Asia Pacific Labour Law Review

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Workers' Rights for the New Century

Asia Monitor Resource Centre

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AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.
The Center provides information, research, publishing, training, labour networking
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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
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Aotearoa/New Zealand

Luci Highfield

History

A number of factors in the relatively recent history of Aotearoa are critical to an understanding of labour law today.

In 1840 the Treaty of Waitangi (Te Tiriti o Waitangi) was signed between the Crown (made up of colonial representatives of the British monarchy) and a number of Maori tribes. Maori, who were the tangata whenua, or indigenous people, had lived in Aotearoa for many centuries prior to colonisation by the British, French, and other Europeans. Apart from Te Tiriti, colonisation reaped its characteristic consequences – wholesale theft of land; war, sickness and death; oppression of Maori society and culture including language.

Unions were quick to establish in the new colony with the first, the Benevolent Society of Carpenters and Joiners, established in 1842. Over the following decades many new unions formed, mainly based around trades. In 1890 a 'sweating' commission was established to investigate the gross exploitation of women and children, and this initially contributed to a large increase in unionism in 1890 (200 unions with a membership of 63,000).

Following a 56-day seamen's strike, the union movement was temporarily defeated and reduced to 70 unions with a membership of 8,000 by 1894. This decrease resulted in passing the first labour law, the Industrial Conciliation and Arbitration Act 1894 (ICA) covering private sector workers. Public sector workers were covered by separate legislation from 1912. The key characteristics of the ICA (and amendments) were:

- compulsory union membership (for some of the time the Act was in force);
- union monopoly on collective bargaining – with a system of occupational-based awards. Once registered, an award covered all workers employed in that occupation (known as 'blanket coverage');
- dispute and collective bargaining resolution through conciliation and arbitration;
- strike action was possible to protest a dismissal.

This system remained fairly much in place until the late 1980s, despite some changes introduced by the Industrial Relations Act of 1973 (and subsequent amendments), such as the introduction of different classifications of disputes ('of right' or 'of interest') and the consequent different statutory methods of resolution.

In 1987 the Labour Relations Act was introduced. While this made some changes to the previous system, there continued to be an industrial relations environment where unions were a fundamental and powerful part of the landscape.

Changes included:

- compulsory union membership had to be negotiated between unions and employers. Failing agreement, unions could ballot affected workers;
- as well as awards, agreements were lawful that covered just one employer;
- arbitration was compulsory as 'final offer' arbitration in the state sector, where awards or agreements had expired for a prolonged period and one party had refused to bargain in good faith, and under the Employment Equity Act 1990. Otherwise, arbitration was voluntary;
- collective bargaining outside the award or agreement (second-, third- etc. tier bargaining) was unlawful unless a 'new matters' application to the Court was successful;
- prohibited strike action taken in protest of a dismissal.

On 15 May 1991, following the change to a conservative government, a fundamentally different regime was introduced with the passing of the Employment Contracts Act (ECA). Key characteristics of the ECA included:

- a contractual free-market based model of industrial relations, with workers being employed on either individual contracts (one worker, one employer), or collective contracts (2 or more workers, one or more employers);
- any form of compulsory unionism was not expressly permitted. In fact, the word 'union' did not appear in legislation and union rights were greatly diminished to all but limited access and representative rights;
- collective contracts could be entered into without any union involvement and collective bargaining was not a right guaranteed by the ECA. Unions had to obtain agreement from the employer to become a party to, and therefore be able to enforce, a collective contract;
- no mechanism such as arbitration was available to assist the settlement of collective bargaining.

The ECA opened the door to wholesale de-unionisation of many industries, such as those in the service sector, as employers forced workers onto individual employment contracts secured on a 'take it or leave it' basis. In the first two years of the ECA, the Service Workers Union lost half of its membership, over 40,000 workers.

During the 10 years of conservative government from 1990, many rural and urban areas were devastated by widespread restructuring, redundancies, casualisation, and outsourcing. No legislative protections existed to prevent these processes and the right to take a personal grievance for unjustified dismissal did little to alleviate the harsh circumstances in many instances, particularly once cases got to the Court of Appeal, which was commonly known for the right wing tendencies of a number of key judges.

Right wing politicians justified their extreme position in areas such as labour law by pointing to New Zealand's small size, isolated geographical position, and position in the increasingly globalised economy. As a Minister of Labour said at the time, "New Zealand is a slow moving crocodile in a fast moving river."

