

Contents Page: NZJER, 2010, 35(3)

Name	Title	Page Number
Raymond Markey	Introduction: Marking 90 years of the ILO	1-5
Margaret Wilson	ILO – Role of New Zealand Government: Reflections of a Former Minister of Labour	6-15
Nigel Haworth & Steve Hughes	Surfing History's Waves: On the Resilience of the International Labour Organisation as an International Institution	16-26
Raymond Markey & Katherine Ravenswood	Grievance Processes: Research, Rhetoric and Directions for New Zealand	27-39
Rupert Tipples & Richard Whatman	Employment standards in world food production – the place of GLOBALGAP supply contracts and indirect legislation.	40-60
Danaë Anderson & Krish Naidu	The Land of Milk and Honey? The contemporary working lives of contingent youth labour	61-79
Edward Dowding	The International Labour Organisation: A View From Within	80-83
Stephen Blumenfeld & Sue Ryall	Unions and Union Membership in New Zealand: Annual Review for 2008	84-96
Erling Rasmussen & Colin Ross	Chronicle: June–September, 2010	96-103

Marking 90 Years of the ILO

RAYMOND MARKEY*

In 2009, the International Labour Organisation (ILO) celebrated its 90th anniversary, against a backdrop of financial crisis and critical levels of unemployment around the world. The ILO is the world's oldest and only tripartite international agency, created in 1919 as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if based on social justice. It was a truly global organisation before globalisation entered our everyday vernacular and figured so prominently in our consciousness. Today the ILO has 183 member states.

The ILO is dedicated to bringing decent work and livelihoods, job-related security and better living standards to the people of all countries through social dialogue and tripartism. The first annual International Labour Conference beginning on 29 October 1919 in Washington DC adopted the first 6 International Labour Conventions. Since then, the ILO has had a mandate from its worldwide members to establish a set of core principles. Today, the ILO has 188 Conventions and Declarations and 199 Recommendations. In 1998 the 8 Core Conventions, were consolidated into 4 principles and rights in the Declaration of Fundamental Principles and Rights at Work:

- Freedom of association and the right to collective bargaining
- Abolition of forced labour
- Elimination of the worst forms of child labour
- Equality of opportunity and treatment.

Symposium on 90 Years of the ILO: The significance for Australia and New Zealand

On 19-20 November 2009, the Business and Labour History Group of the New Zealand Work and Labour Market Institute at Auckland University of Technology (AUT), in association with the Auckland Labour History Group, organised a symposium to mark the 90th anniversary of the ILO, at AUT in Auckland. The title of the symposium was *90 Years of the ILO: The significance for Australia and New Zealand*.

In addition to a number of specialist papers listed below, two national tripartite panels discussed the significance of the ILO for their respective countries.

The New Zealand Tripartite Partner Panel on The Significance of the ILO for New Zealand consisted of:

Carol Beaumont, Labour Member of Parliament, former Secretary, NZ Council of Trade

* Raymond Markey is Professor of Employment Relations at AUT University and the Director of the New Zealand Work & Labour Market Institute (NZWALMI)

Unions, and former worker representative to ILO;
Paul MacKay, Manager Employment Relations Policy, Business New Zealand and employer representative to ILO; and
Michael Hobby, Principal Adviser, International Services, New Zealand Department of Labour.

The Australian Tripartite Partner Panel: on The Significance of the ILO for Australia consisted of:

Louise McDonough, Branch Manager, International Labour and Consultation, Workplace Relations Policy Group, Australian Department of Education, Employment and Workplace Relations;
David Gregory, Director, Workplace Policy, Australian Chamber of Commerce & Industry and employer representative to ILO;
Linda Gale, Victorian State Organiser, National Tertiary Education Union, representing Australian Council of Trade Unions;
Steve Marshall, ILO Liaison Officer in Myanmar (and former employer representative to the ILO from New Zealand), provided a summarising overview as Rapporteur.

These were the overarching questions guiding the symposium participants:

- What has been the significance of the ILO for Australia and New Zealand?
- What influence have Australia and New Zealand had on the ILO?
- What does the future hold for interaction of the ILO with Australia and New Zealand?

1. What has been the significance of the ILO for Australia and New Zealand?

One indication is to examine the impact of ILO conventions in Australia and New Zealand. Conventions need to be ratified by member states. Once ratified, countries commit themselves to applying it in national law. This occurs automatically in some countries, but not in Australia and New Zealand. So what has our record been with core conventions?

Table 1: Ratification of ILO Core Conventions by Australia and New Zealand

Convention and year adopted	Year ratified in Australia	Year ratified in NZ
C87 Freedom of Association and Protection of the Right to Organise 1948	1973	
C98 Right to Organise and Collective Bargaining 1949	1973	2003
C100 Equal Remuneration Convention 1951	1974	1983
C111 Discrimination (Employment & Occupation) Convention 1958	1973	1983
C105 Abolition of Forced Labour 1957	1960	1968

Table 1 shows that the record is not strong in either Australia or New Zealand in terms of early ratification of the ILO's core conventions, with the exception of Abolition of Forced Labour. Both countries had periods of relatively strong ratification activity, in 1973-4 in Australia and 1983 in New Zealand. In addition, Australia has generally acted ahead of New Zealand. It is noteworthy, however, that New Zealand has still not ratified the convention on Freedom of Association, which Russia ratified as early as 1953 and Zimbabwe in 2003. The Australia and New Zealand record of ratification does not indicate in itself a strong influence from an early stage for conventions in either country. However, the case of Russia and Zimbabwe, as well as other countries, may also indicate that there is not necessarily a strong correlation between ratification of a convention and its application in a country's industrial relations and political systems.

Is it possible to directly refer to Conventions as influencing our employment law? In some cases, yes. A notable case occurred in New Zealand in the *Employment Relations Act 2000*, which specifically referred to the *C98 Right to Organise and Collective Bargaining Convention* and the *1998 Declaration of Fundamental Principles and Rights at Work* regarding collective bargaining and good faith bargaining. The Australian Industrial Relations Act 1993 was similarly influenced by this convention and declaration.

In the Australian federal structure of governance, with its multiple jurisdictions for labour law, and the relatively weak powers given by the federal constitution in this sphere, ILO conventions might be referred to by a national government to overcome state government impediments to reform. This could be done by the High Court accepting ILO Conventions as international treaties in relation to which the constitution gives the national government exclusive powers to make laws. This was actually done in Labour's 1993 Act in some areas, although that same Act's forcing of unions with less than 10,000 members into amalgamations was also amended because of an appeal to an ILO Committee of Experts who found it in breach of Freedom of Association. In the recent past, the possibility had been discussed for extending a national Labour government's powers in industrial relations more extensively, but recent changes under a conservative Howard government, ironically, have seen the substantial extension of national powers by reference to corporations power in the constitution, and the states have ceded much of their powers in this sphere to the federal government.

2. What influence have Australia and New Zealand had on the ILO?

Paul Mackay, employer delegate to the ILO from Business NZ, states that he considers that New Zealand delegates 'punch well above their weight' in terms of influence at the ILO. At the symposium, there was consensus amongst all of the tripartite panelists from both New Zealand and Australia that this was the case for both countries. The panelists attributed this influence to two factors. First, there has consistently been a high degree of collaboration between employer, worker and government representatives from each country, and this is unusual in international terms. Second, there has also been considerable collaboration between representatives of Australia and New Zealand. One of

Nigel Haworth's papers referred to below addresses this issue for New Zealand in an early period of the ILO's history.

3. What does the future hold for interaction of the ILO with Australia and New Zealand?

An ILO Declaration on Social Justice for a Fair Globalisation was adopted in 2008. This indicates the ILO's focus on the impact of globalisation on employment and social issues.

Many of the countries that have been the focus of this concern in terms of the lack of fundamental labour rights are in the Asia-Pacific region [our region]. However, the ILO lacks any powers of enforcement and has to rely on persuasion to gain compliance (Lansbury 2009: 607) with core labour standards.

According to some observers, 'the international legal framework is "outdated and ill-suited to the challenges of globalization" and the prospect of "regulating for globalization seems implausible"' (Ewing 2008 as cited in Lansbury 2009: 607). Nike and Gap have been high profile cases of companies agreeing to enforce labour standards amongst suppliers and to produce annual CSR reports. The UN has established a Global Compact, which has been joined by a number of MNCs, and is based on core labour standards and human rights. But there is considerable skepticism about these endeavours. Some have looked to cooperation with other international agencies such as the WTO, World Bank and IMF to enforce labour standards, but progress to date has been slow in this area. Two of the symposium papers, by Nigel Haworth and by Ray Markey and Katherine Ravenswood, specifically addressed these global issues.

The symposium speakers and their topics included the following:

Ray Markey, NZ Work & Labour Market Institute, Auckland University of Technology,
Introduction;

Margaret Wilson, Professor of Law and Public Policy, University of Waikato and former Minister for Labour,

ILO – Role of the New Zealand Government: Reflections of a Former for Labour;

Nigel Haworth, University of Auckland,

Director-General Activism and the Extension of the ILO Agenda: The ILO since 1989;

Ray Markey and **Katherine Ravenswood**, NZ Work & Labour Market Institute, Auckland University of Technology,

The impact of MNEs and FDI on aspects of working conditions as contained in 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises & Social Policy;

Nadine McDonnell, NZ Work & Labour Market Institute, Auckland University of Technology and **Boaz Shulruf**, University of Auckland,

OHS of Migrant Workers: an international concern;

Nigel Haworth, University of Auckland,

A Distant Detachment. New Zealand and the ILO 1919-1945

Danae Anderson, NZ Work & Labour Market Institute, Auckland University of Technology and **Krish Naidu**, University of Auckland,

The Land of Milk and Honey? The contemporary working lives of contingent youth labour;

Felicity Lamm, NZ Work & Labour Market Institute, Auckland University of Technology,

Worker Participation in Occupational Health and Safety: The Hidden Potential to Change Intensified Working Arrangements;

Rupert Tipples, Lincoln University,

Employment standards in world food production – the place of GLOBALGAP supply contracts and indirect legislation

The papers by Margaret Wilson, Nigel Haworth (on post 1989), Ray Markey and Katherine Ravenswood, Danae Anderson, and Rupert Tipples have been reworked for publication in this issue of the *New Zealand Journal of Employment Relations*.

Reference

Lansbury, R.D. (2009). Workplace Democracy and the Global Financial Crisis. *Journal of Industrial Relations*. 51(5): 599-616.

ILO – Role of New Zealand Government: Reflections of a Former Minister of Labour

MARGARET WILSON*

Introduction

The occasion of the 90th anniversary of the founding of the ILO provided an opportunity to reflect on the relationship between the ILO and New Zealand.¹ In this article I shall discuss one aspect of that relationship, namely, the relationship between the ILO and the Government during the time I was Minister of Labour (1999 – 2004). The first observation is that the objectives enshrined in the constitution of the ILO, and affirmed in the Philadelphia Declaration remain as relevant today as they did in 1919. It is worth recalling the fundamental principles affirmed by the Philadelphia Declaration, in particular that:

- (a) Labour is not a commodity;
- (b) Freedom of expression and of association are essential to sustained progress;
- (c) Poverty anywhere constitutes a danger to prosperity everywhere;
- (d) The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers, employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

It is undeniable that while those principles remain as relevant today as they did in 1944, the reality of 30 years of neo-liberal public policies, the globalisation of capital and the growth of transnational corporations dominating the means of production, together with the decline of trade union membership and collective bargaining, combine to provide a challenge to the realisation of those principles. It is a challenge the ILO understands and has risen to meet.

Origins of ILO

An understanding of the role of the ILO today requires knowledge of the origins and the conditions that created and have sustained the ILO over 90 years. The seeds for an international organisation to promote and protect minimum labour standards grew out of the appalling working conditions endured by workers in the factories spawned from the growth in industrialisation of the 19th century. Although the ILO was established formally in 1919 as part of the Versailles Peace Treaty that ended the First World War, its genesis lies in the discussions and activities of those concerned with the improvement of working conditions and labour reform in the 19th century and early 20th century.

For example, as early as 1818 at the Conference of European Powers at Aix-la-Chapelle, France, the British industrialist Robert Owen and the French Industrialist Daniel Legrand, argued for a cooperative international effort to reform the conditions of labour. Owens even proposed an international institution to implement the reforms (Burkett, 2006). Although there were enlightened industrialists such as Owen and Legrand, who advocated labour reform; support for reform came from a cross section of concerned citizens including academics, social workers, lawyers and legislators. The first of many international conferences they organised to promote change was held in Brussels in 1856, followed by a Frankfurt conference the following year that supported the creation of international conventions on working conditions.

* Professor of Law and Public Policy, University of Waikato, former Minister of Labour 1999 – 2004

This rise in social concern was mirrored by the development of international worker organisations with the first conference of the International Workers Association being held in Geneva in 1866. Workers were inhibited from organising to protect and further their interests by legal prohibition of the formation of unions. A group of workers gathering together to improve wages and working conditions was classified as an unlawful conspiracy. To remove this fear of legal prosecution the laws had to be changed, which meant engagement with the political process and in the 19th century when workers were also denied the right to vote that required new forms of political representation. It was not surprising, then, that the formation of socialist parties in Europe in the latter part of the 19th century resulted in the incorporation of a labour reform agenda into their platforms. It is also not surprising that the relationship between industrial and political labour movements was forged in a scarring historical experience that continues today.

While social and industrial concerns were well represented in these discussions in the 19th century, government recognition of the growing demand for reform was slower in coming. In 1890, the Swiss government promoted a conference to prepare for negotiations on an international agreement on the improvement of working conditions. While progress at government level was slow, in 1912, the first international labour convention was ratified on night work for women and the use of white phosphorous in the match industry. By 1915, there were over 20 bilateral labour agreements covering subjects from social insurance to the migration of workers. It is interesting to note how most of the issues raised in this period remain relevant today. The First World War curtailed progress towards international conventions but it can be seen that it was no accident that the establishment of an international labour organisation was incorporated in the peace settlement. The efforts of advocates for over a century were being formally recognised. And for those who, today struggle for social and economic justice, it is an encouraging reminder that political and social activism can produce change, even if it may not be our lifetime.

New Zealand and ILO – Early Period

Apart from a concern for social and economic justice, there was also another more pragmatic reason for the formation of the ILO. The rise of worker-led political movements, especially in Russia, but not only in Russia, was a warning to countries that, unless reform was undertaken, political revolution was possible. In the New Zealand context, it is interesting to note the government was also concerned with labour unrest during this period. Roth (1973) notes the early workers in New Zealand in the 1880s and 1890s spread ‘a wave of socialist feeling’ gained from reading ‘collectivist tracts and listening to altruistic sermons’ William Pember Reeves the first Minister of Labour espoused socialist views but enacted the Industrial Conciliation & Arbitration (IC&A) Act, which ensured government regulation of the industrial relationship (Moloney, 2002). It is perhaps then not surprising to note the bestselling book of the time was the utopian novel *Looking Backwards* by Edward Bellamy.

Stone also notes: “Labour discontent in New Zealand coincided with an upsurge of socialist agitation in Germany, France, Britain, the United States and Australia. New socialist ideas were abroad: sometimes syndicalist, sometimes utopian, but invariably class-conscious” (1963: 203). The Industrial Workers of the World (often known as the wobblies) were the organising force behind the challenges to the arbitration system in the 1908 to 1914 period when New Zealand experienced considerable industrial unrest (Shor, 2002). This period also saw a struggle for control of the ideological direction of the trade union movement – between the predominantly trades arbitrationist unions and the industrial syndicalist unions. The formation of the Labour Party in 1916 provided a political forum for the pursuit of workers’ rights and labour reform, but in the early period was seen as too conservative for the syndicalist unionists, who however by the 1930s had come to support the Labour Party.

As Stephen Hughes and Nigel Haworth note in their excellent paper to be presented to this conference, *A Distant Detachment/New Zealand and the ILO 1919-1945*, New Zealand became a founder member of the ILO in 1919 because of the initiative of Great Britain that, in reality, controlled New Zealand’s foreign policy. The distinct lack of interest in the organisation at that time by the government was not unexpected

given the politics of the time. It was not unexpected, however, that the union movement and new Labour Party took more interest in the new international labour organisation. Both movements had always been internationalist in outlook. The New Zealand government's interest and approach to the ILO has reflected the ideology of the government of the time. It is also not unreasonable to surmise that business was also aware of events overseas. New Zealand business appeared to show little interest in the ILO in the beginning but its involvement has reflected its concern to ensure its class interest was represented in all contact with the ILO.

For a variety of different but related reasons than workers, business and governments all had reasons for supporting an international organisation that facilitated the promotion of international labour standards in the workplace. The fact that the ILO has survived to be the oldest surviving international organisation owes much to the skill of those who have managed the organisation, but it also owes as much to the perception that a balance needs to be maintained amongst the interests of labour, capital and governments to ensure the well being of all parties.

ILO Reinvented

The story of the survival of the ILO and its emergence today as a key international influence on social and economic global policy is one worth retelling. As Haworth and Hughes (2009) have noted, the ILO developed a strategy that they characterised as of independence, relevance, and presence that has served it well since its inception. The leadership skills of two recent Director-Generals, Michel Hansenne (1989-1998) and Juan Somavia (1998- current) have guided the ILO from one of questionable relevance in a rapidly changing economic environment to one whose role is at the heart of global policy making. The achievement of the Declaration of Fundamental Principles and Rights at Work (1998) positioned the ILO to provide a relevant framework within which to engage with the new global and domestic policy frameworks.

When Juan Somavia became Director-General in 1998, he built on this foundation through guiding the *Declaration on Social Justice for a Fair Globalisation* (2008) through the ILO (ILO, 2008). That Declaration clearly stated the nature of the relationship between social and economic policy in a globalised world. The Declaration not only provided support for the Decent Work initiative but also invited the ILO to work with other international and regional organisations to promote decent work. The link between trade and financial policies and employment was made explicit. Labour standards must be considered as part of any global trade, economic and financial policy.

The Declaration has been characterised as marking the most important renewal of the ILO since the Philadelphia Declaration. It set in place and affirmed a new course of action founded on the 1998 Declaration of Fundamental Principles and Rights of Work and the Decent Work Agenda. It has marked the recognition by the ILO for a more integrated and holistic approach for the implementation of labour standards. In particular, the need to work with civil society for the reduction of poverty and recognising the relationship between poverty and poor labour standards has distinguished the work of the ILO in recent times.

On a local and regional level, however, perhaps the most important recent initiative of the ILO has been the Decent Work Agenda. Juan Somavia has stated "The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in condition of freedom, equity, security and human dignity" (ILO, 2009). The strategies to implement this goal have been identified as:

- the promotion and implementation of international standards and rights at work;
- the creation of decent employment and income opportunities for all men and women;
- the enhancement of coverage and effectiveness of social protections for all peoples; and
- the strengthening of economic and social dialogue between government, employers and workers (ILO, 2009).

On a practical level, the Decent Work Initiative is designed for the ILO to assist countries with the implementation of these strategies. It has enabled the redirection of its resources to provide countries with technical support for the development of a national framework within which priorities can be targeted to make that the decent work goal a reality and not just an aspiration.

Role of New Zealand Government

Since the relationship between the Government and the ILO reflects the ideology and policies of the Government of the day, I shall focus my reflections on the role of the New Zealand government during the period I was Minister of Labour. In particular, I shall examine on the institutional support the government gives to the ILO as an organisation; the legislative recognition of ILO Conventions 87 and 98 and the development of a policy to recognise the need to incorporate minimum labour standards into free trade agreements. Before I look at three aspects of the ILO/government relationship, I shall make a few general observations about the role of governments in the ILO.

At present there are 183 member countries of the ILO. Their reasons for support of the ILO are likely to be a combination of the factors identified on the ILO website, namely security, humanitarian, political and economic. The fear of political instability was an important motive for the formation of the ILO and still remains so today. Industrial unrest is not only economically damaging, it is politically unsettling. The level of support the ILO has received from countries varies according to domestic and international factors. Signing up to Conventions and Declarations does not guarantee the countries implement the provisions within their own jurisdictions. The provisions of the Conventions and Declarations are more often considered aspirational than real. Also economic, social, political and culture conditions vary greatly among the member countries. This is why the ILO technical programmes are so important. They assist the member countries to find ways to implement labour standards that are appropriate to the conditions of the countries. The ILO can only provide this assistance, however, if it is funded adequately and this is perhaps the most important role of member countries.

Countries often show their displeasure by not paying their fees, withdrawing from active participating or on occasions boycotting the activities of the ILO. The best example of the latter action was the withdrawal of the United States from the ILO during the cold war period because of a fear that its support for workers' rights was support for the communist ideology (Potter, 2006). Although the ILO survived this period, it did have an impact on the resources, the organisation and its capacity to pursue its agenda. Financial viability and administrative efficiency are fundamental preconditions to the success of the ILO achieving its primary objective. The best way to stifle the effectiveness of any organisation, domestic or international, is to starve it of resources.

