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Introducing labour flexibility: The example of New Zealand

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The perceived need for greater flexibility has been the driving force in a dramatic reform of the industrial relations system in New Zealand over the past ten years. The experience of this reform offers an interesting perspective for assessing the introduction of flexibility there and in other countries. Collective bargaining and labour market flexibility have been closely associated, albeit negatively.

The introduction of flexibility into the labour market and the industrial relations system has been an important part of the change in New Zealand's economic and political environment. The changes followed claims that the previous system of labour relations was inefficient and inflexible, and an historical perspective highlights elements that were considered major obstacles to flexibility. Accordingly, a significant portion of this article is concerned with understanding the development of the flexibility issue in New Zealand. After explaining the nature of the post-1991 system, it concludes with reflections on the relative importance of bargaining arrangements for a system's flexibility.

Background to economic and legislative change

Throughout the 1960s and 1970s the New Zealand economy was highly regulated, protected by government policy from many outside influences. High tariffs, import licensing requirements and quotas gave it one of the highest levels of effective protection amongst OECD countries (see OECD, 1990). The Government embarked on a number of job creation and maintenance schemes which resulted in very low unemployment. The cost, however, was reduced international competitiveness and "the creation of an insular, inefficient, increasingly rigid, inflation-prone economy — which proved ill adapted to external shocks and to the challenges and opportunities of a rapidly changing world economy" (OECD, 1990, p. 13). The economic situation reached a crisis in the early 1980s as the economy was no longer sustainable. This led to a

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dramatic rethink of economic and social policy, culminating in wide-ranging structural and institutional reforms.

The economic and social changes which started in 1984 were based on "New Right" ideology (founded on neoclassical economics) and involved a radical redefinition of the role of the State. The Government referred to the programme as an implementation of orthodox economic policies based on international best practice, as outlined by agencies such as the OECD, the World Bank and the IMF (Department of Labour, 1990). This "best practice" constituted the abolition of wage, price, interest rate, credit and foreign exchange controls in 1984. The New Zealand dollar was devalued by 20 per cent and then floated. The financial sector was deregulated, with provision for the entry of foreign banks. Subsidies and price support to farmers and other exporters were discarded and a programme to remove tariffs and trade barriers instituted. Government trading activities were corporatized and privatized, along with a general restructuring of the public service. There were radical reforms of personal and company taxation, including sharp reductions in rates; a fringe-benefits tax and a broad-based consumption tax were introduced. A negative income tax (family support) rounded off the tax package, replacing social welfare payments as the major means of raising low incomes. The social welfare state was reconsidered, access to health services was restricted, tertiary education sustained dramatic fee increases, and sickness and unemployment benefits were substantially reduced (see Harbridge and Honeybone, 1996).

The Government's intention was to allow markets to operate with less specific economic regulation, guided rather by general law. In simple terms, the neoclassical approach that was applied saw the market as being a superior means of restoring democracy, individual liberty and the efficient distribution of resources. It was highly intolerant of those pressure groups, such as trade unions, which argue for constraints on the unfettered operation of the market. Yet the widespread structural and institutional reforms of the 1980s were not replicated in the industrial relations arena until 1991.

Labour market reform

Historically, labour relations in New Zealand were based on collectivist assumptions which implied state intervention to facilitate effective and efficient labour relations. The Industrial Conciliation and Arbitration Act of 1894 encouraged collectivism. The Act required the registration of unions to ensure an acceptable level of financial accountability and democratic operation in their internal affairs was central to the operation of the system. The industrial relations system was founded on conciliation and arbitration as means of resolving disputes over wage fixing and related matters.

The bargaining structure that emerged was a network of national multi-employer awards (collective bargains). Most awards were occupationally based, with coverage throughout the country, and invariably contained common-rule provisions that bound all workers covered by the award through compulsory union membership. Most awards, while often confined to a single industry, did not cover all employees in the industry as they were occupationally based. A

consequence of this was that even quite small firms were likely to have employees covered by three or more awards (see McAndrew, 1992).

The industrial relations system was best described as multi-tiered. The wage formation process until the late 1980s was a good illustration. It consisted of a range of elements: the national minimum wage; general wage adjustments made by the Government or the arbitration court; awards which set national minimum wages for various jobs; registered collective agreements which set minimum wage rates at the enterprise level; and informal house agreements, setting pay rates for particular jobs at the enterprise level.