During this period, New Zealand workers and their families were also hit with decreases in social security, schemes such as 'work for the dole', the privatisation of the accident insurance scheme, and market rentals for housing. Large increases in the levels of poverty, unemployment, crime, and health problems, coupled with poor economic performance proved the right wing 'dream' was a sham.

By the time a left-wing Labour Alliance coalition Government was elected at the end of 1999, the situation for workers was grim. Urgent action was needed to try and reverse the trends of 10 years and to address the 17 percent level of unionisation. The primary and principal solution came in the form of the Employment Relations Act 2000, along with other industrial relations changes, such as health and safety, accident compensation, and parental leave.

Contemporary snapshot

In 2002 the landscape of employment relations law in Aotearoa, while far from picture perfect, has begun to improve for workers. The statutory minimum code has been subject to changes (see below) that will continue to be enhanced under the Labour-led coalition now in power until 2005.

The statutory minimum code spans most employment related issues, including bargaining, unions, minimum wage rates and leave entitlements, health and safety, parental leave and accident compensation.

All 'employees' are covered by the minimum code legislation. 'Employees' includes all persons who have a contract of service as well as homeworkers who have a contract for service. It excludes volunteers, independent contractors, and prison workers.

New Zealand has not ratified ILO Conventions 87 and 98.

Employment Relations Act

The most significant piece of legislation is the Employment Relations Act 2000 (ERA) that sets out the rights and obligations of the parties to employment relationships (employers, employees, and unions) from the commencement of the employment relationship, through bargaining to the termination of employment.

The objects of the ERA are:

"a) to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship –

i) by recognising that employment relationships must be built on good faith behaviour;

ii) by acknowledging and addressing the inherent inequality of bargaining power in employment relationships;

iii) by promoting collective bargaining;

iv) by protecting the integrity of individual choice;

v) by promoting mediation as the primary problem-solving mechanism;

vi) by reducing the need for judicial intervention; and

b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively."

The changes between the ECA and the ERA as well as the key features, are illustrated in the chart in Appendix 2.

The most important changes in the ERA are those in relation to good faith, collective bargaining, and union rights.

Good faith

The inclusion of general statutory obligations of good faith are considered as mirroring the implied terms already existing in common law. However, their explicit inclusion in the legislation provides to some extent greater clarity and focus on the scope and meaning of the obligations.

The parties to an employment relationship are required to deal with each other in good faith and must not, whether directly or indirectly, do anything to mislead or deceive each other, or do anything that is likely to mislead or deceive each other.

The ERA does not define 'good faith' and cases under the ERA are still developing in relation to whether there are differences between the implied term and the statutory concept. What is clear though is that 'good faith' is more about process than substance – it is about whether the parties deal with each other in a fair and open way rather than a regulation of the outcome of that

dealing or the quality of that outcome. For instance, good faith requires a fair process of termination in a redundancy situation but cannot save a person's job from redundancy, nor can good faith require compensation to be paid for the loss of a job.

The Courts are also yet to clarify whether the good faith obligations are universal or mean different things in the variety of circumstances that may arise. For instance, is the disclosure of information in a restructuring situation an obligation of good faith, in a similar way as it is an obligation in collective bargaining?

The ERA provides guidance on some matters where good faith does apply. These include, but are not limited to:
i) bargaining for a collective agreement or for a variation to a collective agreement;
ii) any matter arising under or in relation to a collective agreement while it is in force;
iii) consultation between an employer, workers and any union about the workers' collective employment interests, including the effect of changes to the employer's business;
iv) a proposal by an employer that might impact on workers, including a proposal to contract out work, sell or transfer all or part of the employer's business;
v) making employees redundant;
vi) access to a workplace by a union;
vii) communications in relation to secret ballots held for the purposes of collective bargaining.

Collective bargaining

The only area where good faith is more prescriptive is in relation to collective bargaining. The ERA provides a new and more regulated system of collective bargaining with a process framework where the requirements of good faith include:[1]

i) a requirement to use best endeavours to enter into a bargaining process arrangement, setting out a process for conducting the bargaining in an effective and efficient manner;

ii) a requirement to meet from time to time for the purposes of bargaining;

iii) a requirement to consider and respond to each other's proposals;

iv) a requirement to recognise the role and authority of the representatives, a prohibition on bargaining directly or indirectly with those represented in the bargaining and a prohibition on doing anything that does or is likely to undermine the bargaining or the other party in the bargaining;

v) an ability to request information, and if considered confidential, to appoint an independent reviewer to adjudicate over that information and its disclosure.