In many ways, governments are the cement or the glue that ensures the continuing institutional existence of the ILO. It is governments' financial and active support of the organisation that is vital. Hughes and Haworth (2008) have documented that, from the outset, the New Zealand government's support for the ILO was lukewarm at best. There is an understandable tension between the ILO and its government members on the most effective use of resources. One of the achievements of Juan Somavia has been to push for administrative and budgetary reform within the ILO. Like many large well established organisations, the ILO had become resistant to change, and questions were being raised about its relevance in an age when neo-liberalism meant the new managerialism was the standard against which all institutions were being measured.

When I became Minister in 1999, one of the decisions that confronted me was whether New Zealand supported the Director-General's administrative and budgetary reform agenda. The 1999 Report of the Programme, Financial and Administrative Committee to the Governing Body (GB 279/PFA/7 ILO 279th Session) noted the need to shift the focus from Geneva into the regions and to ensure to local programmes

were results orientated with efficient management practices. It was a good introduction into the internal working of the ILO and the reality that, as with all governance in large institutions, the organisation is as good as the interest and commitments of its members. New Zealand strongly supported the budgetary and administrative reform agenda and, in particular, the emphasis to decentralise the ILO technical programmes into the regions and away from Geneva. I confess to not being very impressed at the first ILO regional conference I attended in Bangkok and understand the feeling may have been mutual. Like many New Zealanders, I underestimated the task of change in international institutions. I tried to explain that although New Zealand was committed to the ILO, all expenditure had to be justified, including ILO fees and there needed to be a greater allocation of resources in the Pacific region. Currently New Zealand pays \$1,900 annual subscription to the ILO (Budget, 2009).

I also emphasised that I was a Minister of Labour in a government that recognised the reality of globalisation and the need for New Zealand to actively participate in international organisations and events to protect and further New Zealand's interests whether they were issues economic, social or security. For the Minister of Labour, the primary international organisation was the ILO and participation primarily took the form of attending the ILO annual conference held in Geneva in May/June of each year. The New Zealand delegation consisted of representatives from the NZCTU and Business New Zealand. Officials from the Department of Labour supported the delegation. New Zealand was fortunate in having very able and knowledgeable officials who were familiar with the operation of the ILO but also facilitated the more active role of Labour-led government in the organization's activities.

Like all such international events, the annual conferences are large, highly structured with short formal presentations and little opportunity for participation, even in committee meetings. I can see why it is possible to question the value of such gatherings. New Zealand is a small country of no or little significance beyond what can be created through its own participation and efforts. During the time I was Minister I attended four such conferences and came to understand the value of participation and the need to have a long-term perspective. The opportunity to discuss developments in other member countries gave a valuable insight into the way they handled common experiences. The regular meetings with the Director-General were an opportunity to ensure the developments in New Zealand were understood and supported. I was also invited by ILO officials to make presentations explaining the developments under the Employment Relations Act and contrast them with the previous statutory regime. Such invitations were important because they provided the opportunity to explain and discuss the situation in New Zealand with those officials who received the reports on New Zealand's compliance with its ILO obligations.

For me, personally observing and participating in a tripartite social dialogue policy framework strengthened my resolve to apply the same model to employment relations policy reform in New Zealand. It was the model used for changes to the Holidays Act, the Health and Safety in Employment Act and the report on contracting out and sale and transfer of businesses. It was a model followed by New Zealand for 90 years and only abandoned as a tenet of public policy with the enactment of the Employment Contracts Act. I had long felt that not only was our employment relations poorer for rejecting tripartism but also our democracy. The reform of the employment relations statutory framework, therefore, seemed an appropriate opportunity to revive the democratic notion of tripartism.

The reform of the statutory framework provided the opportunity to review whether New Zealand was in a position to ratify the two most important ILO Conventions, namely, Convention 87 on Freedom of Association and Convention 98 on the Right to Organise and Bargain Collectively. It is somewhat ironic that New Zealand, as a founder member of the ILO, had developed an industrial relations system that made it impossible to comply with these fundamental conventions. The IC&A system, as it developed, not only prevented collective bargaining but also freedom of association. It is true that the system served the interests of the parties well at various times and that New Zealand workers benefited through their wages and conditions. The dominant role of the state, however, precluded New Zealand ratifying these conventions.

Although New Zealand did not ratify these Conventions, it did not prevent the employer and union parties at various times complaining to the ILO alleging a breach of the conventions (Roth, 2001; Novitz, 1996). The fact that New Zealand was a member and, therefore, had agreed with the fundamental principles of the ILO provided sufficient jurisdiction for ILO intervention through the Freedom of Association Committee to investigate whether or not a breach had occurred. Although in such instances, there was no enforcement mechanism, the parties deemed the publicity surrounding the investigations provided leverage domestically to highlight the issue and support a campaign for change.

I came to understand the value and the limits of such ILO intervention during the process investigating the NZCTU complaint to the ILO alleging the Employment Contracts Act breached of Conventions relating to freedom of association and collective bargaining. I attended a meeting with others convened by Alan Gladstone who carried out the ILO Direct Contact Mission investigation. Although this Mission's report was not very critical of the government legislation, the final report of the Freedom of Association Committee (Case No. 1698, 1994) was critical and recommended the government initiate a tripartite process to ensure the Act was consistent with the principles of freedom of association and collective bargaining. The then Minister of Labour Doug Kidd rejected such a notion.

The importance of this Report was not only its criticism of the ECA, but for me anyway, it highlighted the relationship between freedom of association and the ability to engage in collective bargaining. If workers could not join unions and could not be involved in actions in pursuit of their right to collectively bargain without the threat of legal action, then they did not have the right to bargain collectively. There could be no collective bargaining without genuine freedom of association, which was not only the right to join or not join a union but to freely pursue collective action without legal penalty.

The Employment Relations Act was an attempt to comply with both Conventions 87 and 98. I suspected the attempt would fail because of the continuing restrictions on the right to strike when bargaining collectively, for example, secondary boycotts. This turned out to be correct. Although there were extensive discussions with the ILO officials, the ILO would only agree that the Act complied with Convention 98 but not 87.

The inclusion of specific reference to the two Conventions in the Employment Relations Act was, however, to make explicit that the Act was founded on the principles in those Conventions and any interpretation of the Act should be consistent with those principles. In particular, the ILO jurisprudence on the relationship between the right to organise and the right to bargaining collectively are very useful when determining whether in fact there has been 'good faith' bargaining or 'good faith' when unions try to organise workers, especially in a new workplace.

New Zealand has ratified 60 Conventions of which 51 are in force. While I was Minister, an effort was made to ensure legislation did comply with the ILO obligations. I assume that practice continues. The officials were aware of our obligations and, as part of their briefings to the Minister, would draw attention to any relevant ILO matter. The shift in the ILO strategy to promote efficient management practices to ensure implementation of the 1998 Declaration of Fundamental Principles and Rights at Work through the Decent Work Agenda was endorsed by New Zealand when I was Minister (Hughes, 2005). The result has been the development of an extensive framework by the Department of Labour on how the Decent Work objectives can be and are being implemented in New Zealand. There is insufficient time to explain this policy work in detail but it is important and I am sure will be covered in other presentations. It is important because it provides a practical programme to measure New Zealand's compliance with the various ILO obligations. It is an outstanding example of a policy framework that translates international obligations into domestic legislative and policy terms.

Finally, I want to briefly mention one of other development when I was Minister of Labour that illustrated the attempt by New Zealand to implement into legislation and policy the ILO commitments. It is the framework for integrating labour issues into free trade agreements (MFAT, 2009). The failure of the Doha trade talks and the WTO to find multi-lateral agreement on free trade arrangements led the government to

seriously enter negotiations on bi-lateral free trade agreements. This development raised concerns relating to the undermining of working conditions in New Zealand through the use of cheap labour in the trading partner country.

To address these concerns and also to comply with and further the objectives of the Declaration on Fundamental Principles and Rights at Work, the government in 2001 adopted a framework to incorporate labour related issues into free trade agreements. Among the objectives of the policy was the statement that economic and trade partnerships were not an end in themselves:

The goal they serve is to improve living standards in the countries whose governments have negotiated them. This government believes that to reach that goal, economic and trade agreements need to be crafted in a way that promotes decent work. By this it means opportunities for work in which minimum standards are protected and adequate income is generated within an infrastructure which ensures social protection (MFAT, 2009)

There is also an explicit statement that the government supports the ILO's objectives of decent work and adheres to the principles of the core labour standards reflected in the Declaration of Fundamental Principles and Rights to Work. The statement concludes with the following:

While the details would need to be determined on a case by case basis, the government would look to include any or all of the following elements in the framework of any bilateral/plurilateral trade and economic partnership agreements: a workplan of initiatives or objectives; a mechanism for regular reviews of objectives or initiatives, and regular dialogue on how to better promote decent work; a mechanism for resolution of issues raised by the parties or the social partners (MFAT, 2009)

While this framework was an achievement, the reality is that it is a policy and needs to be implemented. In my brief review of the free trade agreements I could access, I found it difficult to identify the above policy being explicitly included in the agreements. I trust others who are more expert in the area than I am will follow up to ensure this important development has not been lost in translation.

Conclusion

In conclusion, I want to acknowledge and thank Business and Labour History Group of the NZ Work & Labour Market Institute, and in particular Professor Ray Markey, for organising this conference. It provides an opportunity not only to reflect on the contribution the ILO has made to the development of a regime of minimum labour standards, but the relevance of the organisation to the countering the challenges of globalisation and the attempts through neo-liberalism public policies to make the market the only determiner of working conditions and wages. The ideology of neo-liberal argues that economic and financial matters are the primary purpose of public policy. Matters of social justice have been relegated to accommodating the economic imperative. Not only has such a policy failed on its own terms as the recent collapse of the financial system has demonstrated, it has created a society in which economic and social inequality has become institutionalised and accepted by many as inevitable.

The ILO in its current reinvention has introduced a healthy dose of reality into international public policy making. Whether or not New Zealand actively supports this leadership demonstrated by the ILO is for the government to determine. I was reflecting on how much attention is paid in the media to international trade agreements and how little to international initiatives that highlight the relationship between such agreements and the level of employment and social justice within a community. The time is overdue, once again, to understand the interconnectedness of the economic, social, cultural and political factors that exist within our community. Until this is done there will be neither economic nor social prosperity. The ILO once again provides a pathway to follow to achieve these goals.

Notes

¹ This paper was presented at the *Symposium: 90 Years of the ILO: The Significance for Australia and New Zealand* organised by the NZ Work and Labour Market Institute, AUT in association with the Auckland Labour History Group.

References

- Budget 2009. (2009). *Vote Labour. The Estimates of Appropriations 2009/10*. Retrieved from <http://www.treasury.govt.nz/budget/2009/estimates/est09labour.pdf>
- Burkett, B. (2006). The International labour Dimension: An Introduction. In J.D.R Craig and S.M. Lynk. (eds.). *Globalisation and the Future of Labour Law*. (pp.15-50). Cambridge: Cambridge University Press.
- Hughes, S. (2005). The International Labour Organisation. *New Political Economy*. 10(3): 413-425
- Hughes, S. and Haworth, N. (2009). *Director General Activism and the Extension of the ILO Agenda: The ILO since 1989*. Paper presented at the Symposium, 90 Years of the ILO: The Significance for Australia and New Zealand on 19-21 November, 2009. Auckland, New Zealand.
- ILO. (2008). *ILO Adopts Landmark Declaration on Social Justice for a Fair Globalization*. Retrieved from http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_094186/lang--en/index.htm
- ILO 2010 ILO website <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>
- Ministry of Foreign Affairs and Trade. (MFAT). (2009). *Trade Issues: Framework for Integrating Labour Issues into Free Trade Agreements*. Retrieved from <http://www.mfat.govt.nz/Trade-and-Economic-Relations/NZ-and-the-WTO/Trade-Issues/0-labour-framework.php>
- Moloney, P. (2002). State Socialism and William Pember Reeves: A Reassessment. In P. Moloney and K. Taylor. (eds). *Essays on Socialism in New Zealand*. (pp.39-57). Dunedin, New Zealand: Otago University Press.
- Novitz, T. (1996). New Zealand Industrial Relations and International Labour Organisation: Resolving Contradictions Implicit in Freedom of Association. *New Zealand Journal of Industrial Relations*. 21(2): 119-139
- Potter, E. (2006). The Growing Importance of the International Labour Organization: The View from the United States. In J.D.R. Craig and S.M. Lynk. (eds.). *Globalization and the Future of Labour Law*. (pp.356-374). Cambridge: Cambridge University Press.
- Roth, H. (1973). *Trade Unions in New Zealand Past and Present*. Wellington, New Zealand: Reed Education.
- Roth, P. (2001). International Labour Organisation Conventions 87 and 98 and the Employment Relations Act. *New Zealand Journal of Industrial Relations*. 26(2): 151-168

Shor, F. (2002). Bringing the Storm: Syndicalist Counterpublics and the Industrial Workers of the World in New Zealand, 1908-1914. In P. Moloney and K. Taylor. (eds.). *Essays on Socialism in New Zealand*. (pp.59-72). Dunedin, New Zealand: Otago University Press.

Stone, R.C.J. (1963). The Unions and the Arbitration System, 1900-1937. In R. Chapman, and K. Sinclair. (eds.). *Studies of a Small Democracy: Essays in Honour of Willis Airey*. (pp.201-220). Auckland, New Zealand: Auckland University Press/Oxford University Press.

Surfing History's Waves: On the Resilience of the International Labour Organisation as an International Institution

NIGEL HAWORTH* and STEVE HUGHES**

Abstract

This paper explores six factors which, when taken together, explain not only the survival of the ILO since its creation in 1919, but also its capacity to maintain relevance and legitimacy, despite often adverse circumstances in which it has operated. Whilst focusing primarily on the post-1980 period, it identifies strands of organisation and strategic positioning, which have been central to ILO thinking since 1919.

Introduction

Cyclonic weather patterns often produce great swells, which, when they arrive on suitably configured shorelines, give rise to highly challenging, but for the expert surfer, exhilarating opportunities to test themselves against the sea's elemental power. The surfer battles the swell, chooses the wave to ride, and, applying knowledge and experience, hurtles across the wave's face, constantly adjusting angle and positioning to maximise the run (and also preserve life and limb). All being well, safety is gained and the surfer returns to confront the inexorable swell in preparation for the next ride.

The metaphor of the surfer in cyclonic conditions captures well the history of the International Labour Organisation (ILO) since 1919. The ILO was borne out immediately of a geo-political cyclone (the First World War) and, over a longer term, a similar sea-change created by the growth of militant working class opposition to the capitalist system. The subsequent history of the ILO has been marked by cyclonic shifts – the collapse of the League of Nations, the Second World War, the post-war accommodation, the Cold War, the neo-liberal revolution, and the rise of globalisation, to name but the most obvious. In each case, the ILO has battled through the cyclone, found a wave, and ridden the storm. Today, perhaps against the odds and to the surprise of some, the ILO, commanding resources, knowledge and skill, has not merely survived multiple cyclones, but prospered to the extent that, in 2011, its status and position in the global order is as strong, if not stronger, than has ever been the case.

Based on our previous research (Hughes and Haworth 2011a and 2011b), this paper outlines six dimensions of that historical success, which, when combined, underpin the current status of the ILO. In brief, the dimensions are:

- The founding strategy of autonomy, relevance and presence
- The importance of leadership
- Understanding the political-economy of the context
- Strategic principles
- Organisational adaptation
- External engagement

* Nigel Haworth is Professor of Human Resource Development in the Department of Management & International Business, University of Auckland. Private Bag 92019, Auckland, New Zealand. Email: n.haworth@auckland.ac.nz

** Steve Hughes is Professor of International Organisations at Newcastle University Business School, Citywall Headquarters, Citygate, St James Boulevard, Newcastle upon Tyne. Email: s.g.hughes@ncl.ac.uk

The paper assesses each dimension in turn, focusing particularly on the contemporary period (that is, since the 1980s).

The ILO in brief

The ILO was created in 1919 as an outcome of Part XIII of the Treaty of Versailles. Launched as an institution within the League of Nations system, its origins lay in international debates begun in nineteenth century about labour standards. Those debates had three important dimensions. The first was a humanitarian concern about working conditions. The second was a primarily economic concern about the implications of “unfair” labour standards for trade (an early version of the “race to the bottom” argument). The third addressed the rise of working class militancy, particularly under socialist and communist direction, and the threat to Capital created by that militancy. The ILO and its unique tripartite model was the outcome of those discussions. It was to be an organisation charged with the development and implementation of international labour standards, which would address humanitarian, economic and political challenges posed by workers and their working conditions.

Traditionally, the ILO’s core activities have been to develop, implement and monitor conventions and recommendations relating to all manner of working conditions. There is also a strong commitment to technical capacity building in labour standards, employment relations and many other dimensions of labour market performance. The institutional heart of the standards-setting process is the International Labour Office, located in Geneva. It currently employs about 2500 staff and in 2008/9 enjoyed a revenue of US\$ 565 million. A network of regional and local offices provides “global reach”. 182 countries are members. As noted above, a unique feature of the ILO is its tripartite nature. The Governing Body, the International Labour Conference and many of the Other ILO bodies include government, employer and trade union members¹.

As we shall see, the ILO uniquely survived the demise of the League of Nations and the Second World War to become an institution within the United Nations system. Moreover, despite a sometimes lacklustre performance in the post-war period; since the 1980s, it has enjoyed an extended period of renovation and influence.

The Founding Strategy: autonomy, relevance and presence

The first two Directors General – Albert Thomas and his successor Harold Butler – combined idealism and cool pragmatism in their early positioning of the ILO. Idealism was manifest in Thomas’ belief that workers in a post First World War world wanted stability in daily life and security against any renewed threat of war. Hence, he saw the role of the ILO as reducing tension, not only in nations, but between nations. However, such an ambitious role required the ILO to move beyond a narrow agenda of labour standards into a broader agenda addressing the political, economic and moral order of the post First World War world. Equally, an ambitious agenda was also needed to give the ILO strong international mandate, unlikely to be offered by a narrow focus on labour standards. Thomas recognised that the ILO risked isolation and oblivion if it did not build a stronger, broader international presence. In modern parlance, Thomas understood that the survival and impact of the ILO depended on it becoming “a player” in International Relations.

The inter-war strategy of the ILO can be reduced to *three essential propositions*: autonomy from the mortally-wounded League of Nations (and a concomitant identity as an independent agency); relevance to countries facing the impact of the inter-war crisis (in and beyond the developed economies); presence in

countries and regions beyond the metropole, such that the status and purpose of the ILO was globally recognised.

Autonomy from the League of Nations was a hard fought battle. Early on, Thomas and then Butler realised that the League was ineffectual in its response to deteriorating political circumstances in Europe, China, and to the impact of the global economic crisis. Their answer was to develop direct channels between the ILO and the tripartite partners in countries outside the League's mechanisms. Such links defined the ILO's autonomy from the League, an autonomy subsequently highlighted by US and USSR membership of the ILO in 1934. As the political situation slumped towards the Second World War and the League foundered, the ILO rode its wave of autonomy, crucially supported by the US. The role of the US in the later inter-war years was vital for the survival of the ILO, for its membership bolstered the status the organisation, whilst challenging the domination of European powers in ILO councils. Subsequently, it was the US' engagement with the ILO that provided an essential pathway to the integration of the ILO into the UN system, and supported the post-Second World War agenda for the ILO encapsulated in the 1944 Declaration of Philadelphia.

Relevance has been a goal of the ILO throughout its life. An autonomous organisation without relevance would founder as quickly as the League, as all Directors General have understood. In the inter-war years, relevance was provided by the ILO's technical role in identifying policy settings able to respond to the impacts of the global economic crisis. Subsequently, in the post-Second World War period, the regional and field networks of the ILO were developed to provide an extended level of technical support globally. Relevance remains at the heart of the contemporary ILO, as we shall see below in our discussion of the contemporary role of the ILO in the G20 discussions on the post-2008 global crisis.

Successive Directors-General have worked hard to couple relevance with **presence**. One way to establish relevance was to be present, visible and engaged in countries' policy setting. Presence required physical presence (hence the regional and field networks, and other networks at national level), intellectual presence (the provision of relevant and useful policy advice) and appropriate presence (by which we mean a presence that eschewed neo-colonial Metropole-Periphery relationships). In the contemporary period, presence has developed to include another "location" – the engagement of the ILO in the work and debates of other international institutions. As global governance develops, the ILO has actively positioned itself as a partner in discussions with, in particular, the World Bank and IMF, the WTO, and the G20.

The Importance of Leadership

We have already hinted at the role of leadership in the strategic positioning of the ILO after 1919. Successive Directors-General have, to greater or lesser extent, imposed their own individual mark upon the development of the organisation. However, some have been more "activist" than others, a possibility created by the structure and nature of the ILO as an organisation. Directors-General are elected for five year terms, and have the capacity to influence significantly the Governing Body and Conference of the ILO. An activist Director General has been able to impose his mark forcefully on the ILO (all Directors-General of the ILO have been men).

The power of the Director-General derives from multiple sources. Election places an individual in a major international position, in which there is embodied an expectation of leadership and action. That position allows the Director-General, if graced with diplomatic skills, to use his roles in the organisation's councils to implement bold strategies. Directors-General are members of an elite international order of leaders in the UN system, a position which, if used astutely, can be a lever of internal power within the ILO. Directors-General can, to some extent, play off against each other member countries and their social partners, the social partners

within ILO institutions and the social partners and countries against the staff of the ILO (and vice versa). Directors-General also have significant influence over staff issues at senior levels within the ILO, providing another route for the exercise of power and direction within the organisation. Of course, any of these “routes to power” depend on the political and institutional skill of the incumbent. Power and status inexpertly wielded can drive a powerful wedge between, on the one hand, the Director-General and, on the other, the staff and the social partners.