An ideology of deregulation

The collectivist ideology underpinning the labour market came under increased pressure in the 1980s from a variety of sources. In briefing papers to the Government, the Treasury signalled its views on labour market reform, arguing that the pre-1984 system of labour market regulation was "rigid" and restricted employment opportunities (Treasury, 1984, p. 235). Such claims were bolstered by the OECD, which identified the labour market as the area that had been reformed the least (OECD, 1985).

The Treasury was not alone in pressing for deregulation of the labour market. The central organizations of employers (the New Zealand Employers' Federation) and unions (the New Zealand Federation of Labour, as it was then called) were also expressing dissatisfaction with the system of industrial conciliation and arbitration. Tripartite talks on its failings and on the future of wage fixing took place during a government-imposed wage and price freeze (June 1982 - December 1984). As a result of these pressures for change, the Department of Labour was commissioned to undertake the preparation of consultation and policy papers (Green Paper/White Paper studies). Once reactions had been received from unions, employers and the general public, a set of reform proposals, *Government policy statement on labour relations: A framework for review,* was published in 1985. A hands-off approach (the complete withdrawal of official intervention) was rejected, in recognition of the special characteristics of the labour market and because of concern regarding the balance of bargaining power and thereby the market's efficiency. This led to repeal of the Industrial Relations Act 1973 and adoption of the Labour Relations Act 1987 (Department of Labour, 1985 and 1986).

The Labour Relations Act 1987 represented an attempt to reduce government intervention in the labour market by establishing a framework within which employers and workers could voluntarily conclude comprehensive employment contracts as equal partners. Basically, the aim was to make the bargaining framework permissive rather than prescriptive. The Act made appreciable changes to the labour market regime but retained the basic concepts of the previous legislation. Its most forceful critic was the New Zealand Business Roundtable (NZBR), a body representing the chief executives of most of New Zealand's large enterprises. The NZBR and other pro-market groups undertook to convince the electorate and politicians that the labour market was rigid and inflexible and that further radical reform was needed (New

Zealand Business Roundtable, 1988). It was argued that inflexibilities were a result of centralized collective bargaining.

The Labour Relations Act had opened up the path for enterprise agreements, but it was a path largely controlled by the union movement. Unions — not employers — were given the sole right to choose the bargaining forum, to maintain award coverage or to cite the employer out of the award system (allowing the employer to negotiate an agreement separately from the national collective agreement). Overall, unions took a conservative approach, with the consolidation and protection of their awards being the major reason why three-quarters of all registered unions failed to cite out any employer (see Harbridge and McCaw, 1992). The bargaining framework was considered too restrictive by many commentators. The NZBR continued to criticize labour market inflexibility for causing unemployment, low pay, economic stagnation and the concentration of disadvantaged groups within the poorer segments of the labour market (see New Zealand Business Roundtable, 1988; Treasury, 1990).

The Labour Government, which had instigated the reforms between 1984 and 1990, was replaced at the general election in October 1990 by a National Party Government. The basic market-oriented economic and social policies of the previous Government were continued, but attention turned to the labour market. The National Party's manifesto had portrayed the Labour Relations Act as constraining employers and employees from developing their own specific labour policies, thus restricting growth in productivity, income and employment. Labour market flexibility, which entailed further deregulation of the labour market and a move away from collectivism, was advanced in the Employment Contracts Act 1991.

The Employment Contracts Act 1991

The Employment Contracts Act is based on the same free market principles as were the economic and social policy measures introduced in other areas of the economy in the late 1980s, incorporating the libertarian notion that workers and employers are free agents, free to contract with each other on the price and conditions of work (see Harbridge and Hince, 1994). The Act states as a primary objective the promotion of individual freedom. It was designed to replace the predominant pattern of national, occupational, multi-employer awards with individual or collective arrangements at the enterprise or sub-enterprise level. This was partly a reaction to bargaining difficulties under the traditional conciliation and arbitration structure, whereby unions maintained exclusive bargaining rights and monopoly coverage by occupation. One of the results of this was that in industries with a range of occupations there were numerous unions to bargain with; in the health sector, for example, over 60 of New Zealand's 100 unions had the statutory right to bargain collectively for their members employed in the sector (Harbridge and Hince, 1994, p. 580).