Contract cleaners fight lockout by employer over industrial democracy rights in collective bargaining. (Credit: Alastair Duncan, Service and Food Workers Union)

In ascertaining whether the parties are acting in good faith, such things as a Code of Good Faith, the resources available to the parties, and the background circumstances are considered relevant.

Unions registered under the ERA and employers can initiate bargaining unless there has been no collective agreement covering that work before, in which case only a union may initiate. While a union can initiate bargaining for a collective agreement, an employer can still refuse to enter into a collective agreement and, for example, insist on individual agreements, provided the employer bargains in good faith. The coverage clause of any collective agreement is also a matter for negotiation.

Unions may initiate bargaining for a multi-employer or multi-union collective agreement provided a secret ballot of union members takes place with a simple majority determining the outcome.

Once a bargained settlement is reached it must be ratified by union members voting on whether to accept or reject the settlement. If accepted, the collective agreement must be in writing and signed by both parties in order to be legally enforceable.

If an impasse is reached during bargaining the parties are able to use the industrial weapons of strikes and lockouts, provided 40 days have passed since bargaining was initiated. Where worksites are considered to host 'essential services' such as emergency services and public utilities, 14 days notice of strike action is required. Re-

placement labour is only permitted in certain circumstances. Mediation services are also available to the parties, provided by the Department of Labour.

Union rights

The third key area of change in the ERA is the inclusion of a number of union rights. These include:

i) the right of representation of members' collective employment interests;[2]

ii) the right to be parties to collective agreements;[3]

iii) rights of access to worksites for the purposes of meeting union members and recruiting non-members;[4]

iv) the right to have union fees deducted by the employer and remitted to the relevant union when covered by a collective agreement;[5]

v) the right for each union member to attend two paid union meetings each year, each meeting of two hours duration;[6]

vi) the right to have paid union education leave each year.[7]

In addition, it is unlawful to discriminate against a worker on the grounds of their involvement in union activities, including being a delegate, making a claim against the employer and taking union education leave. However it is lawful to discriminate against a worker for participation in strike action.

In order to be registered under the ERA, unions are required to be democratic, and be independent of and operate at arm's length from the employer. Registration is crucial, because a union must be registered in order to collectively bargain and be a party to a collective agreement. It is not very difficult to register as a union, and therefore a concern exists that company- or employer-sponsored unions will obtain registration in order to undermine collective bargaining.

The ERA has seen the increase in the number of unions, with 167 unions currently registered in Aotearoa/New Zealand.

Other minimum code legislation

Holidays Act

The Holidays Act 1981 fixes a minimum of three weeks paid annual leave per year after the first year of employment. After six months employment, five days special leave is provided for the following twelve months of employment. Special leave can be used for sickness (oneself or a dependent child, parent or spouse) or bereavement of a limited range of relatives. The Act also provides for 11 statutory holidays which will be holidays on pay where the day falls on a normal working day for the worker.

In 2003 it is expected that an updated Holidays Act will be introduced, to include a minimum penal rate of time and one half for working on statutory holidays and improved sick leave entitlements. Trade unions are also campaigning for four weeks paid annual leave.

Minimum Wage Act

The Minimum Wage Act 1983 provides for an annual review of the national minimum wage. Currently, the adult (age 18 years and over) minimum wage is $8.00 per hour and the youth minimum wage (age 16 -17 years) is $6.40 per hour.

Wages Protection Act

The Wages Protection Act 1983 prohibits any deduction from a worker's pay without their consent.

Health and Safety in Employment Act

The Health and Safety in Employment Act 1992 requires employers to set up and maintain safe systems of work, including identifying hazards and prioritising the control of those hazards. The Act requires employers to provide information and safety equipment to workers and to record accidents.

In 2003 new legislation will see greater emphasis on worker and union participation in health and safety development in the workplace, training, and enforcement.

Parental Leave and Employment Protection Act

The Parental Leave and Employment Protection Act 1987 provides for maternity, paternity, and up to 52 weeks extended leave. Prior to 1 July 2002 all leave was unpaid. However, following a decade or more of campaigning by trade unions and community groups, recent changes have introduced a 12 weeks paid parental leave entitlement to one parent, provided they have been employed with the same employer for 12 months prior to the birth or adoption of the baby and for a minimum number of hours. The payment is capped at NZ$325 before tax per week.