Albert Thomas (1919-32) and Juan Somavia (1999 to date) are quintessential “activist” Directors-General. Thomas, a socialist and a French Munitions Minister during the First World War, seized the nascent ILO and, by force of personality and the wielding of great political skill, drove the strategy of autonomy, relevance and presence outlined above. Enjoying the opportunities provided by an organisation-in-creation, he imposed his own blueprint on the ILO, ably supported by his successor, Harold Butler. Thomas is the prototype of the activist Director-General. Somavia, at the time of writing in his third term as Director-General, a Chilean diplomat and the first “Third World” Director-General (and the first not made in the traditional ILO mould), has been equally activist. As we shall see below, he has used the platform provided by his predecessor, Michael Hansenne (1989-1999), to drive a powerful agenda for internal organisational change, the refocusing of ILO strategy into the “Decent Work” agenda, deeper engagement with other international institutions, all underpinned by a commitment to inclusive responses to globalisation. Others might arguably fall into the same category of “activist Director General” (such as Edward Phelan (1941-1948) and David Morse (1948-1970)).

Of course, for much of the history of the ILO, action has been needed. Directors-General have rarely enjoyed the luxury of reflective leadership. Thomas and Butler (1932-1938) were forced to weather the cyclone that destroyed the League of Nations. John Winant (1939-1941) and Phelan (1941-1948) had to preserve the ILO and reposition it in the post Second World War era. Morse had to manage the Cold War’s impact on the ILO, a job that exhausted him, and may have contributed to the early death of his successor, Wilfred Jenks (1970-1973). Francis Blanchard (1974-1989) was confronted by the global neo-liberal attack on much of the philosophy upon which the ILO is based, and his successors, Hansenne and Somavia were confronted, not only by neo-liberalism, but also the impacts of globalisation and, under Somavia, the worst global economic crisis since the inter-war years. Leadership is important in the ILO because it can be displayed, and because it has been a constant requirement of the ILO’s circumstances (Hughes and Haworth, 2009).

Understanding the Political Economy of the Context

To build relevance required the ILO to understand the changing context in which it operated. That understanding, in turn, required strengths in two areas – the technical capacity to understand shifts in the global economy and their implications for labour markets and the social partners, and delivery mechanisms that turned that understanding into effective policies in member countries. We have seen already that, in the inter-war years, economic certainties were pummeled by economic crisis. Moreover, alternative solutions – fascism and communism – were emerging, rejecting the failed liberal policies of the European tradition. Harold Butler understood the implications of this clash for world peace, economic stability and the future of the ILO. And, as the Depression progressed, the standards-setting activities of the ILO diminished in importance and pace.

Butler’s response to this challenge was masterly. He identified the salvation of the ILO (and, in a broader sense, the world order) to be a reduction of the importance of European countries in the ILO, to be achieved by the US becoming a member. Once a member (after 1934), the US, fortified by Roosevelt’s New Deal as a successful alternative to Hitler and Stalin, strongly supported the ILO (whilst condemning the ineffectual League; but this was not simply a political success, consolidated in the inclusion of the ILO in the UN

system. It was also the basis for an alternative policy package for governments responding to the inter-war economic crisis, a package that the technical capacity in the ILO could develop to meet the needs of other countries. Thus, US membership provided simultaneously a political defence of the ILO and a relevant and grounded technical policy framework, which the ILO to promote.

More recently, Somavia has achieved a similar degree of success in positioning the ILO as a central international agency in the development of a response to the post-2008 global crisis. When the global economy “came to a halt” in the second half of 2008, unemployment mounted rapidly, and the potential for the economic crisis to unleash global social unrest was widely recognised. The G20, in London in April, 2009, held a summit meeting on growth, stability and jobs, and called on the ILO to assess the employment impacts of the crisis, existing measures taken in response to those impacts, and other measures that might be implemented. Operating at its technical best, the ILO produced 54 country analysis in response to the G20’s call and presented its findings at the Pittsburgh G20 meeting in September 2009.

Somavia’s success in entrenching the ILO in the G20’s councils mirrors Butler’s success in the 1930s. The ILO achieved three key outcomes as an effect of its work with, and for, the G20. It confirmed the status of the ILO in such august councils, itself a significant outcome. It reinforced the status of the ILO as the pre-eminent international body in labour market, employment and social protection issues. It positioned the ILO’s technical capacity in these areas as unmatched. The ILO’s success in reaffirming its international role in the post-2008 period has been buttressed by the on-going fear of “jobless growth” as the global economy begins its rocky road to recovery. Countries echo the ILO’s concerns about “job rich growth” and its social and political benefits, providing a context in which ILO influence and technical capacity can wax. Arguably, a key ILO success in this period is its capacity to ground its rhetoric and principles in crisis responses in many countries, especially in terms of social dialogue and tripartism.

The ILO’s vehicle for employment-based growth is the Global Jobs Pact, endorsed by the International Labour Conference in June 2009. Its key tenets are:

- Guaranteeing credit flows to business, especially small and medium-sized enterprises (a necessary pre-condition for employment retention and creation)
- Retention of viable jobs by means of a reduction in work hours and the targeted use of skill development strategies (to minimise unnecessary lay-offs and labour market disruption)
- Unemployment benefits targeted expressly to support job seekers
- A strong focus on active labour market policies to reduce, first, the impact of unemployment and, second, to minimise social exclusion. Employment guarantee schemes were particularly highlighted.
- An equally strong focus on measures to support youth in the labour market
- Investment in job-rich infrastructure projects
- The development of “Green” employment strategies to reinforce employment sustainability
- The extension of social protection to vulnerable groups currently without such protection

The Pact positions the ILO’s response to the post-2008 crisis in classical ILO principles: social protection for the needy, employment-led growth, the priority to be attached to “decent work”, the importance of active labour market interventions, and a strong underpinning of social dialogue and inclusion of the social partners. The line between Butler in the 1930s and Somavia in 2008 is direct and consistent.

Strategic Principles

Strategic principles and a capacity to adapt them have been at the heart of ILO success. Some principles – standards setting, tripartism, for example – are constants. Others have emerged and have been adjusted over

time. Thus, for example, the traditional focus on standards-setting was a necessary but not sufficient condition for the survival of the ILO after 1919. As noted above, Thomas understood quickly that survival required the ILO to broaden its strategic principles to include the political, economic and moral rights of individuals in a market-driven system. Similarly, the Declaration of Philadelphia proclaimed that labour is not a commodity, that freedom of expression and of association are essential to sustained progress, that poverty anywhere constitutes a danger to prosperity everywhere, and that the war against want should be based on concerted and continuous international effort. However, it also placed Human Rights at the centre of the ILO's functions. The reason for this was simple. Director-General Phelan was seeking to place the ILO at the centre of the re-building of political democracy after the Second World War, thus, like Thomas and Butler before, guaranteeing the status and relevance of the ILO in the post-war settlement.

Strategic principles have been at the heart of reform agendas in the contemporary ILO. Particularly under Directors-General Hansenne and Somavia, the renovation and refocusing of ILO principles have been important. In 1994, Hansenne addressed the International Labour Conference about the need for the ILO to understand and respond to the challenges and opportunities posed by globalisation. He was challenging the ILO to revise its strategic principles and direction in a changing world. His thinking was driven by four factors: continuing support internationally for the standards-setting role of the ILO, a parallel concern that the mechanism for standards-setting needed to be reformed, an understanding amongst the social partners that change was needed in the ILO, and a related concern that the consensus between the social partners within the ILO was breaking down, primarily as an effect of neo-liberal thinking in government and employer groups.

Hansenne's response, articulated at the 1997 Conference, was to propose that the ILO work in two interdependent ways. The first, echoing the outcomes of the 1995 Copenhagen Social Summit, was, in effect, to specify core labour standards, which would capture key basic rights and, also, the "social rules of the game of globalisation". The second was a framework whereby the ILO "came alongside" countries as they responded to the challenges of globalisation, encouraging them to integrate a social dimension into their economic strategies. This approach, as detailed by Hansenne in his 1997 speech, at once drew heavily on traditional ILO values and practices, and yet moved the ILO into controversial new ground. The identification of "core" labour standards was seen by some to cut across traditional ILO support for all standards, whilst the "encouragement" of a social dimension in countries' responses to globalisation seemed, in the eyes of some traditionalists, to move ILO activity from the application of "hard law" labour standards to a softer, engagement-style relationship with member countries. Traditionalists were even more concerned when the new approach was associated by Hansenne with "standards overload" (the tendency for all issues to be reduced to standard-setting) and a view that standards-setting was but one dimension of ILO activity, and that other activities, perhaps more topical and unrelated to standards, were also important².

Hansenne's reform was consolidated in the hard-fought Declaration on Fundamental Principles and Rights at Work, adopted unanimously by the June 1998 Conference. The final wording of the Declaration is concise and can be reduced to four key elements. First, the Declaration confirms that, by joining the ILO, and endorsing the principles set out in the ILO's constitution and the Declaration of Philadelphia, member states are bound by the principles related to four fundamental areas of rights, which are:

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labour;
- c) the effective abolition of child labour; and
- d) the elimination of discrimination in respect of employment and occupation.

Second, member states and the ILO, working together with other agencies, will support these fundamental rights:

- a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental conventions;
- b) by assisting those members not yet in a position to ratify some or all of these conventions in their efforts to respect, to promote and to realise the principles concerning fundamental rights which are the subject of those conventions;
- c) by helping the members in their efforts to create a climate for economic and social development.

Third, the 1998 Declaration will be promoted by means of an annual “follow-up” at member-state level in cases where one or more of the four fundamental areas have not been addressed appropriately in terms of convention ratification, and an annual “global report”, analysing one of the fundamental rights each year. Fourth, labour standards should not be used for protectionist purposes.

These principles were and remain controversial. However, here, that controversy is secondary to our interest, that is, the manner by which the ILO renews its principles as a necessary strategy in its constant search for relevance and presence in a changing world.

The capacity to adapt strategic principles is seen in equal measure in the changes introduced under Somavia after 1999, Building on Hansenne’s work, and the extended analysis undertaken by the ILO of the social impacts of globalisation (ILO, 2004), Somavia has marshaled the work of the ILO under a single banner – “Decent Work” – from which, for the 2000-2005 period, depended four strategic objectives:

- To promote and realise standards and fundamental principles and rights at work
- To create greater opportunities for women and men to secure decent employment and income
- To enhance the coverage and effectiveness of social protection for all
- To strengthen tripartism and social dialogue

These examples illustrate how strong, yet adaptable, strategic principles have been both pillars of ILO practice and a staunch defence against attempts to marginalise or undermine the institution. Those principles have, since early days, been far broader than a defence of labour standards, and have appropriated to the ILO a responsibility for a broader human rights and social inclusion agenda.

Organisational Adaptation

The organisational performance of the ILO has been a perennial issue for member countries and social partners as much as the institutional leadership in Geneva. We have discussed above the founding strategies of autonomy, presence and relevance, which required the elaboration of an institutional presence beyond Geneva. We will discuss in the next section how contemporary engagement with other international agencies involves innovative organisational measures. There have been three key phases of institutional development in what has, overall, been a constant search for an effective organisational model. The first was the founding period in which the essential model of social partners and tripartism was elaborated, and in which the roles of the key actors and institutions in the ILO, and the key outputs of ILO deliberations, were defined. Thomas and Butler oversaw this period, though one might argue that it extends into the period that culminates with the Declaration of Philadelphia and the insertion of the ILO into the post-Second World War UN system. The second was the long period of Morse’s leadership (1948-1970), in which the quality and scope of ILO technical assistance programmes was extended. That period also saw the creation of the International Institute for Labour Studies and the Turin-based International Training Centre³.

However, in the recent period, Somavia has overseen a major overhaul of the ILO’s organisation, in a clear attempt to create an organisational form that can meet the challenges posed by the 1998 Declaration and the

unifying focus on Decent Work. At the heart of the new organisational model is the delivery of the key strategic objectives, outlined in the previous section, which together comprise the Decent Work agenda. Somavia has instituted reporting across the ILO against those objectives, most recently in the Strategic Policy Framework (SPF) for 2010-2015. This emphasises outcomes-base reporting, in which measurement and reporting of results are important. Reporting to the Governing Body and the Conference are similarly structured. Somavia has also restructured the delivery mechanisms for ILO activity. Thirty-nine programmes have been reorganised into the four strategic objectives, entailing significant budget and staffing realignment. A new senior management structure has been introduced.

Again, such changes are controversial (see, for example, Standing 2008). The social partners have broadly supported change. However, staff have been divided between those who accept that there was a need to modernise the institution and are comfortable with the model implemented, those who accept the need for change but are critical of its particularities, and then a third group who, like Standing (2008), take a far more critical line and suggest that organisational change under Somavia has fundamentally damaged the ILO. Again, here, we are less concerned about the weight of contending assessments and more about the period of organisational change under Somavia as reflecting a constant requirement for the ILO to adapt effectively to changing external circumstances. As was the case in previous periods in the ILO's history, the contemporary period has seen organisational coherence and performance being tested as well as being a key to the institution's survival.

External Engagement

The history of the ILO has been marked by a constant positioning of its institutions and activities relative to other external agencies. The early days of the ILO were, as we have mentioned, marked by a distancing of the ILO from the League of Nations, and a concomitant building of autonomous relationships with social partners in member countries, particularly the US and others beyond Europe. The period between 1938 and 1948 was another period of positioning, this time in terms of the post-Second World War settlement, and the creation of the UN system. Under Morse, the expansion of technical assistance programmes built wider networks and relationships in developing economies. Here, however, we focus on the contemporary period, commencing with Blanchard's opening towards the international financial institutions in 1987.

By the early 1980s, the ILO was effectively sidelined by a combination of factors influencing the global economy. The US had left the ILO in 1977, creating a short period of serious budget crisis and reflection on the future of the ILO. Although the US rejoined in 1980, neo-liberal policies were in vogue, and stood against many of the precepts upon which the ILO was based. Moreover, the major Bretton Woods institutions – the World Bank and the International Monetary Fund (IMF) (sometimes called the IFIs, or international financial institutions) – were in the vanguard of neo-liberalism, especially in the developing countries into which the ILO had expanded with many of its technical assistance programmes. Blanchard, a highly-competent diplomat, argued that the way forward for the ILO was engagement with the IFIs, leading to the 1987 high-level meeting between the three institutions, and a call for greater co-operation between them.

Blanchard's opening towards the IFIs marked the beginning of external engagements that runs through to the contemporary link between the G20 and the ILO (discussed above) and the close relationships that exist between the ILO and the WTO, and with the World Bank. We have outlined the involvement with the G20 above. Here, we develop our argument with reference to the ILO and the IMF⁴.

Underpinning the G20's contemporary "balanced growth" framework was a considerable body of work undertaken across a range of international agencies, including the OECD, WTO, World Bank and the ILO. That joint work became the basis of G20 decisions made in Toronto (June 2010) and Seoul (November

2010). At the heart of the balanced growth framework is a traditional ILO principle – growth and inclusion in social benefits. In one sense, the ILO was pushing at an already open door, in that the G20 leaders were committed, formally at least, to inclusive, balanced growth. However, the presence of a strongly inclusionary approach in G20 statements reflects also the relationship between the ILO and the IMF, and particularly between Somavia and Dominique Strauss-Kahn, the IMF's Managing Director. Strauss-Kahn strongly supports policy settings that include simultaneously macroeconomic stability and social inclusion. His views reflect differences within the IMF between strategists and the top echelon, who broadly support Strauss-Kahn, and the country-level intervention teams, who, usually drawn into a country late in a crisis, tend to draw from their standards tool-box of structural adjustment measures (Personal communication – Authors' interviews, ILO, November 2010).

The integration of traditional ILO concerns with IMF adjustment approaches is the outcome of a number of processes. The first is the development of close personal ties at the senior leadership levels across the two institutions. It is clear that Somavia and Strauss-Kahn are able to work together in some harmony. Second, there is an institutional basis for co-operation, particularly derived from the positive outcomes of the September 2010 joint IMF and ILO conference on “the Challenges of Growth, Employment and Social Cohesion”, held in Oslo (see: www.osloconference2010.org/conference).

Third, there are drivers for co-operation for both institutions. In the case of the ILO, there is the desire to ensure that jobs, social justice and inclusion are at the heart of recovery packages. For the IMF, the impetus for involvement is not just about the personal views of Strauss-Kahn. Before the 2008 crisis exploded, the IMF was in major difficulties. Its interventions were increasingly eschewed by countries, which had seen the impact of such interventions in the 1990s and were critical of them, and which had also seen the success of alternative packages, such as that applied in Malaysia in the Asian Financial Crisis of the late 1990s. It is not stretching the point to argue that the 2008 crisis gave a new lease of life to the IMF, but it also required the IMF to reposition itself, opening up avenues in which co-operation with the ILO could prosper.

External engagement and co-operation has become a central strategic focus for the ILO. It has been present in the ILO toolbox since its creation, but, in the era of globalisation, has become an essential mechanism in building relationships with other key agencies in global governance. Under Blanchard, Hansenne and particularly, Somavia, it has been taken to new heights, facilitated by the need for action to overcome the impacts of the 2008 crisis.

Conclusions

We commenced this discussion by invoking the image of cyclonic swells and the skill and experience needed to surf them. The ILO has been buffeted by such swells since its earliest days. Organisationally, it has had to act across the six areas discussed above in order to survive and prosper. It is much to the credit of the ILO and its leadership that it has not only survived, but prospered. Yet, even now, in a period in which the ILO is strongly placed, its position is still fragile, dependent upon its capacity to tie its technical analysis into the broader work of the international agencies at the heart of global governance. The fate of the ILO is to confront such swells constantly, and to adapt accordingly.

We have concluded our discussion on a high point. The ILO is at the “top table” of international agencies in terms of responses to the post-2008 crisis. This is, as we have argued, because of effective positioning around a traditional high competence. The social, inclusionary and employment aspects of globalisation have become more crucial as questions of sustainable political and economic stability gain greater currency. Building on the 1944 Declaration of Philadelphia and its more recent repositioning in the 1990s and 2010s, the ILO can make legitimate claim to the defence of those inclusionary aspects, and if they are sustained in global agendas, that claim may well maintain the ILO in the first rank of international agencies in the future.

Such a positioning will require that traditional combination of relevance, competence, presence, and, also, leadership, which together has marked the history of the ILO since 1919.

Notes

¹For a brief description of the ILO system, see Hughes and Haworth (2011b, Chapter 2)

²For a brief account of the controversy, see Hughes and Haworth (2011b, Chapter 4). It is fair to conclude that Hansenne's reform emerges from the debate in reasonably good health.

³ The ILO was awarded the Nobel Peace Prize for its contribution to peace through social justice in 1969, not a little due to that expansion in effective technical assistance.

⁴ A similar argument can be made for the relationship between the World Bank and the ILO, see Hughes and Haworth 2011a.

References

Hughes, S. and Haworth, N. (2009). *Director General Activism and the Extension of the ILO Agenda: The ILO since 1989*. Paper presented at the Symposium, 90 Years of the ILO: The Significance for Australia and New Zealand on 19-21 November, 2009. Auckland, New Zealand.

Hughes, S. and Haworth, N. (2011a, forthcoming). Decent Work and Poverty Reductions. *Relations Industrielles/Industrial Relations*.

Hughes, S. and Haworth, N. (2011b). *The International Labour Organisation (ILO): Coming in from the Cold*. Abingon, UK: Routledge.

ILO. (2004). *A Fair Globalization: Creating Opportunities for All*. Retrieved from <http://www.ilo.org/public/english/wcsdg/docs/report.pdf>

Standing, G. (2008). The ILO: An Agency for Globalization? *Development and Change*. 39(3): 355-384

The impact of MNEs and FDI on aspects of working conditions as contained in the ILO 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

RAYMOND MARKEY* and KATHERINE RAVENSWOOD**

Abstract

This article reviews the literature on the impact of multinational enterprises (MNEs) and foreign direct investment (FDI) on employment and identifies the significance of this research, and where further research is required. It proposes that further research is needed, in particular, in the area of EEO and pay equity; the comparative effect on emerging economies, particularly the demand for skills and the impact on skills or training and knowledge transfer; minimum age of work and child labour; and the impact on industrial relations in general.

Introduction

This article is based upon a report commissioned by the ILO on the impact of multinational enterprises (MNEs) and foreign direct investment (FDI) on aspects of working conditions as included in the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy¹. The article takes the form of a review of existing literature from 2007 up until the end of 2010. Sources that were relied upon for information on FDI flows and incidences and characteristics of MNEs were the websites of the OECD and UNCTAD, although other organisations' reports were also consulted i.e. the World Bank, IMF and World Trade Organisation websites. The sources for academic research were through two electronic databases: Google Scholar and Business Source Premier (EBSCO). The terms MNEs, multinationals, TNCs, MNCs, FDI and export zones were all used as search terms, reflecting the range of terms used in the literature, along with the key terms associated with each area of the Declaration. The review is limited by the time period covered, however, this period is one in which increasing interest in MNEs has occurred and, therefore, the review does illustrate current research interests in the field as well as areas that need further development.