The Employment Contracts Act radically altered the bargaining environment. It stipulates that the issue of whether bargaining is to take place for an individual or a collective employment contract is itself a matter for

negotiation. The primary parties to the bargaining process are the individual employee and the employer. Each may choose to be represented by another person, group or organization as the "bargaining agent". The Act does not include a single reference to trade unions or trade unionism. All sections of earlier legislation relating to membership, ballots and elections within unions have been deleted. All exclusive rights previously accorded to unions have been withdrawn. While unions are free to play a role in the labour relations system as bargaining agents, they no longer have exclusive bargaining rights or automatic rights in the workplace. Unions no longer have a statutory role in the labour market. The Act uses the term "employee organization", but such organizations are not accorded registered status or any of the historical rights of trade unions. The change in direction is most clearly demonstrated by reference to the objectives of the new legislation as compared with those of its predecessor.

The purpose of the Labour Relations Act 1987 was to:

- facilitate the formation of effective and accountable unions and effective and accountable employers' organizations;
- provide procedures for the orderly conduct of relations between workers and employers; and
- provide a framework to enable agreements to be reached between workers and employers.

By contrast the purpose of the Employment Contracts Act 1991 is to:

- promote an efficient labour market, and in particular:
  - provide for freedom of association; and
  - allow employees to determine who (if anyone) should represent their interests in relation to employment issues.

The Employment Contracts Act places the employment relationship on a contractual basis. Like any commercial contract, it is seen as a matter solely for the parties and is not open to public scrutiny. This poses difficulties for the research and analysis of developments in the labour system. Prior to 1991, awards and other settlements registered with the former Arbitration Commission were a matter of public record and published annually. Now other sources, using various methodological approaches must be used.[1]

[1] They include the Quarterly Employment Survey (QES), Heylen Research Centre (1992 and 1993), Victoria University of Wellington's Department of Industrial Relations database, Statistics New Zealand (various years), academic studies and commentaries and personal interviews with representatives from employers' and workers' groups, government and enterprise. It should be noted that other factors such as changes in unemployment levels and the size of the workforce, in terms of trade and export and import volumes, impinge on labour relations but are beyond the scope of this article. The QES is conducted by Statistics New Zealand, which is established as an independent organization under statute. The QES covers all enterprises with more than two full-time equivalent employees, in all industries except Agriculture and Hunting, Fishing and a few other small groups. In 1992 and 1993 specific questions pertaining to bargaining structures were included.

The Employment Contracts Act 1991 was introduced against the background of what was perceived to be an inflexible labour market. It dramatically widened the range of issues that could be negotiated — including a variety of flexible work practices. The following excerpt from section 18 of the Act demonstrates how much wider the range became:

> Freedom to negotiate
>
> (1) Negotiations for an employment contract may, subject to this Act, include negotiations on any matter, including all or any of the following matters:
>
> (a) The question of whether employment contracts are to be individual or collective;
>
> (b) The number and mix of employment contracts to be entered into by any employer.
>
> (2) Nothing in this Act requires any employer to become involved in any negotiations for a collective employment contract to which it is proposed that any other employer be a party.

Together with the deregulation and subsequent decentralization of bargaining and management's raised awareness of the potential for flexible work practices, this broader perspective led to a re-examination of the employment relationship. Alteration of the balance of power in the employment relationship facilitated the introduction of flexible work practices in some cases where it had not been negotiated. A number of key elements acted as catalysts for the introduction of greater flexibility, including the state of the national economy and changes in the global trade regime, product and service markets, consumer demand and technology.

The claims of inflexibility preceding the 1991 Act centred on the bargaining structures built up since 1908 by successive versions of the legislation governing the labour market. Even the Labour Relations Act 1987, which was an attempt at reform, provided a detailed code for the legal regulation of the relationship between collective parties only and did not specifically address the individual employee-employer relationship. Employees were dependent not just on a collective but on a registered collective, namely a union, which acquired rights and responsibilities, levels of accountability and internal regulation, as part of its involvement in the industrial relations process. While there is evidence of flexibility in the system of centralized awards, the general picture was of a system of occupational awards, fixed nationally, with accepted internal relativities and accepted relativities between one award and another. Hours of work and most conditions of work were established in awards by the courts, adopting a similar centralized, national approach. Dispute resolution and strike control were also focused at this level.