While the changes are a positive start, they fall short of the ILO standard of 14 weeks and the level of payment is only just above the unemployment benefit, meaning a significant decrease in income for many women for the 12 weeks. The Government will undertake a review in 2003. The number of weeks and level of payment are likely to be on the agenda, as will the 12-month period of employment required for eligibility.

Accident compensation

The Injury Prevention, Rehabilitation, and Compensation Act 2001 contains a basic principle of a 'no fault' scheme for personal injury by accident, whether the accident is at work or elsewhere and whether the person is an 'employee' or not.

If a worker suffers a work injury, the employer is required to pay the first week of compensation of 80 percent of the earnings lost by the worker. If the incapacity continues beyond the first week, the Government pays the weekly compensation.

While amendments to the accident compensation scheme in 1992 abolished the lump sum payments for permanent impairment, pain, and mental suffering, and the 1998 amendments opened the market to private insurers, the lump sum payments have now been restored and the Government once again delivers the scheme, although accredited employers can use private insurance companies to deliver the scheme.

Human Rights Act

The Human Rights Act 1993 provides comprehensive protection against direct and indirect discrimination based on sex, marital status, family status, race or colour, religious or ethical belief, ethnic or national origins, age, disability, employment status, sexual orientation, or political opinion.

The Act covers discrimination occurring in employment, education, access to public places, provision of goods and services, housing, and accommodation.

The Human Rights Commission includes a Race Relations Commissioner and will soon include an Equal Employment Opportunities Commissioner.

Equal Pay Act

The Equal Pay Act 1972 requires there to be equal pay although the mechanisms for comparison in order to ascertain whether there is equal pay between men and women relied on the existence of industry awards or access to collective or individual terms of employment. Since 1991 this has become virtually impossible and the Equal Pay Act is rarely invoked.

The gender pay gap is still very real with women's average weekly earnings 23 percent below men.

State Sector Act

The State Sector Act 1988 sets out additional obligations and rights for those in the core public service, including obligations to be a 'good employer' and to promote equal employment opportunities.

Industry Training Act

The Industry Training Act 1992 provides a scheme of industry training through Industry Training Organisations funded and monitored by a central board. The Modern Apprenticeship Training Act 2000 extends the training scheme to provide for funding and monitoring of apprenticeships.

Privacy Act

The Privacy Act 1993 sets out rights and restrictions in relation to the collection, disclosure and use of personal information in many situations, including employment.

Unfair dismissal

In Aotearoa a worker may be dismissed for misconduct (theft, violence, etc), poor work performance, redundancy or extended absence due to illness. A worker who has been dismissed has a right to take a personal grievance for unjustified dismissal. The onus is on the individual worker to take up that grievance with the employer.

A dismissal is unjustified if it is substantively or procedurally unfair or unreasonable. Matters of procedural fairness include basic rights to natural justice – the right to have the allegation put (in cases of misconduct or poor performance), the right to be heard, and to be heard by the decision-maker, when the employer's decision must be free from bias and not pre-determined.

In relation to redundancy dismissals, an employer must comply with any redundancy clause in the employment agreement, including process obligations and pay-

ment of redundancy compensation. However, the refusal to pay redundancy compensation or provide redeployment opportunities will not be unjustifiable if those matters are not included in the employment agreement. It may be unjustifiable in the particular circumstances if there was no consultation prior to the decision, or in relation to the outcome, but this will not necessarily be the case.

Personal grievances are also available for discrimination, sexual harassment, racial harassment, unjustified actions causing the worker disadvantage in their employment, and duress in relation to union membership.[8]

Where a worker considers they have a personal grievance, there is an obligation on the worker to raise this with their employer within 90 days of the event giving rise to the grievance occurring. If unable to resolve the grievance through informal discussions, the parties are able to utilise mediation services through the Department of Labour. If the grievance is not resolved at mediation, the worker may pursue their claim to the Employment Relations Authority, which holds an investigative meeting and determines an outcome, including remedies. That outcome can then be appealed by way of 'de novo' hearing to the Employment Court. The Court of Appeal is the final stop, but can only be appealed to on questions of law.

Re-instatement is a 'primary' remedy for unjustified dismissals. This was changed from the ECA that did not prioritise re-instatement, and therefore made it very difficult to win. Additional remedies include re-instatement of lost wages, compensation for humiliation, loss of dignity or injury to the feelings of the worker, and compensation for loss of a benefit. Where a personal grievance of sexual harassment or racial harassment has been found to exist, the Authority may make additional recommendations to the employer to assist in the rehabilitation of the worker and to prevent further harassment.