The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy was introduced ahead of its time, well before current discussion of corporate responsibility. In part, because of this, it was controversial and took about 10 years to be formed and agreed on. The aim of the Declaration was to encourage positive contribution of MNEs to economic and social progress through cooperation with tripartite partners. As detailed in Figure 1, the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy has four main sections of Employment, Training, Conditions of Work and Life, and Industrial Relations.

* Raymond Markey is Professor of Employment Relations at AUT University and the Director of the New Zealand Work and Labour Market Institute (NZWALMI). Email: rmarkey@aut.ac.nz

** Katherine Ravenswood is a PhD student at AUT University.

Table 1. Key areas of the 1977 Tripartite Declaration of Principles concerning MNEs and Social Policy

AREA	CONVENTION OR RECOMMENDATION
Employment (paras. 13-28)	
	<i>Employment promotion</i>
	<i>Employment promotion</i> (Convention 122, Recommendation 122 re Employment Policy)
	<i>Equality of opportunity & employment</i> (C111 and R111 Discrimination in Respect of Employment and Occupation; C100 and R90 Equal Remuneration for Men and Women Workers for Work of Equal Value)
	<i>Security of employment</i> (R119 Termination of Employment at Initiative of the Employer)
Training (para. 29-32)	
	(C142 and R150 Vocational Guidance and Vocational Training in Development of Human Resources)
Conditions of Work and Life (paras. 33-40)	
	<i>Wages, benefits and conditions of work</i> (R116 re Reduction of Hours of Work; C110 and R110 Conditions of Employment of Plantation Workers; R115 Workers' Housing; R69 Medical Care; C130 and R 134 Medical Care and Sickness Benefits)
	<i>Minimum age</i> (C138 Minimum Age for Admission to Employment and Work and C182 Elimination of Worst Forms of Child Labour)
	<i>Safety and health</i> (Cs 115, 119, 136, 139, and Rs 114, 118, 144, 147 re specific hazards eg. guarding machinery, ionising radiation, benzene, cancer)
Industrial Relations (paras. 41-59)	
	<i>Freedom of association and the right to organise</i> (C87 Freedom of Association and Protection of Right to Organise; C98 Right to Organise and Collective Bargaining)
	<i>Collective bargaining</i> (C98; C135 Protection and Facilities to be Afforded Workers' Representatives in Undertaking; C129 Communications between Management and Workers within the Undertaking)
	<i>Consultation</i> (R94 Consultation and Cooperation between Employers and Workers; R129 Communications within the Undertaking)
	<i>Settlement of disputes and examination of grievances</i> (R130 Examination of grievances within Undertaking; R92 Voluntary Conciliation and Arbitration)

Source: 1977 ILO Tripartite Declaration of Principles concerning MNEs and Social Policy, 1977, Geneva (ILO, 1977).

MNE actions and FDI flows are playing increasingly important roles in employment worldwide. Since the introduction of the Declaration “the numbers of multinational corporations...has increased nearly eightfold from 11,000 in 1976 to 79,000 in 2007 and foreign direct investment (FDI) stocks almost threefold” (Royle, 2010: 249). MNEs employ about 77 million people globally, accounting for about three percent of the global workforce (UNCTAD, 2009a; OECD, 2009b).

Most of the FDI in the OECD countries peaked in 2007, with developed countries being the most impacted by the economic crisis. MNEs are further shifting their focus to developing countries for

outgoing FDI. Inward and outward FDI is changing, with India and China becoming more significant countries. It has been predicted that China will come out of the current global financial crisis a more significant country in the global economy, and that its outward FDI flow will soon exceed inward FDI (OECD, 2009a). These statistics are particularly interesting in light of the information in the following sections that indicate that MNEs operating in emerging economies such as China and India commonly base their working conditions on the host country, which often has lower regulated conditions than the country of origin. It will be of significance for future trends as the importance of MNEs from these same emerging economies grows. That is, emerging economies influence the lowering of working conditions in MNEs already, as host countries, and this influence might become stronger as they increasingly become the *home* countries of MNEs. Research, previously, has associated FDI location decisions with weaker regulatory environments, however, recent research finds that “neither comparatively high labour costs nor strong unions and formalised systems of employee workplace representation are negatively related to FDI” (Brandl, Strohmer and Traxler, 2010: 635).

MNEs are characterised by increasing diversity of national origin and industry sector of operations, and also by considerable concentration in host countries of operations and in financial assets. There has been a recent trend towards activity in the services sector among multinational enterprises, particularly in telecommunications, electricity and water services. In terms of location intensity, the United Kingdom is the preferred location, but China, Brazil and Mexico are also in the top 20 countries, with the remaining top 20 countries representing developed economies. The geographical spread of the top 100 MNEs is not confined to developed economies, with MNEs from China, Malaysia, Korea, Mexico and Singapore in the top 100. Emerging economy top 100 MNEs, particularly, are responsible for increasing employment (UNCTAD, 2008).

Research into MNEs and FDI and their effect on employment tends to be concentrated in large economies (Collings, Gunnigle and Morley, 2008) and/or OECD countries, which poses obvious limitations. While more research is being undertaken in developing country MNEs, there is little on the least developed countries (Cuervo-Cazurra and Genc, 2008). The research is also criticised for a lack of representativeness, with bias towards “largest, most global, well-known, US based manufacturing firms” (Lavelle, 2008: 51), but also with small samples and only partial coverage of MNEs. An obvious gap in the literature is the increasing role of ‘macro markets’ in FDI location and the ensuing effect on employment (Brandl et al., 2010). This article reviews the literature on the impact of MNEs and FDI on employment and identifies the importance of this research, and where further research is required.

Impact on employment

The Declaration refers to employment growth, equality of opportunity and treatment, and job security and turnover. Generally, there is not substantial research in these areas but the existing research indicates that MNEs do impact on employment growth in host and home countries. However, causality has not been established in the literature, particularly with reference to job security and turnover. There is some evidence that, in the foreign affiliates of MNEs from the USA, Germany and Japan (over the period of 1980-2003), the “ratio of foreign to domestic employment is typically higher in manufacturing industries than in service sectors” (Molnar, Pain and Taglioni, 2008: 101), and that foreign employment growth “is positively associated with domestic employment growth” in the USA (Molnar et al., 2008: 104). Until 2008, increased FDI was associated with an increase in the number of jobs in the foreign affiliates of MNEs. However, for some countries and industries, there is evidence that “outward investment has a significant negative association with the domestic demand for labour after controlling for domestic output and real

wages” (Molnar et al., 2008: 111). On the other hand, some research on Swedish MNEs indicates a positive impact, from increased competition through increased demand for skilled labour, associated with a high presence of foreign owned MNEs in the same industry (Bandick and Hansson, 2009).

The effect of MNEs on the equality of opportunity and treatment is especially under-researched. What is known is that increased diversity is also viewed as one way of expanding the talent pool for employers and boosting employees’ motivation and commitment (OECD, 2009b). OECD-European MNEs have the highest proportion of ‘equal opportunities systems’ (work-life balance indicators such as flexible working hours, job sharing, child care arrangements or statistics showing employee demographics) at 82 percent compared to 16 percent in MNEs from the non-OECD/emerging markets (OECD, 2009b). However, this may change as perceived skills shortages in Asia have increased awareness of measures, such as work-life balance policy, as a tool for widening the pool of employees from which to recruit (De Cieri and Bardoel, 2009). In terms of equal treatment, some studies have shown that the MNEs in the UK that employ predominantly women are less likely to pay above the median, in contrast to MNEs, in general, in the UK, which often pay above the median rate (Edwards, Edwards, Ferner, Marginson and Tregaskis, 2007). Some research points to low wages and poor conditions of workers in export processing zones, of whom 90 percent are female (Royle, 2010).

Research into job security in relation to MNEs is also limited. In an OECD survey of 2000 publicly listed companies, less than 10 percent had clear evidence of job security systems. This was shown to be linked to legislative requirements of the host country, and also to the level of union representation in the company (OECD, 2009b). Turnover has been shown to be higher in MNEs than in domestically owned firms (Brown, 2007; UNCTAD, 2009b) as MNEs tend to respond more quickly to changes in labour and financial markets, through cutting back on numbers of employees, as indicated by reports that labour costs may be cut in response to the global financial crisis (UNCTAD, 2009b). Some research has also suggested that with increasing offshore production, labour demand becomes more elastic and the risk of job losses greater, but there is insufficient evidence for this to be a general observation (Crino, 2009); trends are likely to vary across different sectors and occupations. Related practices, such as outsourcing and subcontracting, contribute to a trend of job insecurity (Royle, 2010). Global Framework Agreements (GFAs) between MNEs and Global Union Federations often include clauses on restructuring of the company, as can be seen in discussion later in this report.

Training

Generally, there is limited, clear evidence regarding training systems in MNEs (OECD, 2009b). Research that has been undertaken has largely focused on cultural and language training for expatriates rather than on training for host country nationals (HCNs) (Zheng, Hyland and Soosay, 2007; Vo, 2009). Some issues that arise are whether MNEs increase the skill level of the host country and whether the demand for skills decreases in the country of origin with increased internationalisation. The pattern of skill development across developed and developing countries is also of concern, as there is some evidence that MNEs locate low-skilled operations in countries that have large numbers of low-skilled low wage workers, and consequently do not invest in skill development for these workers. On a macro level, research has indicated that FDI will only enhance skill development in countries that have a relatively high level of skills to begin with (Te Velde and Xenogiani, 2007). When foreign affiliates operate in high income countries, this also has a negative impact on the demand for high skilled workers in the country of origin (Elia, Mariotti

and Piscitello, 2009). This situation potentially leads to international skills inequalities (Te Velde and Xenogiani, 2007).

In terms of the spread of investment, a recent study indicated that training expenditure, particularly in Asian countries, is predominantly in service industries and targeted at managerial and professional employees (Zheng et al., 2007). There was also some evidence that non-Asian owned MNEs invested more in training than Asian owned MNEs. A study of MNEs in Vietnam found different approaches taken by US and Japanese MNEs. US MNEs had a higher tendency to appoint Vietnamese nationals in managerial positions than Japanese MNEs. Furthermore, the US MNEs then gave Vietnamese managers training and allowed advancement to corporate level in both local and global spheres whereas Japanese MNEs allowed host country nationals to advance to “at least two levels down from the top” (Vo, 2009: 1415) and had fewer training opportunities. Research into global talent management indicates that, contrary to other aspects of work, country of origin is not a significant factor, and that sector may impact more; for example traditional manufacturing MNEs are more likely to have global talent management than high-tech manufacturing MNEs (McDonnell, Lamare, Gunnigle and Lavelle, 2010).

There is some evidence that education levels may be improved by MNEs (Paus and Gallagher, 2008; Zhuang, 2008). However, there are few studies that systematically investigate the interaction between MNEs and education and training, both within the subsidiary and for the host country economy. This is significant because it appears that, due to the heterogeneity of the countries, broad survey data does not indicate statistically significant connections between FDI or MNEs and skills, training or education (Zhuang, 2008).

Conditions of work and life

Conditions of work and life covered by the 1977 Declaration include wages, benefits and conditions of work; minimum working age; and safety and health. There is little information, in general, on the effects MNEs or FDIs have on conditions of work and life. In a recent survey of almost 2,000 companies, including some from emerging markets, the number of companies meeting ILO MNE Declaration standards varied according to region and sector. Health and safety standards are met by more companies in sectors that have high risks in terms of health and safety. There is also a link between the size of the company and the likelihood of them having policy that is consistent with the Declaration. This may be due to public profile and consequent pressure from investors, trade unions, NGOs and consumers (OECD, 2009b).

MNEs generally pay better wages than domestic firms to employees (Almeida, 2007; Brown, 2007). An OECD report places the difference in wages at 40 percent higher in foreign MNEs and 15 percent higher in domestic MNEs than in local firms. The differences between average wages in local firms and MNEs tend to be greater in developing countries (OECD, 2008). However, working conditions in MNEs are not always better than in domestic firms, and in particular, working hours have been found to be longer in foreign-owned firms (OECD, 2009b). With respect to labour standards and conditions of work in general, MNEs have been shown generally to comply with minimum legal standards in the host country, and not to provide higher standards (Chinen, Wang and Wang, 2008). Indeed, evidence indicates that MNEs usually do not export their labour practices to foreign subsidiaries (OECD, 2009b). Large MNEs concerned with their public reputation and brand have increasingly introduced voluntary codes of conduct (Edwards, 2011). These often include minimum labour standards and extend the requirement of these standards to their suppliers. Their content is similar to that of GFAs, but the codes are decided upon unilaterally by the MNE. However, research suggests that despite these codes of conduct, low labour standards

in supplier firms remain a concern (OECD, 2008). Further research on MNEs and voluntary codes are clustered around global supply chains (Robinson, 2010).

There is less information on minimum working age and child labour in relation to MNEs and FDI (Chinen et al., 2008). However, contrary to general opinion, studies indicate that FDI does not increase the demand for child labour (Iram and Fatima, 2008) and is associated with lower incidence of child labour (Neumayer and De Soysa, 2005) and indeed, that child labour deters inward FDI (Brown, 2007). Many GFAs contain clauses on minimum age and child labour, although, as is explained further on in this report, the number of GFAs is still relatively small, and there may be difficulties in enforcement of the agreements. One explanation for FDI being linked with decreased child labour is that child labour has a negative effect on human capital stock as it reduces human capital formation. Human capital stock has a positive effect on FDI, so where child labour incidence is higher and human capital stock lower, it would follow that FDI will also be lower (Brown, 2007).

Safety and health are considered important in terms of protecting the MNE's reputation and avoiding fatalities and regulatory fines (OECD, 2009b). As with all aspects of employment in MNEs, country of origin effect is apparent. In a study of MNEs in China, it was found that Hong-Kong and Taiwan based MNEs had significantly lower standards for health and safety (and environmental concerns) than European and US based MNEs (Chinen et al., 2008). Generally, there is also a clear difference between MNEs operating in developed countries and those in developing countries. Amongst OECD-European companies, 91 percent have 'some evidence' of health and safety systems compared with 55 percent of companies from emerging economies showing little or no evidence of health and safety systems. The sectors with the highest proportion of health and safety systems are mining, chemicals and oil and gas (OECD, 2009b).

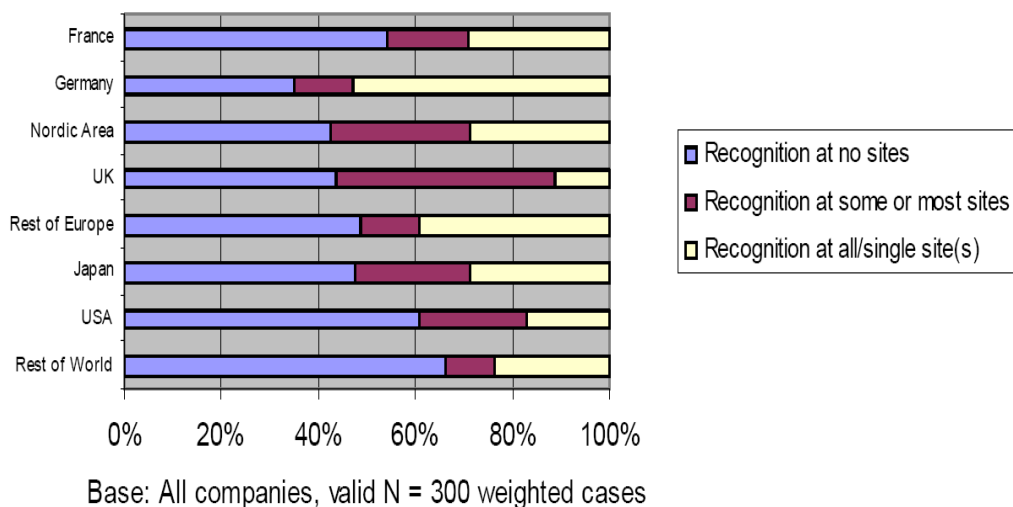
Industrial relations

The industrial relations section of the Declaration incorporates the freedom of association and the right to collective bargaining and consultation; the examination of grievances and settlement of industrial disputes and to organise. Much of the research is focused on Western based MNEs, sometimes with subsidiaries in developing countries, but there has been little research into industrial relations in MNEs originating from developing countries such as China (Shen, 2007). This is an important gap in information as developing countries' industrial relations systems are often characterised by weaker support for freedom of association and the right to organise (Egels-Zanden and Hyllman, 2007). It might, therefore, be predicted that labour rights in MNE subsidiaries in developing countries will be lower than in developed countries. The 'country of origin' effect is widely discussed in the literature and this holds that MNEs' approach to industrial relations and HRM in their subsidiaries will conform to their home country practices and policies (Shen, 2007; Lavelle, 2008). However, it has been illustrated that "different national contexts provide frameworks which allow MNCs greater or lesser flexibility for external management policies" (Vo and Rowley, 2010: 234).

Overall, MNEs have a tendency to avoid unions while adhering to local legislation, particularly in new sites. They do respond to union pressure (Edwards et al., 2007; Lavelle, 2008; Quintanilla, Susaeta and Sanchez-Managas, 2008; Shen, 2007). The research indicates that MNEs are often clearly unionised or do not have a union presence at all and in companies that recognised unions, the majority of employees were unionised (Belanger, Harvey, Jalette, Levesque and Murray, 2006; Lavelle, 2008). There is a strong connection between the country of origin and level of union

recognition, with US MNEs less likely to engage with unions than Irish, United Kingdom (UK) and continental European MNEs as illustrated in figure 1 below (Edwards et al, 2007; Lavelle, 2008; Tuselman, Allen, Barrett and McDonald, 2008). Where there is union presence, union activity is often limited (Aggarwal, 2007; Braun, 2007). There is evidence that MNEs have taken punitive action, such as dismissal, against employees who have tried to unionise workplaces, particularly in developing countries (Royle, 2010). Of further note is research that indicates that MNEs may impact on the IR and HRM framework of the host country (Collings et al., 2008; Navrbjerg and Minbaeva, 2009).

Figure 1. Union recognition in MNEs in the UK by country of origin



Source: Edwards et al., 2007: 80.

Consultation generally occurs at a low level and is most likely to take place in unionised MNEs (Belanger et al., 2006; Edwards et al., 2007). Overall, MNEs have advocated decentralisation of bargaining arrangements to increase “scope for company negotiation within sector and inter-sector agreements” (Marginson and Meardi, 2009: 28). Simultaneously, research indicates that non-union forms of representation are increasing in MNEs (Edward et al., 2007), but that there is a lack of access to collective representation for non-unionised employees (Belanger et al., 2006). While country of origin effect does influence MNEs, recent research indicates that of MNEs operating in the UK, the differences overall were not as great as expected: “that these multinationals may be embracing voice regimes associated with dominant Anglo-American business practice and/or escaping constraints on employee voice practice which domestic environments are perceived to impose” (Marginson, Edwards, Edwards, Ferner and Tregaskis, 2010). Similarly to union recognition, MNEs that recently engaged in acquisition had clearly different voice practices within the organisation (Marginson et al., 2010).

There is scant research that investigates, in detail, the examination of grievances and settlement of industrial disputes, and national statistics do not distinguish between domestic companies and MNEs. The research predominantly investigates HRM practices overall and how they interact with host country industrial relations frameworks. One study of American MNEs in Ireland pointed to a tendency to deal with grievances with employees individually rather than as a group or through the union. This extended to group grievances (Collings et al., 2008). There is also the suggestion that MNEs choose their locations, in part, based on the industrial relations framework of the host country with factors such as weak unionisation and employment legislation and strong managerial

authority preferred (Hewison and Chiu, 2009). It may be that MNEs operating under these frameworks, and with unitarist goals, would avoid or suppress industrial disputes. Collective labour disputes in Chinese-owned MNEs have been found to take place predominantly in manufacturing and refineries where workers are largely blue collar. This study suggested that “because labour standards in the case of Chinese MNEs were partly influenced by home standards, blue collar workers were more likely to be employed under conditions from which disputes arose” (Shen, 2007: 422).

Global Framework Agreements

The incidence of Global Framework Agreements (GFAs) provides some indication of the coverage of the Declaration's clauses in MNEs. GFAs are agreements made between Global Union Federations (GUFs) and individual MNEs for their worldwide operations. GFAs cover minimum labour standards in their operations and usually encourage them in subcontractors and suppliers to the MNE. The first GFA was agreed with a French company, Danone, in 1988. By December 2007, 61 GFAs had been agreed, covering a total of approximately 5 million workers (Papakakis, 2008). As of June 2008, that number had increased to 68 agreements. Nearly all of the GFAs agreed have been with MNEs which are headquartered either in the European Union (EU) or the European Economic Area (EEA). The remaining agreements have been with companies headquartered in South Africa (2), Russia (1), New Zealand (1), Canada (1) and the USA (1). Almost two thirds of all GFAs were agreed to by MNEs based in Germany, France, the Netherlands and Sweden (Telljohan, da Costa, Muller, Rehfeldt and Zimmer, 2009). GFAs generally adhere to the ILO Core Labour Standards and some include minimum conditions of employment such as wages, working time and health and safety. Key differences among GFAs can be found in the scope of their application, implementation and union rights. Many GFAs include a clause that the MNE will encourage its suppliers to conform to the GFA. Only 9 percent of GFAs assume responsibility for the whole supply chain and 31 percent do not mention suppliers and subcontractors (Telljohan et al., 2009). Generally, GFAs represent quite exceptional cases that are heavily dependent on factors, such as the presence of a strong trade union, management willingness to cooperate with unions particularly as these are voluntary agreements, and a home country with cooperative industrial relations (Telljohan et al., 2009).

