important result, it demonstrated the fact that 'national' employer and trade union positions emerged quite early in the history of the IC and A system.

A word of caution is added in the case of later volume and number sequences in the journal entitled The Arena. Research I conducted in the United States revealed that Frank Parsons resigned the editorship sometime in 1907, and that it was carried on spasmodically during 1908. The journal was to re-appear as The Twentieth Century Magazine late in 1908 under a new editor. I have attempted to transpose volume and numbers forward from 1906, from the style adopted for earlier volumes and numbers, but have some doubts as to their accuracy. References for 1907 to 1908 should therefore be treated with care.

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