Generally, personal grievances are the most common form of legal action taken by workers against employers in New Zealand. Remedies for dismissals are considered by many unions to be too low.[9] This is in part because of the statutory requirement on the Authority to take into account any contribution the worker made to the personal grievance in awarding remedies. This can result in up to a 100 percent reduction.

Effectiveness of labour law

With few exceptions, the labour laws in Aotearoa/New Zealand cover most workers and do so to a reasonable degree. As we are still emerging from the 10-year period of right-wing dominated de-unionisation, progress is slow. Huge sectors of the workforce remain non-union, including many young workers, service and retail sector workers, homeworkers, and migrant workers. In the 2000 – 2002 period, employers and unions have been adjusting to the environment of good faith, with some employers slower than others to embrace the change.

The effectiveness of labour law in this country is undermined by a number of things:

The inadequacies of the legislation

There are a number of critical inadequacies in the current legislation. These relate to:

Collective bargaining – including –

i) inadequate sanctions for breaching obligations of good faith (at present a compliance order is the only remedy available);

ii) there is no requirement on an employer to agree to a collective employment agreement, and may insist on individual agreements;

iii) there is no special protection or assistance for first-time or greenfields collective bargaining, which can often be difficult and protracted;

iv) few minimum statutory requirements in a collective agreement, with no minimum redundancy process or compensation required;

v) collective bargaining can be undermined by the employer bargaining in parallel with non-union members or agreeing to individual agreements that are superior to the collective agreement;

vi) freeloading by non-union workers is not even discouraged by the Act, so bargains are consistently undermined by the immediate pass-on of those union negotiated benefits to non-union workers.

The effect of these inadequacies is that union members may well be organised and bargaining collectively through their union, but still be unable to achieve a collective agreement. In the process of bargaining, the employer can use a raft of weapons, without fear of penalty, to undermine the bargaining including offering non-union workers the same or superior terms and prolonging

the bargaining in high turn-over industries. Without minimum redundancy, hours of work, and security of employment provisions, the end bargain may be little better than was bargained under the ERA.

Strike action requires 40 days to have passed since initiating bargaining, restricting the ability for unions to pressure employers in the bargaining process discussions and bargaining itself. In addition, the ERA needs urgent amendment to prohibit discrimination by an employer against striking workers.

Redundancy law in New Zealand is very harsh on workers. Many workers do not have any redundancy compensation in their employment agreements, and the negotiation or retention of provisions remains difficult. If the agreement omits redundancy compensation or provides that none shall be paid, a worker cannot be awarded compensation for loss of a job by the Authority even if the dismissal was found to be otherwise unjustified. The Authority will not scrutinise the reasons for the redundancy, with the redundancy only needing to satisfy a superficial test of validity.

Remedies for personal grievances – as referred to above, remedies for personal grievances are low and are subject to a determination about contributory fault. These difficulties undermine the security of many workers' employment, particularly union members, as it remains a relatively cheap matter for employers to rid themselves of union activists and others who fall from favour.

Inadequate leave entitlements including annual leave, paid maternity leave (below the ILO minimum), sick leave, and bereavement leave. Unions are currently lobbying the Government for improvements to all leave entitlements.

The absence of protective legislation for contract workers

Outsourcing or contracting out in New Zealand has become widespread throughout many industries, particularly the service sector. Through the 1990s contracting out became part and parcel of privatisation and liberalisation.

Contract workers are those who work for a business ('a contract company') that has a service contract of fixed duration with the principal or user enterprise in which the service operates. An example are cleaners or catering workers employed by a contract company to work inside a hospital, where the hospital is a District Health Board, which is a separate legal entity from the contract company. Usually service contracts are decided by a competitive tendering process, where the cheapest tender is achieved through reductions in wages and/or conditions or in staff numbers performing the work.

As there is no employment relationship between the workers and the user enterprise, and there is no legal obligation on a new employer to employ any person, when one contract company loses a service contract, the workers are most likely to lose their employment. There is no legal obligation on either the existing employer to continue to employ the workers, or on the incoming contract company to offer employment to the workers. Even if the incoming contract company does offer the workers employment, it does not need to be on existing terms and conditions.