Concluding comments

MNEs are becoming increasingly important as employers globally, and there are indications that their approach to employment impacts significantly on many areas associated with the 1977 Declaration, such as national IR and HRM frameworks. The nature of their impact is mixed. On the positive side, there are strong indications that MNEs tend to pay higher wages than domestic firms. There is also no substantial evidence that MNEs are associated with the incidence of child labour. On the negative side, however, they encourage unequal skills and training development between developed and developing countries, and potentially further disadvantage employees in developing countries. All indications are that MNEs operate at the lowest level of employment conditions allowable by legislation in the countries within which they operate, and furthermore may contribute to other existing areas of difficulty such as pay equity.

Clearly, there are important gaps in the research into the effect that MNEs and FDI have on employment, conditions of work, training and industrial relations on a national and global basis. Further research is needed, in particular, in the area of EEO and pay equity; the comparative effect

on emerging economies, particularly the demand for skills and the impact on skills or training, and knowledge transfer; minimum age of work and child labour and the impact on industrial relations in general. The research across a number of the areas covered by the Declaration indicates the variance of impact according to factors, such as the sector, home country conditions and host country conditions. It would, therefore, be desirable for further research across a range of conditions and countries.

Research has predominantly been undertaken in developed countries such as the USA, the UK and Ireland. This is noteworthy because there appear to be significant differences between MNEs operations in different host countries, depending on whether the hosts have developed or developing economies, and depending on whether the MNEs' home base is in a developed or developing country. With India and China becoming more important players in terms of FDI, there is a particular need for research into the effect of MNEs in those countries. It also has been noted that the research is, predominantly, into large MNEs, and that more research is needed into small and medium sized MNEs (Collings, 2008). Finally, there is little research into the effect of MNEs on employment in Australasia, and while New Zealand is a small economy, as can be seen in recent developments with Warner Brothers, MNEs may impact on the industrial relations framework in New Zealand.

Notes

¹ Raymond Markey and Katherine Ravenswood, *The Effects of Foreign Direct Investment and Multinational Enterprises on the areas covered by the 1977 MNE Declaration of the ILO. A Global Holistic Scan*, New Zealand Work and Labour Market Institute, Auckland University of Technology, September 2009.

Original version copyright © 2010 International Labour Organization. Copyright of this version @ 2010 the Authors

References

Aggarwal, A. (2007). *Impact of Special Economic Zones on Employment, Poverty and Human Development*. (Working Paper No. 194). New Delhi, India: Indian Council for Research on International Economic Relations.

Alemeida, R. (2007). The Labor Market Effects of Foreign Owned Firms. *Journal of International Economics*. 72(1): 75-96.

Bandick, R. and Hansson, P. (2009). Inward and Demand for Skills in Manufacturing Firms in Sweden. *Review of World Economics*. 145(1): 111-131.

Bélanger, J., Harvey, P., Jalette, P., Levesque, C., and Murray, G. (2006). *Employment Practices in Multinational Companies in Canada: Building Organizational Capabilities and Institutions for Innovation*. Interuniversity Research Centre on Globalization and Work. Université de Montréal, Université Laval, HEC Montréal, Retrieved from http://www.crimt.org/PDFs/CRIMT_Report_on_MNCs_in_Canada_September_2006.pdf

-
- Brandl, B., Strohmer, S., and Traxler, F. (2010). US Foreign Direct Investments, Macro Markets and Labour Relations: The Case of Enlarged Europe. *Industrial Relations Journal*. 41(6): 622-638.
- Braun, S. (2008). *Should Trade Unions Welcome Foreign Investors? Evidence from Danish Matched Employer-Employee Data* (Discussion Paper 2008-7. Frederiksberg, Denmark: Centre for Economic and Business Research.
- Brown, D. (2007). *Globalization and Employment Conditions Study*. (SP Discussion Paper, No. 0708). Washington, DC. Social Protection. The World Bank.
- Chinen, K., Wang, R.L. and Wang, C. (2008). Policy Variations of Multinational Enterprises' Labor Practices in China. *Management Research News*. 31(10): 729-736.
- Collings, D.G. (2008). Multinational Corporations and Industrial Relations Research: A Road Less Travelled. *International Journal of Management Reviews*. 10(2): 173-193.
- Collings, D.G., Gunnigle, P. and Morley, M.J. (2008). Between Boston and Berlin: American MNEs and the Shifting Contours of Industrial Relations in Ireland. *The International Journal of Human Resource Management*. 19(2): 240-261.
- Crino, R. (2009). Offshoring, Multinationals and Labour Market: A Review of the Empirical Literature. *Journal of Economic Surveys*. 23(2): 197-249.
- Cuervo-Cazurra, A. and Genc, M. (2008). Transforming Disadvantages: Developing-Country MNEs in the Least Developed Countries. *Journal of International Business Studies*. 39(6): 957-979.
- De Cieri, H. and Bardoel, E.A. (2009). What Does 'Work-Life Management' mean in China and Southeast Asia for MNC's? *Community, Work and Family*. 12(2): 179-196.
- Edwards, T. (2010). The Nature of International Integration and Human Resource Policies in Multinational Companies. *Cambridge Journal of Economics*.
- Edwards, P.K., Edwards, T., Ferner, A., Marginson, P., Tregaskis, O., Adam, D. and Meyer, M. (2007). *Employment Practices of MNCs in Organisational Context. Report of Main Survey*. Warwick, United Kingdom: De Montfort University, Kings College, Warwick Business School.
- Egels-Zanden, N. and Hyllman, P. (2007). Evaluating Strategies for Negotiating Workers' Right in Transnational Corporations: The Effects of Codes of Conduct and Global Agreements on Workplace Democracy. *Journal of Business Ethics*. 76(2): 207-223.
- Elia, S., Mariotti, I. and Piscitello, L. (2009). The Impact of Outward FDI on the Home Country's Labour Demand and Skill Composition. *International Business Review*. 18: 357-372.
- Hewison, K. and Chiu, C.C.H. (2009). Hong Kong-Invested Companies in Thailand: Labour Relations and Practices. *Journal of Contemporary Asia*. 39(1): 1-22.
- ILO. (1977). *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_101234.pdf

-
- Iram, U. and Fatima, A. (2008). International Trade, Foreign Direct Investment and the Phenomenon of Child Labor. *International Journal of Social Economics*. 35(11): 809-822.
- Lavelle, J. (2008). Charting the Contours of Union Recognition in Foreign-Owned MNCs: Survey Evidence from the Republic of Ireland. *Irish Journal of Management*. 29(1): 45-63.
- Marginson, P., Edwards, P., Edwards, T., Ferner, A. and Tregaskis, O. (2010). Employee Representation and Consultative Voice in Multinational Companies Operating in Britain. *British Journal of Industrial Relations*. 48(1): 151-180.
- Marginson, P. and Meardi, G. (2009). *Multinational Companies and Collective Bargaining*. Dublin, Ireland: European Foundation for the Improvement of Living and Working Conditions.
- McDonnell, A., Lamare, R., Gunnigle, P. and Lavelle, J. (2010). Developing Tomorrow's Leaders – Evidence of Global Talent Management in Multinational Enterprises. *Journal of World Business*. 45(2): 150-160.
- Molnar, M., Pain, N. and Taglioni, D. (2008). Globalisation and Employment in the OECD. *OECD Journal: Economic Studies*. 2008(1): 83-116.
- Navrbjerg, S.E. and Minbaeva, D.B. (2009). HRM and IR in Multinational Corporations in Denmark: Uneasy Bedfellows? *The International Journal of Human Resource Management*. 20(8): 1720-1736.
- Neumayer, E. and de Soysa, I. (2005). Trade Openness, Foreign Direct Investment and Child Labor. *World Development*. 33(1): 43-63.
- OECD. (2008). *OECD Employment Outlook*. Paris: OECD.
- OECD (2009a). *OECD Investment News June 2009*. Paris: OECD.
- OECD. (2009b). *Annual report on the OECD guidelines for multinational enterprises 2008*. Paris: OECD.
- Papadakis, K. (2008). Research on Transnational Social Dialogue and International Framework Agreements (IFAs). *International Labour Review*. 47(1): 100-104.
- Paus, E.A. and Gallagher, K.P. (2008). Missing Links: Foreign Investment and Industrial Development in Costa Rica and Mexico. *Studies in Comparative International Development*. 43: 53-80.
- Quintanilla, J., Susaeta, L. and Sanchez-Mangas, R. (2008). The Diffusion of Employment Practices in Multinationals: 'Americanness' within US MNCs in Spain? *Journal of Industrial Relations*. 50(5): 680-696.
- Robinson, P. K. (2010). Do Voluntary Labour Initiatives Make a Difference for the Conditions of Workers in Global Supply Chains? *Journal of Industrial Relations*. 52(5): 560-573.

-
- Royle, T. (2010). The ILO's Shift to Promotional Principles and the 'Privatization' of Labour Rights: An Analysis of Labour Standards, Voluntary Self-Regulation and Social Clauses. *The International Journal of Comparative Labour Law and Industrial Relations*. 26(3): 249-271.
- Shen, J. (2007). Approaches to International Industrial Relations in Chinese Multinational Corporations. *Management Revue*. 18(4): 410-426.
- Telljohan, V., da Costa, I., Muller, T., Rehfeldt, U. and Zimmer, R. (2009). *European and International Framework Agreements: Practical Experiences and Strategic Approaches*. Dublin, Ireland: European Foundation for the Improvement of Living and Working Conditions.
- Te Velde, D.W. and Xenogiani, T. (2007). Foreign Direct Investment and International Skill Inequality. *Oxford Development Studies*. 35(1): 83-104.
- Tuselman, H., Allen, M. M. C., Barrett, S., and McDonald, F. (2008). Varieties and variability of employee relations approaches in US subsidiaries: country of origin effects and the level and type of industry internationalisation. *The International Journal of Human Resource Management*, 19(9): 1622-1635.
- UNCTAD. (2008). *World investment report 2008. Transnational corporations and the infrastructure challenge*. Geneva: UNCTAD.
- UNCTAD. (2009a). *World investment report 2009. Transnational Corporations, Agricultural Production and Development*. Retrieved from http://www.unctad.org/en/docs/wir2009_en.pdf
- UNCTAD. (2009b). *Press release: Global FDI Flows have Halved in the 1st Quarter of 2009, UNCTAD Data Show: Prospects Remain Low for Rest of Year*. Retrieved from <http://www.unctad.org/Templates/webflyer.asp?docid=11666&intItemID=1528>
- Vo, A.N. (2009). Career Development for Host Country Nationals: A Case of American and Japanese Multinational Companies in Vietnam. *The International Journal of Human Resource Management*. 20(6): 1402-1420.
- Vo, A.N. and Rowley, C. (2010). The Internationalization of Industrial Relations? Japanese and US Multinational Companies in Vietnam. *Asia Pacific Business Review*. 16(1-2): 221-238.
- Zheng, C., Hyland, P. and Soosay, C. (2007). Training Practices of Multinational Companies in Asia. *Journal of European Industrial Training*. 31(6): 472-494.
- Zhuang, H. (2008). Foreign Direct Investment and Human Capital Accumulation in China. *International Research Journal of Finance and Economics*. 19: 205-215.

Employment standards in world food production – the place of GLOBALGAP supply contracts and indirect legislation.

RUPERT TIPPLES* and Richard WHATMAN**

Abstract

This paper evaluates two innovative systems which are encouraging higher employment standards amongst those engaged in the world's food production. They are through retailer led supply contracts, such as GLOBALGAP, and indirect regulation, such as the licensing of labour contractors.

The former contractual initiative has evolved from EUREPGAP, an initiative of supermarket retailers from Europe, which now extends worldwide. The paper outlines the evolution of EUREPGAP to GLOBALGAP and how this retailer initiative has increased the focus on worker welfare and development. The paper reviews how compliance with GLOBALGAP standards is achieved.

The second initiative is focused on the developed world where farm work is no longer popular. Finding the labour supply for seasonal production processes is difficult. Consequently, migrant labour is often utilised. However, compliance is problematic. Careful governance of labour supply contractors can help ensure compliant employers and employees while also fulfilling the labour needs of farmers and packers. A case study of the Recognised Seasonal Employer Scheme (RSE) now operating in New Zealand is presented as an illustration. New Zealand has insignificant unemployment, yet high seasonal labour needs for pruning, training, picking and packing of its varied horticultural produce. This is produced largely for export, and frequently has to comply with GLOBALGAP. At the same time, there is an underutilised labour force in the Pacific. A tripartite strategy has been developed between governments (both NZ and from the Pacific), New Zealand farmers and growers, and New Zealand trade unions. This gave rise to the RSE temporary migration policy. RSE requires compliance and worker care. Such a policy fits with a 'Work, not aid' philosophy for helping impoverished Pacific neighbours, and facilitates substantial remittances to source countries, potentially creating a 'Win:Win:Win' situation for participants.

Introduction: rural employment relations

Food production, which is predominantly rural, is vital to us all. The rapid rise in many basic food commodity prices in 2008 was a salutary reminder that feeding the world's growing population engages a significant part of the world's workforce, many of whom are subsistence farmers. In 2005, the world's total agricultural workforce was estimated to be 1.1 billion, of whom some 450 million held a waged status and some kind of employment relationship (FAO-ILO-IUF, 2005).

In developed countries, only a small part of the population is still engaged in 'on-farm' food production pursuits; more are involved in related sectors, often rural too, of primary produce packing and processing. Most research and writing on employment relations, inevitably, has a strong urban focus. With the primary production sector (agriculture, forestry, horticulture,

* Dr Rupert Tipples is a Senior Lecturer at Lincoln University, Canterbury. E-mail: Rupert.Tipples@lincoln.ac.nz

** Richard Whatman is an independent consultant (formerly at NZ Department of Labour) in Wellington, New Zealand.

viticulture etc.) forming such a significant part of the New Zealand economy and external trade, the employment relations of the sector are vital for continued increases in production and productivity of the New Zealand economy as a whole.

However, today, rural employment relations are not just a concern of farm managers, but affect all sectors of the economy that are not distinctly urban. Agricultural production is conceived as a paddock to plate enterprise, with farmers being concerned about their inputs through to the ultimate consumption of their produce. Employment relations are a concern to them anywhere down the supply chain, especially where it impacts on their business operations (Tipples and Martin, 2006). In urban situations, employment relations are often more collective in nature, in contrast to rural ones, where there is less collective activity among the workforce. In developed economies, particularly, there may be a high level of legislative and judicial intervention, which sets basic conditions of employment. That is less apparent in the developing world where the labour market is less fettered by regulation. In the rural sector too, regulation is not popular and even in developed economies, such as in Australasia, compliance can be difficult to achieve. Further, because of the small scale of many businesses there is little effective collective activity among the labour force (Tipples, 1987).

Government interventions

Australia and New Zealand have had some of the most interventionist employment regimes, particularly under the arbitration systems which existed from the end of the nineteenth century (Holt, 1986; Macintyre and Mitchell, 1989). There were attempts to extend these largely urban employment relations regimes to rural employment too. Initially, this was partially successful for the more collective rural enterprises such as shearing, nursery plant production and landscape gardening (e.g. Martin, 1987, 1990; Tipples, 1987). Such regimes tended to be enhanced in periods of governments sympathetic to collective employed labour. In New Zealand, these would have been the Liberal and Labour governments from 1894-1910, 1935-1950 and 1999-2008, particularly. These enhanced regimes were undone in periods of governments sympathetic to employer interests. In New Zealand, these were the Reform and later National Party dominated governments of 1910-1935, 1950-1984, and 1990-1999.

The National Party led Government (1990-1999) abolished the New Zealand arbitration system with the Employment Contracts Act 1991. Labour market deregulation under the Employment Contracts Act led to the collapse of collective bargaining in the rural sector (Tipples, 1995; 2007), leaving employees' protections to the minimum codes set by the state and price setting by the market. The organisation of the rural labour market has been brought back into focus too by the on-going recruitment and retention problems experienced across Australasian primary production and processing today. A broad interdisciplinary view of the labour market called the Human Capability Framework was developed by the New Zealand Department of Labour in the late 1990s (Department of Labour, 1999). This has been used to investigate rural and occupational labour markets in several different studies (Tipples, 2004). The individual employment relationship¹ can be considered to be a microcosm of the labour market. Very similar factors interplay and the labour market, for any area or occupation, may be considered to be the sum of all their individual and collective employment relationships.

The Present

Today's issues of recruitment and retention continue to challenge the primary industries in developed economies, much as they have for the past half century. A recent issue of the

*Employment Relations Record*², 'Changing Rural Employment' (Tipples, 2008) explored new ways of looking at these problems and highlighted the effects of demographic changes and the continued attraction of urban life and employment, which draws the young away from rural areas and jobs. What it did not do was examine the role of migration from developing countries with an over-supply of under-employed labour to developed ones with shortages in many and especially rural occupations. This is an area which needs more study. International experiences with short-term migratory groups have been a widespread phenomenon, but often not a happy experience for the short term migrants. For example, the Parliamentary Assembly of the Council of Europe was recently advised:

Reliance on migrant labour has become a characteristic feature of agriculture in southern European countries, especially for seasonal activities, where a large workforce may be needed at short notice for brief periods. The work of many of these migrants is undeclared. As a result, they have no rights to receive minimum wages or make social security contributions and are often subject to abuse and exploitation (De Zulueta, 2003: 1).

Similar recent views can be found about other developed countries such as the UK and the USA (Rogaly, 2008; Taylor, Martin and Fix, 1997; Martin and Taylor, 2003; Weil, 2009).

That is something of concern as New Zealand and Australia consider ways to utilise the large potential source of labour on their doorstep in the Pacific. In New Zealand, this has already begun with the Recognised Seasonal Employer scheme. Does this scheme deliver the Win:Win:Win outcome for New Zealand growers, New Zealand and Pacific Island governments, and Pacific workers and their communities? Further, if countries like Australia and New Zealand have a tradition of difficulty getting farmers and growers to be compliant with employment legislation, are there any other new developments which may help ensure marginal groups of employees like migrants get a better deal?

Higher employment standards from private codes

Economic liberalism in the late twentieth century led to the state withdrawing from many parts of the economy where it had previously played a central role. Campbell and Rosin (2007) have argued that this deregulation was meant to unleash a burst of innovation and development from privately funded sources, but:

What actually happened was that de-regulation left a void that was filled, in part, by the least likely of sources. New Zealand food exports have become increasingly characterised by new forms of governance emanating from the private sector, or from hybrid alliances across private sector, public groups and sometimes government agencies...we are in the midst of a rise in retailer led governance and that this has created the need for a shift from 'economies of quantity' to 'economies of quality' among food exporters. Organisations, industries and sectors that can make the jump into the new 'economies of quality' will not only survive, but can actually thrive in this new global trading environment. (Campbell and Rosin, 2007: 12)

The New Zealand Vegetable Growers' Association was the first primary industry group in New Zealand to realise the significance of this change in about 1996 when an amendment to the Food Act 1981 was passed. Appreciating future competitive advantage and, particularly, access to large food purchasers like supermarkets was going to lie with quality production, they set up a \$400,000 research study with *HortResearch* to improve their product quality over four years. That study led to the New Zealand Approved Supplier Programme (NZASP) from 1999, which was a pro-active

move by growers to face consumer concerns about food safety, the environment and quality issues. It was a quality assurance system which provided a traceable, accountable, HACCP³ based system from crop production to consumer. Subsequently, it was extended to fruit (in 2000) and flowers (in 2003) and its name went through changes reflecting *Horticulture New Zealand's* international stance and a planned benchmarking to EUREPGAP; a quality assurance initiative of supermarket retailers from Europe, which now extends worldwide. In 2006, it was re-branded to New Zealand Good Agricultural Practice (NZGAP) and then in 2007, re-benchmarked to GLOBALGAP, the new name for EUREPGAP.