The 1991 Act abolished centralized bargaining by focusing on the enterprise. Arguably, the emergence of the enterprise as the predominant bargaining level (with various laws on minimum conditions used as guidelines), has been the most important development in fostering flexibility in enterprises, whether by way of collective or individual employment contracts.

The coverage of collective bargaining

Collective bargaining was one of the most noticeable casualties of the Employment Contracts Act 1991. It shifted labour relations from occupational/industry-wide bargaining, widespread multi-employer settlements and compulsory unionism (which had led to almost universal collective coverage of the workforce) to a deregulated, decentralized system founded on individual freedom of choice and largely determined by the exigencies of labour supply and demand.

The focus on free choice means that workers and employers must first decide whether or not to bargain and then determine the type of contract and the content of any negotiations. The legislation provides for two types of bargaining arrangements — individual or collective employment contracts.

There has been a significant decline in collective bargaining since 1991. Whether this decline has come about with direct anti-collectivist intent on the part of the Government or employers or whether it is a natural transition to a "new", flexible, more efficient human-resource-powered labour market is the subject of considerable debate.

The benchmark bargaining round for comparing the two legislative periods is the 1989/90 round, the last completely under the old legislation.[2] In the 1989/90 bargaining settlements, 721,000 people were recorded as being covered by collective bargains in a compulsory registry with the Arbitration Commission. This represented around 73 per cent of the workforce, involving over 70,000 employers. The collapse in collective bargaining coverage was rapid: by the 1990/91 bargaining round, coverage was estimated to have fallen to 610,000 in anticipation of the enactment of the new legislation. By February 1993, survey data from the Quarterly Employment Survey by Statistics New Zealand suggest that there were some 428,000 employees covered by collective bargaining arrangements.[3] Over a similar period (1993), Harbridge and Honeybone (1994) identified collective contracts covering 340,000 workers. Based on the firms represented in their database and the demographics of firms in New Zealand, they also estimated that collective bargaining coverage was unlikely to exceed 370,000. Regardless of data differences, there are indications that bargaining collapsed by between 40 and 50 per cent between 1989/90 and 1993/94. In 1994/95 some 373,000 workers were reported to be covered by collective employment contracts (Harbridge and Honeybone, 1995). More recently (1996/97), 416,000 workers have been identified as covered by such arrangements, still far below the coverage before adoption of the Employment Contracts Act (Harbridge, Crawford and Kiely, 1997).

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[2] The introduction of the draft legislation at the end of 1990 had signalled a shift in the balance of power towards employers, giving them a stronger hand in future negotiations. As a result, negotiations for many awards in the 1990/1991 round were stalled and inconclusive (Harbridge and Moulder, 1993).

[3] Since this data series has not been continued, it is not possible to use it for more recent years, for which it is necessary to rely on other sources.

These figures depict an extreme change. But it is important to understand that under the prior system, collective bargaining was an abstract concept rather than a reality for most of those who were covered. Since it was largely a national or industry-level process, most employers and most workers were not directly involved in the process of negotiation. This detachment from the prior bargaining process would appear to be an important element in explaining how the pressure for greater flexibility could lead to such sharp structural change.

Changes in bargaining levels

The dramatic decline in the coverage of collective bargaining was mirrored by a similar change in the level of bargaining. For simplicity this article adopts the OECD method of viewing bargains at three levels: national, industry and enterprise or company.

In New Zealand, pure national bargaining has never been extensive. Instead, up until 1991 industry or occupational bargaining, coordinated at the national level, was the dominant form of settlement. Multi-employer negotiations took place annually and many of these settlements had industry coverage throughout New Zealand, extending beyond the parties who negotiated them (registered unions and employer associations, among others) to form "blanket coverage" of the industry or occupational group concerned even though not all were directly involved in the negotiating process.