Thus, through the 1990s, many service sector workers found themselves in a downward spiral of continual job loss, continual wage reduction, and conditions reduction. With precarious employment, many contract workers have no redundancy compensation to cushion the blow of unemployment.

The New Zealand Council of Trade Unions (NZCTU) and the Service and Food Workers Union have been vigorously lobbying the coalition government to implement legislation that will require the incoming contract company to employ all existing workers on their existing terms and conditions of employment. While promises by the left-wing parties have been made for implementing such legislation after the July 2002 election, there is considerable disappointment that the Government has not acted sooner to protect this vulnerable group of workers.

Over-employment and under-employment

The labour market has become more and more polarised, with some sectors becomingly increasingly over-employed, working long hours each day over more than five days per week, and under-employed, working in marginal casualised employment on an 'as and when required' basis. Casualisation was a deliberately created employment status to provide flexibility for employers and became rampant in the 1990s.

Trade Unions, Membership, and Union Density 1985-2001 (selected years)

		Potential union membership	Union density			
	Union member ship (1)	Number of unions (2)	Total employed labour force (3)	Wage and salary earners (4)	(1) / (3) percent (5)	(1) / (4) percent (6)
Dec 1985	683006	259	1569100	1287400	43.5	53.1
Sep 1989	684825	112	1457900	1164600	47.0	55.7
May 1991	603118	80	1426500	1166200	42.3	51.7
Dec 1991	514325	66	1467500	1153200	35.1	44.6
Dec 1992	428160	58	1492900	1165700	28.7	36.7
Dec 1993	409112	67	1545400	1208900	26.5	33.8
Dec 1994	375906	82	1629400	1284900	23.1	29.3
Dec 1995	362200	82	1705200	1337800	21.2	27.1
Dec 1996	338967	83	1744300	1389500	19.9	24.4
Dec 1997	327800	80	1747800	1404100	18.8	23.3
Dec 1998	306687	83	1735200	1379200	17.7	22.2
Dec 1999	302405	82	1781800	1414100	17.0	21.4
Dec 2000	318519	134	1818400	1454500	17.5	21.9
Dec 2001	329919	165	1860700	1500700	17.7	22.0

Source: Household Labour Force Survey, Table 3, Table 4.3 (unpublished)

The issue of stress has more recently become a huge workplace issue with the increase in the expectations of the quality and quantity of work by employers. Through the 1990s many businesses downsized, and in many cases, this lead to one worker now performing the job that had once been performed by two or more workers. Technology advances, the introduction of performance-based pay systems, and the 24/7 nature of our society have also added to the stress associated with over-employment.

At present, the coalition government has a new health and safety bill in Parliament that specifically identifies stress as a health and safety hazard. This is an attempt by the Government to send a message to employers that they must address the causes of stress in workplaces.

On the other end of the scale, due to the precarious nature of their employment status, many casual workers also suffer the stress of job insecurity. In addition, they do not generally receive minimum code rights, such as leave entitlements, and the 'take it or leave it' employment agreements make it virtually impossible to bargain terms and conditions of employment. As employment is insecure, many casual workers are not unionised, having no information about relevant unions and may be too scared of job loss if the employer discovers they are union members. Many casual workers have multiple jobs in order to meet financial commitments. As the termination of a casual worker is generally not considered unjustified, personal grievances are not available for unfair dismissals. There is no statutory regulation of the employment of casual labour.

Union resources

As the levels of unionisation dropped away to 17 percent by the late 1990s, so too did the resources of the trade unions. As trade unions are principally funded by union fees, income dropped and many unions remain in precarious financial positions. The scarcity of resources has

fundamentally affected the unions' ability to drive forward concerted and widespread efforts to re-unionise. The ERA did not provide the means of turning around the levels of union membership many hoped it would, with membership currently down to 17.7 percent and continuing to decrease.

Freeloading remains a huge barrier to re-unionising workplaces. In addition, several generations have been born without knowledge of the past unionism, and there is a huge amount of work to do in re-educating young people about unions. A NZCTU apprenticeship programme, begun in 2002, as well as networks for young workers, such as the Young Union Movement will need continued support to ensure the survival of unions in years to come.

Unions have generally switched to a more campaign, organising focused approach, with the emphasis on activating members through education and campaigns, as a means of overcoming limited resources and the decline in membership.