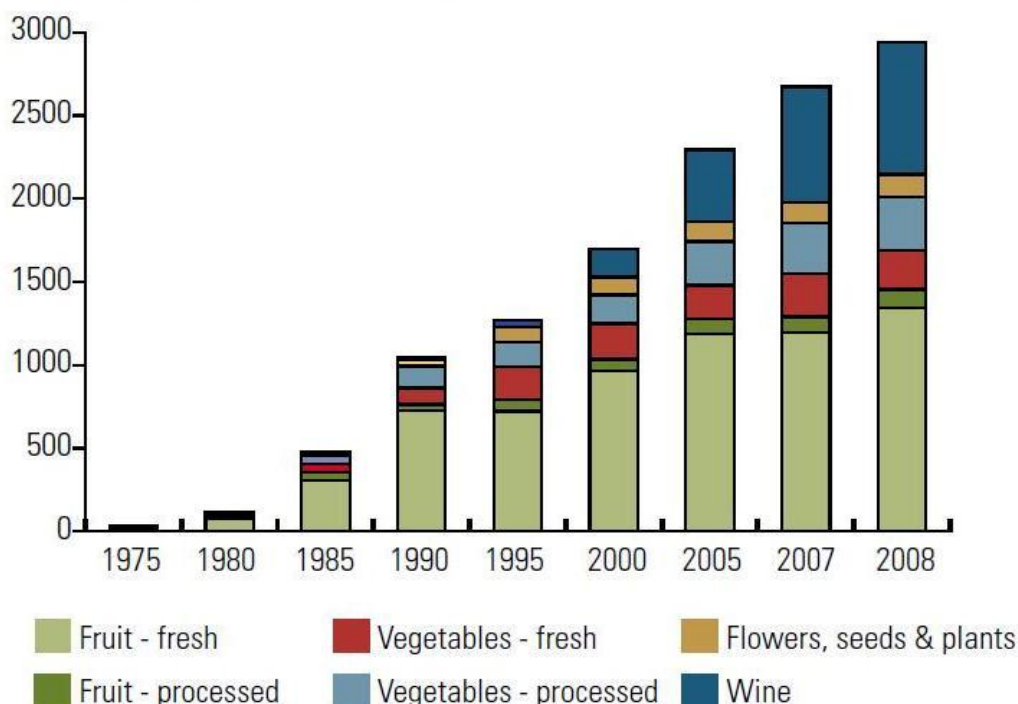
One feature of these changes which was not part of the original NZASP was the inclusion of clauses concerned with employment issues. In EUREPGAP these related to health and safety issues like protective clothing and pesticide operator training. Such factors were already covered by New Zealand's Health and Safety in Employment Act 1992, but were now made part of the private supply contracts associated with the programme. So such standards of employment were also derived from private contractual sources which had evolved from quality assurance programmes like EUREPGAP.

New Zealand Horticultural Industries

New Zealand is only a small country with 4 million inhabitants, situated some 2,000 kilometres to the east of its much larger neighbour Australia. It depends, for its economic livelihood, on its primary sector exports, but unlike Australia, does not have extensive mineral resources. Since the 1970s, and particularly since Britain's entry into the EEC, the horticultural industries in New Zealand have expanded almost exponentially with horticultural exports increasing from \$NZ115 million in 1980 to \$NZ2.9 billion in 2008. That was 2 percent of all New Zealand merchandise exports in 1975, growing to 6.9 percent in 2008 (Plant and Food Research, 2008). Kiwifruit exports with \$NZ870.7 (million, fob) was the major horticultural export, wine followed with \$NZ793.7 (million, fob) and apples were third with \$NZ344.9 (million, fob) exports (Figure 1).

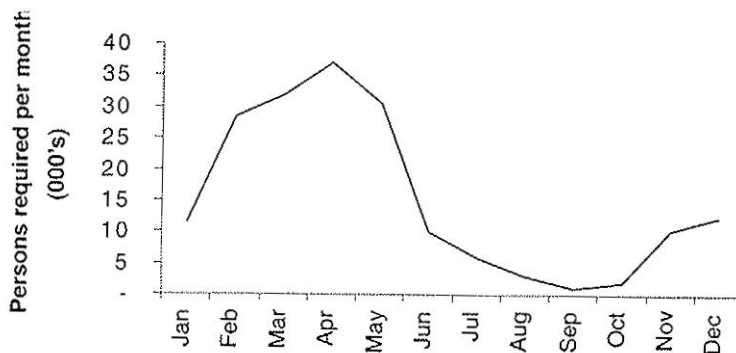
Figure 1

Horticultural exports (\$ million, fob)



Traditionally, apples were the major export, now superseded by kiwifruit, shortly to be superseded by wine. All of these crops have highly seasonal demands for labour, for apples and kiwifruit for pruning and picking and for grapes for pruning alone, although grape varieties less suited to mechanised harvesting still need staff for grape picking and there are a variety of other jobs, like bud rubbing, that also require labour. These needs vary regionally as well as by crop. The estimated labour demand for fruit production is shown in Figure 2.

Figure 2 Estimated seasonal labour demand for the New Zealand Fruit Industry, (2004)



Source: Horticulture and Viticulture Seasonal Working Group, 2005

Supermarkets

Paralleling the development of the horticultural industries in New Zealand were other major changes in the retail sector. More and more food came to be sold through supermarkets rather than small specialty stores. The old pattern of small producers sending their produce to market and retailers buying their supplies from there was overtaken by a smaller number of large purchasers – the supermarkets – buying directly from larger growers on formally agreed supply contracts. Thus, their supplies were guaranteed throughout the year by complementing northern and southern hemisphere production seasons. Supermarkets as large corporate enterprises are concerned with maximising their returns for their shareholders and are very risk adverse. Anything which might damage their corporate brand image is to be avoided. Thus, they became interested in supplier codes of conduct to ensure no ‘bad news’ stories appeared about where their produce came from, what it contained and how it was produced. There is now extensive literature on such codes of conduct (e.g. Fulponi, 2005; Hatanaka, Maki, Bain, Carmen and Busch Lawrence, 2005; Hatanaka, Maki and Busch Lawrence, 2008), which have been used not only to avoid risk with their supplies but also to give them a competitive edge because they are more appropriately sourced than other producers. Thus in the United Kingdom, Marks and Spencer sell under their ‘Field to Fork’ banner, while Tesco sell as ‘Nature’s Choice’.

As a very small player on world markets, New Zealand producers have to remain closely attuned to what consumers are seeking by way of horticultural produce. Thus, they have to be sensitive to supermarkets’ requirements. Exports went to 118 countries in 2008, with most going to Australia and Japan, but almost as much to the United Kingdom and the European Union on the other side of the world (Plant and Food Research, 2008). That requires New Zealand growers, as niche suppliers, to stay aware of those markets. Food scares around the millennium about the presence of *E. Coli*, BSE and spray residues raised public awareness of the safety of food consumed. They

were accompanied by concerns as to how sustainable food sources were, with the result that retailers began to develop schemes to reassure consumers and to give themselves a market edge for their produce. These all came together in a protocol called EUREPGAP – the Euro Retailer Produce Working Group and Good Agricultural Practice, which was launched in May 2002. Initially, it targeted fresh produce with the intention to be expanded to cover all agricultural sectors and to provide critical mass and efficiencies greater than individual retailers would have on their own. This initiative was a commercial retailer initiative and not a regulatory requirement. Further, it applied to all supplying growers and suppliers and related coolstores and packhouses, and was based on documents (Rabobank, 2002).

Initially, EUREPGAP had 21 large EU food-based retailers chiefly from the UK and Netherlands. These were allowed to overlay the EUREPGAP protocols with their own ‘in-house’ requirements. Thus, Tesco’s ‘Nature’s Choice’, which was started in 1993, continues to profile that retailer’s produce. As EUREPGAP expanded and covered more produce and suppliers from more of the world its title was changed to GLOBALGAP in September 2007.

GLOBALGAP standards can now be obtained on-line from www.globalgap.org. Certification by GLOBALGAP permits New Zealand growers to access European markets because evidence is collected showing that their production practices meet the GLOBALGAP standards, which include:

- “A commitment to maintaining consumer confidence in food quality and safety
- Minimising detrimental impact on the environment, whilst conserving nature and wildlife
- Reducing the use of agrichemicals
- Improving the efficiency of natural resource use
- Ensuring a responsible attitude towards worker health and safety” (AsureQuality, 2009)

It is the last of these bullet points that leads us directly into our area of interest: “Ensuring a responsible attitude towards worker health and safety”. At the Geneva *Regulating for Decent Work* conference in 2009 there was a focus on such non-core labour standards as “...the regulation of wages, working hours, work/family, health and safety, security of employment and social protection, including the ability of vulnerable workers to access these rights” (ILO, 2008).

The first part of this paper is premised on the belief that the contractual requirements needed for GLOBALGAP accreditation reinforce local labour standards of the types specified. Not only do they require compliance and annual inspection to ensure that, but also, they hold a far greater sanction than the state over non-compliant suppliers. The severity of this sanction is best demonstrated by Wal-mart, who rather than try and work with a non-compliant supplier to resolve any employment relations concerns, terminates the relationship immediately and thus, ends the damage potentially caused by a ‘bad news’ story about the supplier – the relationship was ended because they were ‘bad news’! (Christopherson and Lillie, 2005). That is, of course, a most severe sanction and many certificating bodies actually work with non-compliant suppliers to help them improve and reach a satisfactory standard. The whole point of the *kaizen* (continuous improvement) principle upon which all true Quality Assurance programmes are based is just that, ‘continuous improvement’. Many GLOBALGAP related organisations work with this continuous improvement strategy firmly in mind (see Box 1 describing Tesco’s Nature’s Choice policy). This is most clearly shown by the Good Risk-based Agricultural Social Practices (GRASP) initiative, but before that is discussed it is necessary to be rather more specific about GLOBALGAP labour standards.

Box 1**TESCO – Nature’s Choice**

Is a private quality assurance scheme applying to all fresh produce supplied to Tesco UK. It started in the UK in 1993 and was extended worldwide in 2004. After an audit a supplier may be awarded one of three levels of attainment: Gold, Silver or Bronze. Continuous Improvement is a key principle, which can be based on the annual percentage audit score. Tesco have some 11,400 farm suppliers worldwide from 66 countries. They are audited by 28 companies with 204 auditors.

The major drivers of the scheme are first customer food safety concerns and expectations. They seek to demonstrate corporate social responsibility and seek to harmonise farm operating systems and procedures in the global supply chain for fresh produce to give a level playing field for all producers. The Nature’s Choice protocol has 238 control points in seven groups:

- Rational use of plant protection products
- Rational use of fertilisers and organic matter
- Pollution prevention
- Protection of human health
- Efficient use of energy, water and other natural resources
- Recycling and re-use of materials
- Wildlife and landscape conservation and improvement

Trained auditors with a local knowledge of crops and the local language are used where possible, but quality control procedures are centralised to provide technical consistency and keep the integrity of the scheme.

Tesco, as a mass merchandise retailer, seeks to give outstanding value to its customers in the sourcing of all its foods, at best prices. To help ensure decent labour standards throughout its supply chain:

- It seeks good suppliers sharing its values
- It monitors performance to identify any issues. Where there are difficulties keeping high labour standards it needs to know what they are. Audits are based on the risk associated with a particular supplier from a particular country. High risk means annual audits; low risk may permit self-assessment, which is monitored by Tesco. Spot audits are also conducted.
- Where problems arise it addresses them. For labour standards priority is given to no child, forced or bonded labour; or any abuse in the supply chain. Correction plans are expected to be implemented within 6 months and the aim is to make the businesses concerned strong partners and not let ‘difficult’ situations or countries cause Tesco to ‘cut and run’. Those that fail to meet standards and refuse to put in place the corrective actions required are terminated as suppliers.
- To prevent problems arising it builds up the labour standards capabilities of the supplier and its own buying and technical staff. High risk suppliers are required to attend a ‘Supplying with your eyes open’ course to help attain good labour standards.
- Where these problems are complex and intractable, it works with others to solve them. In 2007 Tesco worked with Ethical Trading Initiative (ETI), Global Social Compliance Programme and Sedex (Supplier Ethical Data Exchange) on such problems.

Sources: The TESCO plc website downloaded on 15 May 2009:

http://tescoplc.com/plc/corporate_responsibility/resp_buying_selling/ethical_trade and a Tesco powerpoint to a joint UNCTAD/WTO Information session found on 23 May 2009 at:

www.unctad.org/trade_env/test1/meetings/wto1/Tesco%20Nature's%20Choice%20Cox.pdf

GLOBALGAP Labour Standards

GLOBALGAP standards are designed to reassure consumers about how food is produced on the farm by minimising damaging effects of various kinds and ensuring a responsible approach to the health of employees and their safety (GLOBALGAP home, 2009), but it has to be recognised that many, lacking other viable alternatives, agree to work with poor social conditions. The labour standards are introduced as follows:

People are the key to the safe and efficient operation of any farm. Farm staff and contractors as well as producers themselves stand for the quality of the produce and for environmental protection. Education and training will help progress towards sustainability and build on social capital. This section is intended to ensure safe practice in the work place and that all workers understand, and are competent to perform their duties; are provided with proper equipment to allow them to work safely; and that, in the event of accidents, proper and timely assistance can be obtained. (GLOBALGAP, 2007)

The emphasis is on documents – a written risk assessment and a written health, safety and hygiene policy; records of training and certificates of competence against specified control points, especially where handling or administering any chemical; documented hygiene instructions and related training. Concern is also given to whether these policies and procedures are carried out e.g. whether subcontractors and visitors are made aware of them, and of hazards they may encounter, with appropriate advice on how to react to them if necessary. Availability and handling of protective clothing is also addressed. In addition a member of management has to be identified as responsible for workers' health, safety and welfare (GLOBALGAP, 2007).

GRASP – Good Risk-based Agricultural Social Practices

As the call for social responsibility has emerged in global food supply chains consumers and civil society have drawn attention to the need for meaningful approaches to these social requirements on farms, and in agricultural supply chains. From 2005, trials were undertaken to develop a tool to support farmers who were trying to show their compliance with international as well as national labour legislation. This was not for a full social audit because it was recognised that the agricultural mass market could not afford the cost of a full audit or high costs of compliance. However, it provided various support devices for those wishing to improve their performance based around 14 control points. Mostly based on management documentation, only limited interviews were required. Farmers' compliance was encouraged by giving them detailed guidelines adapted to their local situations. These criteria were developed in a tri-partite process between the GLOBALGAP secretariat, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH and Coop Switzerland. They were trialled in Kenya, Brazil, Viet Nam, Spain and Morocco.

While the GRASP module does not form part of the GLOBALGAP standards, it complements them in laying out a set of 14 control points and criteria for compliance in a similar system. Development of the research based GRASP protocol formed an important part of informing the revision process for worker health, safety and welfare revision of the GLOBALGAP 2007 standard (Anwander, 2008). Nigel Garbutt, Chairman of GLOBALGAP, wrote:

It was reassuring to note that GLOBALGAP certified farms tended to demonstrate overall better performance against certain social criteria. In part this can be attributed to

the high attention paid to establishing management systems of monitoring and control on these farms (as cited in Heise, Uhlig, Vonwiler, 2007: 2).

The Recognised Seasonal Employer Scheme

The second part of this paper is focused on the developed world where farm work is no longer popular. Finding the labour supply for seasonal production processes is difficult. Consequently, migrant labour is often utilised (De Zulueta, 2003; Rogaly, 2008). However, casual employment often presents compliance problems. Farmers are often tempted to operate a cash-based, undocumented approach because it is easier. Now, however, with the need to satisfy quality assurance schemes and audits for the right to supply international retailers such a casual and often illegal approach is unacceptable. In New Zealand, at the beginning of the new millennium, these two issues became apparent at the same time – the need to maintain duly certified quality production and the need to have the labour supply to deliver that quality product. During the Labour led government from 1999, unemployment levels continued to fall as the economy had boomed, to the point where there was little employable labour available for seasonal tasks such as in horticulture. High seasonal peak demands for fruit picking and packing (see Fig. 2), exacerbated by the tight timelines for those processes needed to meet QA requirements and by the growth in total production, were further complicated by the nature of the labour force utilised.

In the 1980s, the seasonal labour force had operated with lots of students and local families, but by 2000, the task had grown and the work had become much less attractive to students. A review of MAF Research Reports on rural social affairs revealed the stresses in rural society, many of them about employment (MAF, 2000). In May 2001, the Central Otago District Council drew attention to the rapid growth in requirements for harvest labour and the difficulty of attracting labour when the limited accommodation facilities were also under pressure from tourists. In July 2002, a *Human Resources in Agriculture Workshop* resulted in Rotorua for the whole agricultural sector (MAF, 2002). It set out to define the problem, take stock of what had been done, identify gaps and suggest immediate and longer term initiatives. Horticulture representatives reported that they had been working on the issues of future horticultural employment with government for some time. On-going changes in the industry and the difficulties of retaining staff season to season were noted:

...a lot of numbers are involved in harvesting, especially fruit harvesting, and in the foreseeable future this will stay a manual job, maybe even bigger due to the technical needs of the market. We still need the numbers, but we need the supervisors, and the QA people in pack-houses checking quality (MAF, 2002).

They also noted the change in demographics and suggested the industry needed to undergo a culture change. A new organisation for governance was established: *Human Capability in Agriculture and Horticulture*, but its subsequent focus was more on the problems of full time staff across the sector. By 2002-2003, the emerging employment problem, with the decline in the number of unemployed available for picking and the falling skills base, was being noted. There was a piecemeal response and crisis management of the seasonal problems over the period 2000-2004 (Silcock, 2005).

By 2004, regional discontent became national and the Minister of Immigration was put on the spot in a televised debate by a squash grower who believed Thai immigrants worked better than New Zealand's unemployed. The Minister did not want the issue getting out of control at a sensitive time and called the heads of the relevant grower associations and four other related ministers together to discuss the issue. A key meeting in which the Minister laid down the principles upon which the government was prepared to help resolve the industry's problems then followed. First, he outlined the respective roles of industry and government. Industry had to share responsibility for

their labour needs, actively plan for the future, and attend to recruitment and retention through good employment terms and conditions, wages and staff training. Government would help through getting the mix of interventions right and help with the development of a strategy. Secondly, he differentiated between absolute labour shortages, with them being the concern of government and recruitment difficulties, short term concerns more for employers. Only for absolute labour shortages were immigration responses appropriate. Local labour had to have the priority and to be fully utilised. He urged that "...a standard, strategic approach is required to seasonal labour shortages rather than continuing to respond in an ad hoc manner" (Swain, 2004). He also outlined possible short-term (2004/05), medium-term (2005/06 – 2007-08) and long-term (2008/09 onwards) scenarios. Appropriate, good recruitment (attempting to recruit locally, engagement with Work and Income (New Zealand's benefit and work broking agency), addressing housing and transport problems, use of lawful labour and credible agents) and employer (improved business compliance, such as health and safety) practices were outlined. Government responses to industry were to be contingent upon them working together, not just on the labour shortages but also developing industry skills and productivity. Finally, he wanted a report on industry strategy development by Christmas 2004. However, that was to be Christmas 2005.

In the next season (2004/05), an election year, there were stories of fruit left to rot on the tree, coupled with tales of illegal immigrants because growers were so desperate. With New Zealand dependent on its export markets, these were not 'good stories' for overseas buyers. Also, kiwifruit suffered serious production problems. Zespri estimated that the shortage of staff and poor quality had cost some \$20 million (Whatman, 2009 personal communication, 11 May, 2009) as well as other production damage through adverse weather conditions for total losses of \$100 million.

The path to Recognised Seasonal Employers

The path from this point is difficult to follow. There were a number of different threads developing at the same time and interacting, which have been reported elsewhere in more detail than is possible here (Hill, Capper and Wilson, 2005; Whatman, Wong, Hill, Capper and Wilson, 2005; Hill, Capper, Wilson, Whatman and Wong, 2007; Whatman and Van Beek, 2008; Institute of Policy Studies, 2008; Carroll, Blewden and Witten, 2008; Spoonley and Bedford, 2008; Bedford, 2008; Ramasamy, Krishnan, Bedford and Bedford, 2008). The key ones will be outlined in turn.

1. Behind the specific seasonal labour shortage problems developing in New Zealand was a wider policy context of relations with New Zealand's Pacific neighbours: New Zealand's role in the South Pacific (Ramasamy et al., 2008), the role of the World Bank, and the role of the United Nations. The latter two wanted to tackle some of the economic and demographic problems of Pacific countries by helping them gain access to the labour markets of the two major developed economies of the Pacific, Australia and New Zealand. In contrast to the ageing populations of Australia and New Zealand and their relatively low levels of unemployment, Pacific countries tended to have fast growing more youthful populations and have relatively few employment opportunities (Bedford, 2008). Pacific leaders were advancing their case for access from 2004, which gained particular potency from a UN General Assembly debate in 2006, just before the Pacific forum met (Ramasamy et al., 2008).
2. The quality problems of fruit harvesting had come to the fore and yet the harvest seemed to be miraculously gathered each year in spite of the increased labour market problems. The standard top-down policy formulation out of Wellington via a literature review and limited discussion did not seem appropriate, but fortuitously the Co-Chair of the working party had an interest in an alternative form of policy development. It was more 'bottom-up' and

‘outside-in’ than a model system in approved Cabinet Office mode driven from Wellington. It came to be known as ‘practice making’ (Whatman et al., 2005). Further, it was based on primary research funded securely from an inter-departmental fund, thus avoiding early termination of the research.