Under the Employment Contracts Act there was a dramatic shift from multi-employer bargaining to enterprise bargaining. The earlier dominance of multi-employer bargaining is demonstrated by the coverage of the awards and agreements registered with the Arbitration Commission in the 1989/90 bargaining round, when 77 per cent of covered workers — 552,100 out of 721,000 — were covered by registered settlements under multi-employer awards or agreements. The Arbitration Commission was abolished in 1991, disallowing a comparison with later years; but an indication of the decline may be seen in a survey, commissioned by the Department of Labour and conducted by Heylen Research Centre (1993), of enterprises in the private sector with more than three employees. In May 1991, 59 per cent of employees in the survey were covered by multi-employer settlements; by August 1992 this figure had fallen to only 9 per cent, and a year later it was 6 per cent. Comparing 1989/90 and 1994/95 (depicted in table 1) one can readily see the sharp decline in multi-employer coverage: bargaining shifted from being mostly related to multi-employer agreements (77 per cent) to being mostly single enterprise agreements (80 per cent). See table 1.

A study by McAndrew (1992) of 557 randomly sampled firms throughout New Zealand similarly illustrates the decisiveness of the shift from national, industry or occupational, multi-employer awards to bargaining at the enterprise or sub-enterprise level. A structural comparison of 229 firms with new collective contracts in place at the time of the survey shows that the coverage of enterprise settlements had risen from 9 per cent to 80 per cent in the firms concerned within the course of 18 months.

Table 1. Shifts in collective bargaining structures by settlement and sector, 1989/90 and 1994/95

	Year	Employees covered by multi-employer agreements (per cent)	Employees covered by single employer agreements (per cent)	Total number of employees covered	Change in bargaining coverage (per cent)
Private sector	1989/90	93	7	413 600	
	1994/95	14	86	209 100	−49
Public sector	1989/90	55	45	307 800	
	1994/95	27	73	156 300	−49
All sectors	1989/90	77	23	721 400	
	1994/95	20	80	365 500	−49

Source: Harbridge and Honeybone, 1996.

It was argued that decentralizing the bargaining process from the national arrangement to the enterprise level was necessary for enterprise flexibility and productive efficiency, which in turn would lead to better macroeconomic performance. However, in some cases the decentralization process went even further, extending to individual contracts within enterprises. It is this that has caused the greatest concern in relation to workers' rights and the imbalance of the power relationship between the parties to a contract. In the early periods of the new legislation it was believed that workers' concessions, reduced labour costs and productivity improvement were directly tied to the new contract structures, and particularly to individual (versus collective) contracts. McAndrew says that "crudely put, more concessions have been extracted from workforces that have been moved onto individual contracts than from those that have retained collective contract coverage. This will not, of course, be universally so. But it held true as a general rule across organizations in this sample, and at a statistically highly significant level" (1992, p. 28).

Research has identified the impacts and outcomes within the collective bargaining sector, but little is known of the now significantly enlarged individual contract sector. The tentative argument is that more vulnerable workers (young, female, less skilled, or combinations thereof) are more likely to have been adversely affected. That is, those who appear most in need of the collective approach have been the major casualties (see Harbridge and Hince, 1994). The system is designed to operate with a greater reliance on minimum legislative standards, allowing the market to determine the most efficient equilibrium between labour supply and demand. Reorientation of the bargaining structure to enterprise and individual bargaining has been an important policy move toward this goal. In the opinion of Harbridge (1993), it is clear that the Government's expectation was that collective bargaining would decline and that individual bargaining would replace much collective bargaining.

The enactment of the new legislation in 1991 allowed employers and, theoretically, employees to choose the form and level of bargaining, the rationale being to give enterprises the flexibility to design labour relations to their specific

needs. The result was a rapid shift to enterprise-level bargaining, comprising a mixture of individual and collective agreements.

Managerial prerogative

The main source of increased flexibility within the industrial relations system in New Zealand has been the greater scope given to managerial prerogative and unilateral managerial action. The shift of the bargaining structure predominantly to the enterprise level has facilitated the development of enterprise agreements to meet the specific needs of a particular enterprise. Once regulation of the employment relationship was decentralized, management took on responsibility for a much wider spectrum of issues. Whereas hours of work, basic pay and even specific conditions of work were previously determined at the national level, almost all employment matters over and above the legal minima are now dealt with at the enterprise level. Management prerogative has been strengthened further by the decline in trade unionism in New Zealand (see table 2), as well as the lack of formal status accorded to unions in the industrial relations system (as previously mentioned, the Act contains no reference to unions).