NZCTU campaigns such as 'Fairness at Work' and 'Get A Life' are cross-union campaigns aimed at improving workers' lives at work, at home, and in the community. These campaigns recognise the importance of leave entitlements, hours of work, job security, health and safety, and pay equity. The campaigns are also aimed at making unions relevant to workers. Other unions have specific campaigns, such as the Service & Food Workers Union and NZ Nurses Organisation campaign focusing on valuing the work performed and quality training for careworkers in aged care facilities. The Rail & Maritime Union's 'Buy Back the Track' campaign stems from years of disastrous privatisation of the railways and seeks to pressure Government into buying it back.

Unions continue to struggle, but with another three years of a Labour-led coalition government now assured with improvements to the ERA possibly to be made, it is hoped that union density can be increased and long-term survival become more certain.

Notes

1. Section 32 ERA.
2. Section 18 ERA.
3. Sections 5, 54 ERA.
4. Section 20 ERA.
5. Section 55 ERA.
6. Section 22 ERA.
7. Sections 70 – 79 ERA.
8. Section 103 ERA.
9. January to June 2001 figures indicate that most Employment Relations Authority awards for compensation for humiliation were less than $5,000.

Appendix 1

Major events 2000 - 2002

Date	Event
November 1999	Election of a new centre-left coalition government
December 1999	Government voted to increase adult minimum wage from $7 to $7.55 and the youth wage from $4.20 to $4.55/hour
Early 2000	Government introduced a bill to end the private insurance provision of accident compensation
	A new Ministry of Economic Development heralded as a 'jobs machine' by providing $100 million a year in loans and grants to businesses
14 March 2000	Introduction of the Employment Relations Bill in Parliament, repealing the Employment Contracts Act
March 2000	The Government introduced the modern apprenticeship scheme
	Job losses of 200 announced in a South Island meat processing plant, and 600 Inland Revenue job losses
May 2000	Government announced it would scrap the 'work for the dole' scheme
mid- 2000	Ministerial inquiry held into the health and safety record of Tranz Rail after five workers were killed in one year
August 2000	Employment Relations Bill given its third reading in Parliament
	Junior doctors took strike action in four centres
September 2000	Unemployment dropped to its lowest in 12 years, with 5.9 percent of the workforce out of work
1 October 2000	Employment Relations Bill came into force
	Controversy caused over the Registrar of Unions purporting to register unions prior to the ERA coming into force Registrations subsequently declared invalid by Court of Appeal
November 2000	Pickets and strike action by union members protesting at the use of casual contract labour on the waterfronts at various South Island ports
December 2000	Human Rights Commission released sexual harassment report showing that nearly one in three women over the age of 18 had been sexually harassed
	Fisher & Paykel, a whiteware company, laid off 200 middle management
1 January 2001	The Protected Disclosures Act 2000 ('the Whistleblowers Act') came into force
Early 2001	Loss of 1,500 jobs across the country with the closure of 43 stores in one retail chain
February 2001	Vets employed by the Ministry of Agriculture & Fisheries took strike action in support of their collective employment agreement claims for a 17 percent wage rise. They had not had a wage rise since the early 1990s
March 2001	Unemployment down to 5.4 percent
	Tranz Rail fined $50,000 after pleading guilty to two health and safety charges involving the death of a railway shunter
	Secondary teachers lodged a pay claim worth $105 million. Industrial action and bargaining continues throughout 2002
April 2001	Qantas Airways (New Zealand) collapsed with the loss of 1,100 jobs
July 2001	About 500 probation workers went on strike in support of collective bargaining
	Strike action taken by about 225 waterfront workers in Auckland
	Fire fighters won their long-running dispute and secured a new collective agreement, with their first wage increase in 10 years
October 2001	Government introduced amendments to the Health & Safety in Employment Act, providing for more worker participation. This has yet to become law
12 November 2001	Over 1,100 workers employed by Canterbury District Health Board walked off the job in support of a 6.5 percent wage increase over two years
December 2001	Government announced 12 weeks paid parental leave would commence from 1 July 2002
	Government announced the overhaul of the Holidays Act, including the improvement to sick, domestic, and bereavement leave entitlements
March 2002	Increase of the adult minimum wage to $8 per hour, and youth rate increased to $6.40 per hour
	Strike action taken by secondary teachers in support of pay claims, after 'wildcat' strike action taken in April 2002
1 July 2002	Paid parental leave commences
27 July 2002	General Election – Labour-led coalition government formed

Appendix 2

Key differences between the Employment Contracts Act and the Employment Relations Act