3. The primary research was based in the field with workshops in industry training space in Hastings, in the middle of the biggest area of apple production. The workshops:
...involved practice-making by engaging the various regulators and all the elements of the industry – apple growers, contractors, quality controllers – to share knowledge about what happens on the ground and co-design the changes that industry needed to make, with the support for those changes from immigration and employment environment required to transform the apple industry...Without the primary research and understanding having been completed, it would have not been possible to respond quickly when the top down window of opportunity popped open (Institute of Policy Studies, 2008: 66).
4. Participants were exposed to multiple and conflicting perspectives, but managed to develop a real understanding of how the system of ‘Appling’, as it became called, really worked. That took time, but enough time was available to develop a shared understanding
...that things looked very different in practice depending upon whether you were a low paid and poorly treated worker, the legitimate orchardist who was at a cost disadvantage compared to the shady operator, or the regulator worried about illegal and overstaying temporary workers, occupational health and safety issues, tax compliance and poor social assistance and housing issues (ibid).
So the harvest was no longer perceived as a miracle but a disaster.
5. One of the key moments in the workshops was when a quality controller perceived that there were:
...disconnects between pickers rewarded on quantity, growers who were rewarded on quality, and a casualised, informal workforce; employers had no incentive to invest in productivity with a system that worked in that way. The key insight was that ‘the moment that value is added or destroyed is the moment of choice by the individual picker (ibid).
Thus to maximise crop value a sustainable workforce with the skills of repeat workers was essential.
6. Besides the ‘secure funding’ for the research, another key aspect was that it was facilitated and conducted by outside researchers (WEB Research) working with officials from the Department of Labour. This added a degree of independence and objectivity with their evaluative skills, together with their knowledge of workplace learning (Hill et al., 2007)
7. Another key feature was the risky role taken by a ‘policy entrepreneur’, who kept the project moving in the department, although there were regular changes in senior management and there were potential personal costs attached.
8. When the policy development process could have fallen down there was significant media attention focused on seasonal labour shortages that caused the responsible minister to call the Strategy Group together. Because of the prior established mutual

trust and understanding between officials and industry leaders, policy solutions quickly resulted.

9. A serendipitous moment was added by the eventual policy paper going to Cabinet at the same time as a paper on Pacific Labour Mobility, with the result that the RSE took on a more specific Pacific character, which is thought to have helped its progress from being just a possible policy to actually being implemented. It also assisted with the implementation of RSE because of the previously developed relationships between the Pacific Island States and New Zealand, and the relatively more manageable scale of undertaking a Pacific focussed RSE compared with a World-wide scheme.
10. Finally, the plans allowed for there to be some problems in the first year of operation with sufficient resources for a response. As the Institute of Policy Studies concludes: “Working together is hard and success is not guaranteed. Sometimes however, one plus one can equal five” (Institute of Policy Studies, 2008: 67).

Two concrete policy outcomes from these intermingled threads stand out. First, the delayed Seasonal Strategy, which outlined how the problems would be tackled in short, medium and long-term on 8 December 2005 and the introduction of the Recognised Seasonal Employer scheme on 30 April 2007. To avoid having to discuss each in full, in this analysis the focus will be on labour contractors as employers.

Labour contractors in the strategy

The problem of illegal labour was highlighted in the Strategy (Objective 2, H&VSWG, 2005), with the presence of illegal workers being a problem in both domestic and international markets. Illegal labour was to be progressively eliminated but without disrupting the overall labour supply. The main section concerning contractors was Action Area 5.4 ‘Ensuring compliance and moving beyond compliance’. The competitive position of law-abiding growers and labour contractors was undermined by illegal activity. ‘Illegals’ were fundamentally unreliable and compromised the quality, value and reputation of the industries. Consequently government agreed to progressively enforce standards and eliminate illegal behaviour, especially where it concerned serious exploitation and fraudulent activity.

To prevent the problems from re-appearing it proposed a national contractor certification scheme. While most seasonal labour suppliers and growers wanted to build up long-term sustainable businesses, ‘rogue’ contractors using illegal labour undercut the good business practices of the law-abiding ones. The contractor certification processes for horticulture and viticulture were to be based on compliance with:

- Established minimum pay and conditions
- Immigration requirements
- Inland Revenue requirements
- Occupational safety and health requirements. (H&VSWG, 2005, Action Area 5.4)

Achievement of compliance was to be gradual with public agencies focusing enforcement activities on ‘rogue’ operators, while supporting those seeking to become legitimate. Industry was to promote contractor recognition and discourage illegal activity. The positive benefits of registration were to be highlighted:

- Decreased risk of being prosecuted for tax, employment and immigration breaches
- Support with compliance with the conditions of market assurance programmes and standards e.g. EUREPGAP, British Retail Consortium standards
- Protection of the industries' reputation and image (H&VSWG, 2005, Action Area 5.4).

Master Contractors and the RSE scheme

The roots of a Master Contractors' association had been laid in the Bay of Plenty (the main kiwifruit area) back in 2003 among contractors who wanted to differentiate themselves as compliant compared to others. New Zealand Kiwifruit Contractors Inc had about 70 members, who wanted recognition for their excellent business practices and ethics (Wood, 2007). This pattern was readily accepted nationally in 2006 and New Zealand Master Contractors Inc (NZMCI) was launched by the Minister, Shane Jones, in March 2008, to aid the Recognised Seasonal Employer scheme (Jones, 2008). Not just compliance but also industry 'best practice' was sought (Kuiper, 2008). To ensure adequate standards NZMCI established a Code of Conduct and an audit procedure. The Code focuses on employment law, and the health and safety of its staff as well as 'best practice' (NZMCI, 2009). Throughout, its intention has been to raise the quality and compliance bar in the industry. With a sustainability and training focus, they are now working with post-harvest facilities to promote the organisation in the industry and improve their compliance and practices (Wood, 2008). The productivity of contractors is being developed, using tailored business training based on Government financed productivity research.

The Recognised Seasonal Employer scheme

The product of the extensive policy development process eventually came into effect on 30 April 2007. To become a Recognised Seasonal Employer (RSE) six requirements had to be met:

- To meet the policy definition of a New Zealand employer
- To have a high standard of human resource policies and practices
- To have good work practices
- To be committed to recruiting and training New Zealanders
- To be in a sound financial position
- To be willing to pay market rates and 'take care' of their RSE workers (Department of Labour, 2009a)

Employers also had to be responsible for:

- Paying half the travel costs for workers flying to and from New Zealand
- Paying for at least 240 hours work
- Providing at least 30 hours per week work over the period of their employment
- Providing evidence of pastoral care of their RSE workers e.g. suitable accommodation, translation, transport, availability of suitable churches to attend, recreation facilities, and an introduction to life in New Zealand
- A commitment to pay at full market rates
- A commitment to contributing to the cost of removal of overstayers, if that should arise (Department of Labour, 2009a).

RSE status is approved for two years but has to be accompanied by an Agreement to Recruit (ATR). Applications for ATRs are dependent on applying in the approved form, paying the fee and supporting the case with evidence showing the requirements are met. These relate to the jobs to be filled, their terms and conditions and from where they are to be filled. With RSE status and ATR approved, they begin their own recruitment. RSE officers are available to help where necessary. To be suitable for recruitment workers must be:

- At least 18 years old
- Have an employment agreement
- Have a return ticket
- Satisfy health and character requirements, and
- Be able to show they only want to stay in New Zealand temporarily (Department of Labour, 2009a).

Pacific countries are given priority in providing potential RSE recruits. These include Federated States of Micronesia, Papua New Guinea, Nauru, Palau, The Republic of the Marshall Islands, Solomon Islands, and Kiribati, Tonga, Tuvalu, Samoa and Vanuatu, the Pacific 'Kick Start' states. The latter were helped to take advantage of RSE through New Zealand's Department of Labour helping develop pre-departure training and the setting up of work-ready pools of potential recruits (Department of Labour, 2009b). Recruiting from elsewhere requires demonstrating that a reasonable attempt had been made to recruit from the Pacific, or that they had a previous relationship with another country. While the number of potential workers was originally capped at 5,000, that depended on the state of the New Zealand labour market and whether there were any Kiwis seeking jobs. The cap was raised by the previous government to 8,000. 3,994 workers came to New Zealand over the initial period (2007-2008), 74 percent from 'kick-start' countries in the Pacific, 6 percent from another non 'kick-start' country and 20 percent from other countries, mainly Asian. 273 workers had returned home at 30 April 2008 and 3,721 were still in New Zealand (Department of Labour, 2008). Just over a year later (28 May 2009) 5,408 RSE workers were in New Zealand and 5,327 had gone home. They had been employed by 411 approved employers (Department of Labour, 2009c).

Initial Outcomes of the Recognised Seasonal Employer Programme

While it is very early to speculate on the success of this programme, there are already some very positive indicators that it is indeed supplying the Win:Win:Win outcome suggested earlier. First, the World Bank initiated some tough evaluative studies of the scheme. A survey of 2,000 Tongans revealed that the RSE scheme had opened up the prospect of seasonal migration opportunities to many poor, rural households in Tonga. Some 20 percent of men of working age were offering themselves as part of a work-ready pool, with some 800 having the chance to work in New Zealand (Gibson, McKenzie and Rohorua, 2008). Of those who wanted to come from Vanuatu, those with better health records, more work and overseas experience, and with better English literacy tended to be favoured. They tended to be males between late 20s to early 40s, with some relatives in New Zealand and less likely to smoke or drink. More than 1,600 ni-Vanuatu had been allowed to work in New Zealand by May 2008. Poor information had discouraged some prospective applicants and returned RSE workers are suggested for briefing new contingents. Workers had a predominance of financial and individual motives and a desire to have the chance to learn English (McKenzie, Martinez and Winters, 2008). In terms of short term financial gains, the households of Tongan

participants of the RSE scheme had per capita income increased by almost \$US 300, but there was no apparent impact on their consumption (Gibson and McKenzie, 2008).

Informal comment suggests that remittances, which vary widely from a maximum of about \$NZ16,000 in one Tongan case and an average of \$NZ7,000, have made real differences for things like siblings' education rather than conspicuous consumption (Department of Labour, 2008). Besides the remittance taken home and their economic multiplier effects, there are also the formal work skills that may be transferable; also, the other social skills and informal learning from being in a different and more developed country. Then there are the less tangible benefits of eyes being opened to a different reality, choices extended, of human capabilities being built up (Sen, 1999), and enhanced self esteem having travelled, flown, and lived in New Zealand.

The great advantages of the scheme for the 'sending' communities has best been summed up by Tuatagaloa Joe Annandale, a senior matai of Poutasi village on the southern coast of Samoa. He came to appeal to the Pathways migration conference in Wellington on 3 November 2009 to keep the RSE scheme going because it gave hope of significant employment for his people. But he had come at a time of great personal trauma, having lost his wife, six family members, his business and all the 2010 RSE paperwork in the devastating tsunami which had hit his community only a few weeks previously. That he had come at such a time was quite unexpected by the conference organisers but spoke eloquently of the seriousness of the issue of the RSE scheme to his community so soon after the tsunami. Further, he appealed to have the paperwork involved in the scheme reduced because it was such a burden and its loss would slow down his people getting involved in the RSE in 2010 (Annandale, 2009).

Besides the benefits to workers and their communities, growers and employers have also benefitted. Initial teething troubles threatened to undo the scheme in the first year but the organisers had allowed for problems and were prepared for difficulties. A colleague taking a Lincoln University student field trip to the Central Otago apple growing area in April 2008 reported that the workers had learned how to get time off work for injuries received in work accidents at public expense and the growers encountered had tales of woe. After the similar trip in 2009, his report was quite different. Growers had suddenly discovered the virtues of the scheme with a certain workforce, returning workers who did not have to be trained again, and who could help their 'new' colleagues get to grips with the work and living. Further, there were also stories of New Zealand growers making efforts to help the communities from which their workers came. So, the RSE scheme seems to be achieving a Win:Win:Win outcome, which will be more thoroughly investigated with the passage of time. A positive official *Summary of Evaluation findings from Recognised Seasonal Employer (RSE) Policy – First Season (2007-08)* was published in June 2009 and the government announced that the strategy would continue, with minor improvements. HortNZ CEO, Peter Silcock, said:

It is simply a case of being able to pick an apple when it is meant to be picked, not a week before, or a week after. Pick it at its best and it will store better, travel better and look better on the shelf (Horticulture New Zealand, 2009).

The final word should rest with a representative opinion of the fruit trade, the UK's *Fruit Produce Journal*:

Pacific Islands labour in New Zealand is proving a bigger factor than even an improving new variety profile in helping growers deliver high quality fruit to market, the country's top-fruit industry body has said... 'New Zealand apples are taking the place of other southern hemisphere apples in our markets offshore because the quality is higher'... 'We have one of the best-quality crops we have ever had, but Pacific Islands labour has

fundamentally changed our ability to deliver quality to the market. It is bigger even than changing varieties – being able to pick the crop at exactly the right time in terms of fruit maturity is a huge fundamental change (Hammond, 2009: 1)

Notes

¹ The employment relationship has been described as a notion creating a legal link between an employee and an employer to “...whom she or he provides labour or services under certain conditions in return for remuneration” (FAO-ILO-IUF, 2005: 13). It is a concept common to all legal systems and traditions but the obligations, rights and entitlements associated with it vary from country to country.

² The *Employment Relations Record* is the refereed Journal of the Pacific Employment Relations Association (PERA).

³ Hazard Analysis & Critical Control Points.

References

Annandale, T.J. (2009). *RSE : A Falealili Perspective. Pathways, Circuits and Crossroads : International Migration in Uncertain times*. Migration Conference at Te Papa, Wellington, 3 November.

Anwander, S.P-H. (2008). *Good Social Practices in Agriculture – From Case Studies to Broader Implementation*. GLOBALGAP Summit, Cologne, 15-17 October. Retrieved from www.globalgap.org/cms/upload/Resources/Presentations/Cologne/Anwander_Sibyl_low.pdf

AsureQuality. (2009). *Auditing to Inspection*. Retrieved 6 May, 2009 from <http://www.asurequality.com/how-to-meet-the-globalgap-standard-for-food-safety.cfm>

Bedford, R. (2008) “Migration policies, practices and cooperation mechanisms in the Pacific”, *United Nations Expert Group Meeting on International Migration and Development in Asia and the Pacific*, Bangkok, Thailand, 20-21 September 2008. UN/POP/EGM-MIG/2008/5. 30 pp.

Campbell, H.R. and Roisin, C.J. (2007). Global Retailer Politics and the Quality Shift in New Zealand Horticulture. In M.R. Butcher., J.T.S. Walker., and S.M. Zydenbos (eds). *Future Challenges in Crop Protection: Repositioning New Zealand's Primary Industries for the Future*. (pp. 11-26). Proceedings of a symposium held 13 August, 2007 in Napier, New Zealand. New Zealand Plant Protection Society Incorporated.

Carooll, P., Blewden, M. and Witten, K. (2008). *Building Research Capability in the Social Sciences (BRCSS) – The Social Sciences and Policy Research Use*. Centre for Social and Health Outcomes Research and Evaluation: Massey University.

Christopherson, S. and Lillie, N. (2005). Neither Global or Standard: Corporate Strategies in the New Era of Labour Standards. *Environment and Planning A*. 37: 1919-1938

Department of Labour (1999). *Human Capability: A Framework for Analysis*. Wellington.

Department of Labour (2008). *The RSE Scheme – The Journey so far*. [DVD]. Wellington, New Zealand.

Department of Labour (2009a). *Labour Market Strategy – The Recognised Seasonal Employer Work Policy*. Retrieved from <http://www.dol.govt.nz/initiatives/strategy/rse/index.asp>

Department of Labour (2009b). *Summary of Evaluation Findings from Recognised Seasonal Employer (RSE) Policy – First Season 2007-2008*. Retrieve from <http://www.immigration.govt.nz/NR/rdonlyres/C2222267-E10A-461F-ADF4-7FFED28BFB8A/0/DOL11060SummaryofEvaluationFindingsfromRSEPolicyFirstSeason28May09.pdf>

Department of Labour (2009c). *2009 Statistical Update on Key RSE Figures*. Retrieve from <http://www.dol.govt.nz/initiatives/strategy/rse/facts-figures.asp#2008>

De Zulueta, T. (2003). *Migrants in Irregular Employment in the Agricultural Sector of Southern European Countries*. Report to the Committee on Migration, Refugees and Demography. Parliamentary Assembly: Council of Europe. Retrieved from <http://assembly.coe.int/Documents/WorkingDocs/Doc03/EDOC9883.htm>

FAO-ILO-IUF. (2005). *Agricultural Workers and their Contributions to Sustainable Agriculture and Rural Development*. Retrieved from <http://www.fao.org/docrep/008/af164e/af164w00.htm>

Fulponi, L. (2006). Private Voluntary Standards in the Food System: The Perspective of Major Food Retails in OECD Countries. *Food Policy*, 31(1): 1-13

Gibson, J., McKenzie, D., and Rohorua, H. (2008). *How Pro-Poor is the Selection of Seasonal Migrant Workers from Tonga under New Zealand's Recognised Seasonal Employer (RSE) Program?* (Working paper in Economic 08/08 June). Department of Economics, Waikato University, Hamilton, New Zealand.

Gibson, J. and McKenzie, D. (2008). *Preliminary Impacts of a New Seasonal Work Program on Rural Household Income in the Pacific*. (Working Paper in Economics 18/08 December). Department of Economics, Waikato University, Hamilton, New Zealand.

GLOBALGAP (EUREPGAP) (2007). *Control Points and Compliance Criteria – Integrated Fram Assurance – All Farm*. Retrieved from http://www.globalgap.org/cms/upload/The_Standard/IFA/English/CPCC/GG_EG_IFA_CPCC_FV_ENG_V3_0_2_Sep07.pdf

GLOBALGAP Home (2009). *Welcome to GLOBALGAP home*. Retrieved from http://www.globalgap.org/cms/front_content.php?idart=3&idcat=9&lang=1

Hammond, K. (2009). Fruit Pickers to the Rescue. *Fresh Produce Journal*. April 17: 1

Hatanaka, M., Bain, C., and Busch, L. (2005). Third-Party Certification in the Global Agrifood System. *Food Policy*, 30(3): 354-369

Hatanaka, M. and Busch, L. (2008). Third-Party Certification in the Global Agrifood System: An Objective or Socially Mediated Mechanism? *Sociologia Ruralis*. 48(January): 73-91

Heise, J., Uhlig, K., and Vonwiller, L. (2007). *The GRASP Project Report – Towards Good Social Practices in Agriculture*. GLOBALGAP, Coop Switzerland and GTZ GmbH.

Hill, R., Capper, P., and Wilson, K. (2005). Experimenting with the Change Laboratory Method to Solve the Problem of 'Episodic Labour' in the New Zealand Horticultural Sector. First ISCAR Congress *Acting in Changing Worlds: Learning, Communication and minds in Intercultural Activities*. 20-24 September. Seville, Spain.

Hill, R., Capper, P., Wilson, K., Whatman, R., and Wong, K. (2007). Workplace Learning in the New Zealand Apple Industry Network: A New Co-Design Method for Government 'Practice Making'. *Journal of Workplace Learning*. 19(6): 359-376

Holt, J. (1986). *Compulsory Arbitration in New Zealand: the Forty Years*. Auckland, New Zealand: Auckland University Press.

Horticulture and Viticulture Seasonal Working Group (H&VSWG). (2005). *Medium – Long-term Horticulture and Viticulture Seasonal Labour Strategy*. December, Wellington.

Horticulture New Zealand (2009). *Secure future for RSE secures Future of Horticulture*. Press release at 10.12 a.m. 4 June from news@parliament.nz

Institute of Policy Studies (2008). *Better Connected Services for Kiwis – A Discussion Document for Managers and Front-Line Staff on Better Joining Up the Horizontal and the Vertical*. School of Government, Victoria University of Wellington. Retrieved from <http://ips.ac.nz/events/completed-activities/joiningup/Connected%20Services%20ver%2010.pdf>

International Labour Office (2008) *Regulating for decent work: innovative regulation as a response to globalization*. Conference of the Regulating for Decent Work network, Geneva, Switzerland, 8-10 July 2009. Call for abstracts: <http://www.ilo.org/travail/lang--en/index.htm> , downloaded December 2008.

Jones, S. (2008). *Master Contractors Inc. Launched to aid RSE Scheme*. Retrieved from <http://www.beehive.govt.nz/node/32397>

Kuiper, H. (2008, March). National Master Contractors' Organisation Launched. *The Orchardist*. pp.62-63

Martin, J.E. (1987). *Tatau Tatau – One Big Union Altogether: The Shearers and the Early Years of the New Zealand Workers' Union*. Christchurch, New Zealand: Griffin Press.

Martin, J. (1990). The Struggle for £1 – The emergence of the Shearer' Union in the 1870s. *New Zealand Journal of History*. 24(1): 56-73.

Martin, P. and Taylor, J.E. (2003). Farm Employment, Immigration and Poverty: A Structural Analysis. *Journal of Agricultural and Resource Economics*. 28(2): 349-363.

Macintyre, S. and Mitchell, R. (eds.) (1989). *Foundations of Arbitration – The Origins and Effects of State Compulsory Arbitration 1890-1914*. Melbourne: O.U.P.