The reality is that the introduction of flexible work practices, like any change process, can be difficult for both employers and employees. Because managers are the agent of flexibility in New Zealand, it is important to address this issue further. Much has been written about the various effects of change on workers, including a vast literature discussing the end of the traditional job or career. It is often assumed, however, that for employers flexibility is very positive. Indeed, for employers there are a number of positive results of greater flexibility, including reduced labour costs, increased productivity and a more broadly skilled workforce. Nevertheless, the pursuit of flexibility, especially in the use of casual, part-time out-workers and other forms of numerical flexibility, can bring new problems for managers, which if badly handled can greatly reduce the expected benefits of flexibility.

Table 2. Trade unions and membership in New Zealand, 1985-95

Data series *	Unions	Membership	Change (%)	Density **
Dec. 1985 (1)	259	683 006	. . .	44
Sep. 1989 (2)	112	648 825	–5	45
May 1991 (3)	80	603 118	–7	41
Dec. 1991 (4)	66	514 325	–15	35
Dec. 1992 (5)	58	428 160	–17	29
Dec. 1993 (6)	67	409 112	–4	27
Dec. 1994 (7)	82	375 906	–9	23
Dec. 1995 (8)	82	362 200	–4	22

* (1) Department of Labour, 1986; (2) Fuller, 1989; (3) Department of Labour, unpublished data; (4) Harbridge and Hince, 1993a; (5) Harbridge and Hince, 1993b; (6) Ibid; (7) Harbridge, Hince and Honeybone, 1995; (8) Crawford, Harbridge and Hince, 1996. ** Density = full-time equivalent union membership as a percentage of both full- and part-time labour force.

Complications associated with the introduction of flexibility include difficulties in managing a contingent workforce, problems with trust and commitment, and difficulties with skill development. For workers, flexibility may threaten the traditional concept of work, or at least an alteration in methods and conditions of work. For employers, flexibility often results not only in the adoption of new operational methods but also in the need to deal with a new range of human resource issues. For example, there may be a need to formulate new contractual terms, adopt different modes of supervision, and negotiate new objectives and time frames, with a more transient workforce. The reality is that the combination of "slimming" large organizations, outsourcing some functions and flexible employment patterns has a potentially negative effect on the psychological contract which traditionally existed between the organization and the individual employee. As a result, commitment to organizational goals and culture can become weakened.

How does collective bargaining fit into this changed environment? The answer is by no means straightforward, but it is certainly arguable that the process of collective bargaining, with its implicit assumption of involvement by workers and employers in negotiation, can provide the foundation of a quality employment relationship. "Quality" can be expressed as a high level of communication between employer and employees, active participation by employees in decision-making processes, and regular employer consultation with employees. It also embodies elements of trust and loyalty. The development of flexibility requires a reconsideration of the traditional employment relationship model. The managing director of Mobil Oil New Zealand captured the essence of the new approach in a talk entitled "Relating workplace performance to your business strategy":

> The success of any organization ultimately comes through working in harmony with its people, not over their dead bodies . . . most successful companies provide employees with a sense of ownership, have few and flexible guidelines and impose virtually no job-defining rules.
> Those organizations in New Zealand such as Fisher and Paykel, Nissan, Toyota and ICI Paints, which are recognized as having developed innovative workplace relationships under the 1987 Labour Relations Act, are characterized by the integration of human resources into the overall business objectives.
> These companies have demonstrated commitment to change historical arrangements and relate workplace performance to the business strategies. The focus has been predominantly at the enterprise level and the most striking feature is the fundamentally different culture and relationships between employees and the companies that have been established (Geoff Atkinson, quoted in Deeks, Parker and Ryan, 1994, pp. 557-558).

Flexibility may be introduced by a spectrum of methods between the negotiated and the imposed. The latter requires one party to be in a powerful position, able simply to overwhelm the other party and implement the desired change. That method is not conducive to the quality employment relationship suggested here. Which is why a rethink of adversarial bargaining is required, rather than merely a change to the bargaining process.