	Employment Contracts Act	Employment Relations Act
Objectives	contracting approach anti-union pro-individual bargaining supports and assists unequal bargaining	key is good faith in the employment relationship pro-union supports and assists collective bargaining promotes the observance of ILO conventions on freedom of association and the right to organise and to bargain collectively
General obligations	freedom of association	freedom of association general obligations of good faith in all aspects of the relationship
Bargaining	very little regulation - no rules the employer is not required to bargain at all the employer is required to recognise the authority of the union to negotiate anyone or any organisation can negotiate collective employment contracts (CEC) Union only a party to CEC if employer agrees Individual employment contract (IEC) = 1 worker – 1 employer CEC = 2+ workers – 1 employer multi-employment collective employment contract = 2 + workers – 2 + employers when a CEC expires, workers are employed on IECs based on the CEC employers & unions can initiate negotiations 'negotiations' are defined narrowly	obligations to bargain in good faith regulate collective bargaining, including obligations: to meet & respond to proposals; to recognise the union's representation of their members and not to undermine the union or bargain directly with members; provide information only unions can bargain for collective employment agreements (CEAs) union always a party to CEA individual agreement = 1 worker – 1 employer collective agreement = 1 union (2 + workers) - 1 employer multi-employer agreement = 1 or more unions and/or 1 or more employers if bargaining is initiated before expiry of the CEA, the CEA remains in force for a further 12 months unions can initiate bargaining within 60 days from the date of a CEA expiring. If no CEA, then can initiate at any time. Employers can initiate bargaining within 40 days from date CEA expires. Employers cannot initiate unless there has previously been a CEA or a CEC still in force after 2 October. (Note: multi-employer and multi-union have different timeframes) 'bargaining' is widely defined to include all interactions between the parties which relate to the bargaining, including all communications
Content of collective contracts/ agreements	whatever can be negotiated only mandatory requirement is an expiry date	whatever can be negotiated mandatory requirements are: an expiry date; a variation clause; a coverage clause; an explanation about services available a clause dealing with the rights and obligations of the parties if the work is contracted out or the business is sold or transferred to protect workers from being disadvantaged
New employees	employed on whatever is agreed (IEC or CEC)	employed for first 30 days on the terms of any applicable CEA. If join a union then covered by CEA

Union rights	access only for the purposes of negotiations. Access only to premises controlled by the employer no paid union meetings unless employer agrees no paid education leave unless employer agrees no union fee deductions unless employer agrees	access for any purpose including recruiting, health and safety and union business 2x2-hours paid meetings per year paid union leave of up to five days per member union fee deductions for workers on a CEA
Dependent contractors	the words of the contract determine the employment status of the worker irrespective of the reality of the working situation	the words of the contract are not all that is to be considered: all matters must be considered when determining the employment status of workers
Unfair contracts	contracts can only be set aside or compensated for if harsh and oppressive or procured by harsh and oppressive conduct	unfair bargaining if unable to understand because of age, sickness, mental or education disability, communication disability or emotional distress, and other circumstances
Personal grievances	types include: unjustified dismissal unjustified action to worker's disadvantage discrimination, including involvement in activities of a union sexual harassment duress re-instatement not primary remedy discrimination – onus of proof on worker	types of personal grievance the same as ECA but also include: racial harassment Human Rights Act grounds of discrimination re-instatement a primary remedy union discrimination – onus of proving no discrimination on employer
Strikes and lockouts	strikes in support of multi-employer contracts unlawful strike and lockout any time other than when collective contract is in force	strikes in support of multi-employer agreements are lawful must have initiated bargaining at least 40 days before strike or lockout
Institutions	Employment Tribunal – functions of mediation and adjudication Employment Court – injunctions, appeals of personal grievances, etc Court of Appeal – only appeal on points of law	Mediation Service – a variety of information, advice, and mediation services Employment Relations Authority – investigative, deals with good faith, personal grievances, and interim re-instatement Employment Court – appeals from Authority are 'de novo' hearings Court of Appeal – only

Appendix 3

Key information

Aotearoa/New Zealand lies in the southern Pacific Ocean, 1,600 kilometres east of Australia. The total land area is 270,500 square kilometres, about the same size as Japan or Britain.

Population	3,898,600 (31 March 2002)
Total employed	1,867,000 (March 2002)
Made up of	1,024,000 males
	843,000 females
Unemployment	5.3 percent (March 2002)
GDP	3.2 percent
Consumer Price Index	2.6 percent

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