The employment contracts regime has received a great deal of criticism, primarily to the effect that to promote individual freedom in an employment relations context is to promote the freedom of the relatively strong individual or organization to take advantage of the relatively weaker party without fear of government intervention (McAndrew, 1992, p. 261). Such criticism led the New Zealand Council of Trade Unions (NZCTU) to submit a complaint to the ILO of violations by the New Zealand Government of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Collective Bargaining Convention, 1981 (No. 154) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), on the grounds that the Employment Contracts Act did not provide an adequate legislative framework for the exercise of the right to organize and bargain collectively (ILO, 1994).[4] The Committee on Freedom of Association's concluding statement noted that the Act was incompatible with ILO principles on collective bargaining, largely because of the underlying philosophy of putting individual and collective contracts on the same footing (see Kelly, 1995, for a discussion of the complaint). The complaint has still not been resolved to the satisfaction of the ILO, and it was taken up again at the 271st session of the ILO's Governing Body (March 1998). The Government had informed the ILO's Committee on Freedom of Association of a coalition agreement to introduce the concept of "fair bargaining" into the Employment Contracts Act, but various options for addressing the bargaining issues, particularly recognition of the employees' representative, were still under consideration; the Committee asked to be kept informed of any progress (ILO, 1998, para. 31). The Committee also reaffirmed its earlier conclusions concerning multi-employer contracts, stating that "legislation should not constitute an obstacle to collective bargaining at the industry level" and that "provisions which prohibit strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer are contrary to the principles of freedom of association on the right to strike" (ILO, 1998, paras. 30, 32).

Conclusions

The evolution of New Zealand's industrial relations system provides an excellent case for a study on the introduction of flexibility into the labour market. Flexibility was facilitated by deregulating and restructuring industrial relations. In just four years — between 1989/90 and 1993/94 — collective bargaining collapsed, with those covered falling by more than half. The key

[4] The Act does provide that collective employment contracts may be negotiated between one or more employers and any or all of the employees engaged by those employers; that a contract must be in writing, must be given on request to any employee bound by it and must contain an expiry date. Notwithstanding, a collective contract will not remain in force beyond that date and employees previously covered by the contract will automatically go on to individual contracts based on the terms and conditions of the collective contract. The expired collective document was to be amended only to the extent necessary to make it read sensibly as a contract between an individual worker and the employer.

elements leading to the legislative change were substantial pressure from employer groups and a shift in the ideological position of government, as well as a new economic climate (imposing greater competition, a more open economy and growth in the service industries).

Labour legislation now provides basic protection to employees and employers but little regulation of the bargaining process or of the details of the employment relationship. This has encouraged the introduction of flexibility of various kinds — there has not been a coordinated approach — owing to the dominant market ideology which discourages interference in the "efficient" operation of the labour market. Enterprise-level bargaining is one of the principal mechanisms for achieving greater flexibility.

Details of the actual introduction of flexibility at the enterprise level, however, are difficult to come by. Managerial behaviour has clearly been an important element, yet there is considerable variety — from inactivity, to dictating the change process or negotiating changes to the organization with the employees. Unfortunately, there is no comprehensive research comparing the types of behaviour with such indices as organization performance, worker satisfaction, productivity or competitiveness. Therefore it is not possible to provide a comprehensive picture of the impact of the new bargaining processes or managerial behaviour on the introduction of flexibility.

Although the main catalyst for change has been the Employment Contracts Act 1991, that does not necessarily mean that it was the direct instigator of flexibility. The Act both symbolizes and enacts an ideological change in industrial relations. With minimal provisions and guidelines in the legislation, employers and employees, most without significant exposure to labour relations practice, are encouraged by the Act to make their own contractual employment arrangements, with everything permissively negotiable and nothing mandatorily negotiable (McAndrew, 1993, p. 166). Hence the actual introduction of flexibility has largely followed the reform agenda of New Zealand's managers. This inevitably led to a new industrial relations environment.

The new industrial relations environment owes much to the perception hat greater global competitive pressure in product and service markets requires enterprises to be increasingly flexible. Managers have sought to make labour relations as flexible as they believe product and service markets demand. Management, principally, has opted for bargaining at the enterprise and workplace level, on the argument that labour relations should be tailored to the needs of the firm. Although many employers still see strong efficiency and equity reasons to use collective contracts, there is a trend towards greater use of individual contracts.

The real lesson from New Zealand is that flexibility in practice is about relations — industrial relations, employment relations and human relations. While it is possible to present a case for collective bargaining as an efficient means of introducing flexibility, it is also possible to present a similar case for the use of individual contracts. Although collective bargaining can provide a forum for a negotiated approach to the employment relationship, the nature of that relationship is more important for all parties in implementing flexibility than is the bargaining forum in which it operates.

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