- Mackenzie, D., Martinzez, P.G. and Winters. L.A. (2008). *Who is coming from Vanuatu to New Zealand under the Recognised Seasonal Employer (RSE) Program?* (Working Paper in Economics 9/08, June). Department of Economics, Waikato University, Hamilton, New Zealand.
- Ministry of Agriculture. (2002). *Human Resources in Agriculture Workshop*. Sustainable Farming Fund Initiative [CD]. 22-24 July, Centra Hotel, Rotorua, New Zealand.
- Ministry of Agriculture (2000). *The Influence of Social Factors on the Future Performance of the Primary Production Sectors*. Wellington, New Zealand.
- NZMCI – New Zealand Master Contractors Inc. (2009). Retrieved from <http://www.mastercontractors.co.nz/about/>
- Plant and Food Research (2008). *FreshFacts 2008*. Plant and Food Research Institute of New Zealand Ltd.: Auckland.
- Rabobank (2002, July). Food safety and the EUREPGAP retailer initiative – the implications for New Zealand horticultural exports. *Rabobank GLOBAL FOCUS Horticulture*. pp.1-4
- Ramasamy. S., Krishnan, V., Bedford, R. and Bedford, C. (2008). The Recognised Seasonal Employer Policy: Seeking the Exclusive Triples Wins for Development Through International Migration. *Pacific Economic Bulletin*. 23(3): 171-186
- Rogaly, Ben (2008). Intensification of Workplace Regimes in British Horticulture: The Role of Migrant Workers. *Population, Place and Space*. 14(6): 497-510.
- Sen, Amartya (1999). *Development as Freedom*. Oxford: O.U. P.
- Silcock, Peter (2005). *Remarks at launch of Horticulture/Viticulture Seasonal Labour Strategy*. 8 December 2005.
- Spoonley, P. and Bedford, R. (2008). Responding to Regional Labour Demand: International Migration and labour Markets in New Zealand's Regions. *Journal of International Migration and Intergration*. 9(2): 203-223
- Swain, Paul (2004). *Speech notes from ministerial meeting with horticulture industry*. 24 August 2004.
- Taylor, J.E, Martin, P., and Fix, M. (1997). *Poverty amid Prosperity: Immigration and the changing Face of Rural California*. Washington. D.C.: Urban Institute Press.
- Tipples, R. (1987). Labour Relations in New Zealand Agriculture. *Sociologia Ruralis*. XXVII(1): 38-54.
- Tipples, R. (1995). The re-regulation of farming employment relations in New Zealand. *Sociologia Ruralis*. XXXV(1): 93-109.
- Tipples, R. (2004). The Human Capability Framework – An important and Useful Framework for Understanding the Labour Market. *New Zealand Journal of Employment Relations*. 29(1): 3-20.
- Tipples, R. and Martin, S. (2006). Getting produce from the New Zealand paddock to the European

plate – Reducing supply chain vulnerability. *New Zealand Journal of Employment Relations*. 31(1): 60-75.

Tipples, R. (2007). The further re-regulation of farming employment relations in New Zealand. *Sociologia Ruralis*. 47(1): 63-79.

Tipples, R. (2008). Special Edition – Changing Rural Employment. *Employment Relations Record*. 8(1): 1-103.

Weil, D. (2009). Rethinking the Regulation of Vulnerable Work in the USA: A Sector-based Approach. *Journal of Industrial Relations*. 51(3): 411-430

Whatman, R., Wong, K., Hill, R., Capper, P., and Wilson, K. (2005). *From Policy to Practice: The Pure Business Project*. Proceedings of the 11th ANZSYS/Managing the Complex V conference. Christchurch, New Zealand. 5-7 December.

Whatman, R., and Van der Beek, J. (2008). The Seasonal Labour Strategy and the Role of RSE in Helping Make Transformative Changes for Employers and Industry. *Proceedings of the 13th Labour, Employment and Work Conference*. Victoria University of Wellington. 11-12 December.

Wood, A. (2007). *NZ Master Contractors Programme*. Report for Kellogg Rural Leadership Programme. Lincoln University.

Wood, A. (2008). Master Contractors – What is it? *Winepress – The Official Magazine of wine Marlborough*. 11: 23.

The Land of Milk and Honey? The contemporary working lives of contingent youth labour

DANAË ANDERSON* and KRISH NAIDU**

Abstract

The 90th anniversary of the International Labour Organisation (ILO) in 2009 and its ‘Decent Work’ campaign presented an opportune time to investigate contingent youth labour and, more specifically, student migrants. Underpinning this investigation is the fact that the export education industry is one of New Zealand’s fastest growing, high-value, service export sectors and is the fifth largest export earner. This paper examines the type of employment involving youth international students and presents tentative evidence to show that many international student workers are forced into exploitative and illegal forms of employment. It is also argued that given that the international education market is a significant contributor to New Zealand’s economy, this area of research has wide policy implications. Finally, we ask the question: what potential reach does the ILO have to mitigate concerns associated with student migration?

Introduction

Financial, cultural, and educational exchange in a “shrinking world” (Infometrics, NRB and Skinnerstrategic, 2008: 12) means nearly three million tertiary students worldwide are involved in formal education outside their own country (Binning, 2010). Indicative of worldwide trends, export education has become increasingly important for the New Zealand economy, making up nearly 7 percent of New Zealand’s export earnings and generating \$2.3 billion in foreign exchange earnings for the local economy (Butcher, 2009). Export education foreign exchange earnings are higher as a proportion of GDP for New Zealand than any of the other main destination countries New Zealand competes with for foreign students (see Tables 1 and 2; Education NZ, 2008a). In 2008/09, 73,926 international students were approved to study, a 6per cent increase from 2007/08 (Education New Zealand, 2008b; New Zealand Visa Bureau, 2009). The largest category of student approvals was fee-paying students (82 percent), the main approval category being for those aged 18 to 24 years. Traditionally, students have come from China, South Korea, and Japan but numbers from these countries are falling, with Indian student numbers increasing. Changes in demographics are salient, reflecting not only how New Zealand is perceived as an education provider domestically, but also its reputation overseas¹.

Table 1: International University Students/Overall Population

Country / Population		Int. Unit Enrolments	Int. Students per 1000 population
Australia	21,487,000	177,760	8.27
UK	61,186,000	237,765	3.89
New Zealand	4,286,000	21,136	4.93
Canada	33,432,000	90,000	2.69
USA	305,682,000	623,805	2.04

Source: Education NZ, 2008a

* Danaë Anderson is a Lecturer in Employment Relations at AUT.

** Krish Naidu is a Masters student at the University of Auckland and a Lecturer at the Auckland Institute.

Table 2: International Education as a percentage of GDP

Country	% of GDP
New Zealand	1.13%
Australia	1.06%
UK	0.40%
Canada	0.25%
USA	0.16%

Source: Education NZ, 2008a

The international educational sector has not only grown considerably in the past decade but it has generated a number of interconnecting issues, including the transnational migration of people, economic imperatives of education, and potential conflict between education and paid work. While research to date has focused on migration outcomes (Ward, 2008; Bauder, 2006; Coppel, Dumont and Visco, 2001; Deshingkar and Start, 2003; Khoo and Birrell, 2002) or educational results, there is limited analysis delving into student migrants who are students and are *also* working (Nyland, Forbes-Mewett, Marginson, Ramia, Sewer and Smith, 2008). Existing research indicates that migrants are overrepresented in negative work outcomes, including poor occupational health and safety (Benach and Muntaner, 2007; Loh and Richardson, 2004). For many student migrants, their vulnerability may be increased when employed in jobs characterised by low wages, insecurity, and unclear employment relations legislation (Haque, 2002; Mackenzie and Forde, 2009; May, Wills, Kavita, Yara, Herbert and McIlwaine, 2006).

This article explores the work experiences of student migrants in order to ascertain whether the students participating in the study are experiencing marginalised and precarious conditions of employment. Beginning with a background of the issues inherent in student migration to New Zealand, a description of the characteristics of the student migrant worker will then be outlined. Finally, the initial findings of exploratory research will be presented, including the potential role for the ILO to address prospective labour market issues.

Student Migrant Work

While sizeable research quantifies the value of the education export market (Infometrics et al, 2008; Education NZ, 2008a; OECD, 2010a; b), there has been little evaluation of the experiences students have while studying in New Zealand (see Ministry of Education, 2006; Deloitte, 2008). As stated previously, to date the discussion has largely concentrated either on the working experiences of migrants or the educational experiences of international students rather than examining the working experiences of student migrants.

While little is known about the working experiences of student migrant workers, they are nonetheless emblematic of the internal and external diaspora of labour and increased interdependence between countries in terms of the exchange of labour (Cerny, Menz and Soederberg, 2005; Gill, 1995). The “subsequent fragmentation of employment relationships and the declining rate of trade union membership and collective action” (Council for Europe, 2005: 237) have further eroded worker protection, particularly for those more vulnerable workers. Research also shows that there has been exponential growth in precarious, non-standard employment arrangements in which employing migrant labour is now widespread, particularly in industries where non-standard, precarious employment is the norm (see Dyer, McDowell and Batnitzky, 2008; McLaren, Firkin, Spoonley, Dupuis, de Bruin and Inkson, 2004; OECD, 2009). Young workers also share a number of employment characteristics with migrant workers in that they are more likely to tolerate ‘flexibility’ and unpredictability in their employment conditions, as discussed below (Nicole-Drancourt, 1992). Moreover, by the very nature of their immigration status, student migrant workers are contingent labour. As with most other countries, the New Zealand immigration

regulations covering migrant student workers dictates that they can only work twenty hours per week. Nonetheless, this is not to conclude that *all* student migrants are involved in precarious work, rather that many may have poor employment conditions due to a variety of factors such as language difficulties, qualifications, work experience, and discrimination (Deloitte, 2008).

International research has also begun to explore the possible effects on wellbeing of different forms of work, such as shift work, being on-call, temporary, and part-time employment (Reitz, 1998; Pledger, Cumming, McDonald and Poland, 2009). In particular, researchers have begun to make a link between precarious and hazardous employment, conditions, poor pay, low union density and the use of vulnerable workers, such as migrant labour (see Quinlan, Bohle and Lamm, 2010; Funkhouser, 1993; Pollert and Charlwood, 2009; TUC, 2008; Cellier, Eyrolle and Bertrand; Ehrlich et al, 2004; Sargeant, 2009; Sargeant and Tucker, 2009). There is growing evidence that workers employed in informal work arrangements also have an above-average level of injury and illness, and report higher levels of work-related stress compared with workers employed in more formal working arrangements within the primary labour market (Virtanen, Kivimaki, Joensuu, Virtanen, Elovainio and Vahtera, 2005; Quinlan et al, 2010). In particular, there is emerging research to indicate migrant workers are frequently exposed to hazardous work conditions, and have higher rates of injury and illness compared to non-migrant workers in standard employment (McKay, Craw and Chopra, 2006; Bohle, Quinlan, Kennedy, and Williamson, 2004).

While there is some labour market data to indicate that youth international students are over represented in sectors where temporary and casual work is endemic, including agriculture, the service sector, and hospitality, there has been, generally, a lack of focus on youth labour and, in particular, on international students; and a paucity of information about the impact of student migration on the workforce in New Zealand. Further, the incomplete statistical information available captures *only* those engaged in the formal economy whereas the secondary labour market is where contingent work is situated. Complexities arise in capturing meaningful data sets from such workers as limited statistical data is collected (see Department of Labour, 2007b; Coppel et al., 2001). Literature tends to focus on quantifying the proportion of students employed and financial imperatives (Bexley, Devlin, James and Marginson, 2007; Curtis, 2000) or the effect employment has on academic results and wellbeing (Manthei and Gilmore, 2005; Merwood, 2007; Riggert, Boyle, Petrosko, Ash and Rude-Parkins, 2006; Zimmer-Gembeck and Mortimer, 2006). Nonetheless, the adverse effects of working while studying have been highlighted by McDonald, Bailey, Oliver and Pini (2007). The authors note that student workers are vulnerable to employer exploitation because of their limited work skills, high unemployment, under-employment, and poor knowledge of their rights. Many students find it necessary to work while studying, given the financial constraints they face while living in a foreign country, away from the economic security blanket of their home environment.

In 2007, the Ministry of Education and the Department of Labour (in Deloitte, 2008) acknowledged the lack of knowledge by integrating a number of new questions into the *National Survey of International Students* focusing on international students' experiences of working in New Zealand. Thirty-five percent of the students surveyed indicated that they were currently in part-time employment, mainly in hospitality or retail sectors. The main reasons students gave for opting to work part-time were to meet living and tuition costs, with 47 percent of students stating this was their main reason for working. Just over a quarter of students (26 percent) sought work experience directly relating to their area of study and a further 21 percent of students worked part-time simply to gain general work experience in New Zealand. Nonetheless while many student migrants work in addition to their study significant quantitative or qualitative information is not routinely collected to inform policy or debate.

Methodology

Initial concerns regarding student migrant workers were signposted during research for two Masters theses *Safe Enough? The Working Experiences of New Zealand Children* (Anderson, 2010) and *Employers' Use of Professional Contractors: Supplement or Substitute?* (Naidu, 2011). More broadly, the research sought to discuss the working conditions of student migrants and whether there is cause for concern. Auckland was considered an appropriate location to base the research as it is the primary youth migrant location (Department of Labour, 2007a). The numerous difficulties associated with researching migrant labour are acknowledged, as with any other vulnerable group (see Boocock, Hannif, Jamieson, Kjaer, Lamare, Lamm ... Wagstaffe, 2010; Jayaweera and Anderson, 2009). In particular, it is often problematic locating research participants who are willing to speak about their experiences, while language or cultural differences may affect comprehension of the issues as well as fear of 'being found out' for working illegally. Therefore, it is important to recognise that 'official measurements' may fail to capture detailed work experiences and definitional issues as well as inconsistencies are inherent in attempting to gather data of this kind. For this reason, a qualitative methodology was considered most appropriate to gain a more complex understanding of student migrants' working experiences reflecting multiple 'realities', and acknowledging major differences in ethnicity, place of study and language competency (Patton, 2002; Denzin and Lincoln, 1998; Golafshani, 2003).

Questions were asked in a survey where most questions followed a yes/no format, while other questions were open-ended, allowing respondents to voice their opinions in greater detail. During initial exploratory research, 74 surveys were collected. A further 10 student migrants were interviewed using open-ended, semi-structured questioning to further explore themes identified during the surveying phase. In all cases, participation in the research was anonymous and voluntary. Survey respondents were all university students, while the interviewees were from private training institutes and university. The student population here represents a number of ethnicities (see Table 3). All participants were aged between 18 and 25, consistent with definitions of youth and the dominant age group for migration for tertiary education (Kritz, 2006; Docquier and Marfouk, 2006).

Table 2: Gender

Gender	Number
Female	32 (43.2%)
Male	42 (56.8%)
Total	74

Table 3: Ethnicity of Survey Respondents

Ethnicity	Number of respondents
Asian: Chinese (27), Malaysian (5), Japanese (3) Indian (38)	63 (85.1%)
African	3 (4.1%)
European: Russian (4), German (2), French (2)	8 (10.8%)
Total	74

Key Findings and Discussion

Survey questions were designed to explore typical working experiences, centring on the themes of job types, wages and hours worked, working conditions, and health and safety. As questions were designed to capture the working experiences of a different cohort, some detail was missing. Therefore, the interviewing phase was intended to capture greater detail as well as seeing if survey findings could be indicative of concerns in the broader student migrant population.

Types of Work

Candidates were asked what jobs they worked in and while the types of work engaged in were varied, for the size of the survey ($n = 74$), over half the workers (42) were clustered in the hospitality and service sectors while a small but significant number were in agriculture (12 in total), typical of the New Zealand workforce (Callister and Didham, 2010) (see Table 4), but also sectors where illegal workers are significantly represented in (Garson, 1999; ICFTU, 2001; Allen and du Gay, 1994). Of note was the lack of professional positions listed, consistent with Deloitte's 2008 findings. This indicates student migrants may be concentrated in jobs at periphery of the labour market (see Atkinson, 1984; Walsh and Deery, 1997). In positions such as agriculture, there has been sustained media commentary that these jobs are unable to be filled by the domestic population, but "in most cases the pay and working conditions are poor and this is the key reason these jobs are not filled locally" (Minto, 2009). A number of those interviewed mentioned the difficulty for themselves or friends finding work in the current recessionary climate, citing lack of New Zealand experience, racism and not having networks through which to find work as the primary obstacles.

Table 4: Types of Work

Job category	Types of work
Manual labour	labourer, tiling, maintenance for a hire firm, light labouring, bulldozer operator, house painter
Agriculture/ horticulture	tomato packing, hothouse work, agricultural production, stable hand, milking cows, strawberry picking, fruit picking
Administration	receptionist, office administration, data entry
Retail	gift shop, clothing, checkout operator, fast food, cashier
Hospitality	bar waitress, bartender, pub work, translator, receptionist, delivery driver, dishwasher, waiting tables
Other	cleaning, paper round, factory work, housecleaning, computer repairs, car groomer, busboy, shelf stacker

Wages

Of the survey respondents, 28 out of 74 (or 37.8 percent) of respondents had been paid below the statutory minimal (at the time \$12.50 per hour). This is a significant proportion, meaning almost 4 in 10 workers were being paid illegally and (presumably) cash in the hand. Particularly low pay rates were widespread in agriculture and horticulture where almost all workers (21/23 or 91.3 percent) were paid illegally, with 75 percent of all workers reporting illegal pay rates. This is consistent with Ross and Rasmussen's (2009: 96) contention that "migrant workers are found working in horticulture 'under the table' for as little as \$6 an hour (less than half the statutory wage)". Of all 74 respondents, only 7 were earning significantly above minimum wage (\$20+ per hour), with most ($n = 26$) earning between \$12.50 and \$15.00, and a few ($n = 13$) earning between \$15.00 and \$20.00. Those reporting persistently low, and in many cases illegal wages are cause for concern:

Chinese female, 18 years. Working at a discount store: 'I couldn't find anything. I know the (minimum) wage is more than \$10 (\$12.50) but (I) am lucky to work. Most of my friends can't find anything- so \$7.00 is ok'.

Indian male, 23 years. Works in a shop: 'It (the pay) should be \$15 to \$18/ hour because expenses in city is much more as room rent is \$130/week without grocery' (paid \$10.00 per hour).

Indian female, 20 years. Washes dishes in a restaurant: 'They said they would pay the minimum wage. But when I got my pay it was only \$8.00 (per hour). I asked them (why) and they said business was quiet and it was better if they paid cash to me. I know this is not allowed but I have no choice'.

Hours of work

Limited research suggests many migrants work far in excess of stipulated hours although information of this type is difficult to gather (for further discussion, see Chen and Madamba, 2000; Green, Owen and Jones, 2007). This is consistent with others engaging in low-skilled work, where the general trend is for longer hours further exacerbated by low pay rates (Boniface, 2007). In the case of student migrants, most are able legally to work up to 20 hours per week during semester time, and through the holidays if they have a visa allowing entry for longer than one year (Immigration New Zealand, 2010). However, students may work in excess of their visa conditions due to financial imperatives, such as repayment of educational loans as well as finding the cost of living in the host country higher than anticipated². Initial findings indicate that pressure for extra hours is usually from the employer's side, and indications are that long hours may compromise the student's attendance and performance at their tertiary institution (Curtis and Shani, 2002). The adverse effects of working while studying were highlighted by McDonald et al (2007) in Australia; while research by Neill, Mulholland, Ross and Leckey (2004) identifies fifteen hours of work as a point beyond which "there may be a detrimental effect on academic performance" (ibid:136).

Survey responses indicated the majority of respondents worked between 15-20 hours per week (42, or 56.8 percent). However, the second largest proportion admitted typically working over twenty hours (22, or 29.7 per cent), while eight declared they worked fulltime (40 hours or more). This means over a third of the sample were working in clear violation of their visa conditions while many in the sample were 'on call' and working on a casual basis (28 out of 74, or 37.8 per cent). Such conditions are not illegal, but in the current economic climate, with a lack of jobs *in general*, the employment environment for migrant workers can be seen to have worsened (see Wu, Guo and Sheehan, 2010; ILO, 2010).

Due to the high incidence of precarious work indicated by surveying, interviewees were asked, in more detail, about the hours they worked. *All* ten interviewees said they had been asked to, or had worked more than the allowed 20 hours per week. This result is inconsistent with Deloitte's 2008 findings where only five percent of the student population surveyed outlined that they worked more than 20 hours per week, 47 percent stating they normally worked between 16 to 20 hours per week. However, McInnis and Hartley (2002) believe that many international students are unwilling to admit to working more than 20 hours per week as the consequence for working outside this limit involves withdrawal of the study visa. Therefore, one could reasonably assume that when student migrants are speaking to a regulatory and enforcement authority they may not necessarily give an accurate picture of their working hours or conditions. Responses below indicate instability of guaranteed hours, but also pressure to work longer hours if and when it suits the employer:

Korean male, 24 years. Working in horticulture outside Auckland: "It's (the job) not so bad. Too much travel - but they pay for that. Sometimes it is hard to fit in study, but I need a job. They want me more hours (than I am allowed). And they are not nice to me. Boring? Yes, but I have a job".

Thai male, 21 yr old hospitality student: “I work a lot at a Thai restaurant in the city, there are no fixed hours, and I get called whenever a function is scheduled or large booking are made during the weekdays. In the weekends I am always working all day. I thought doing a hospitality course will open doors for me, but all I can find work is in Thai takeaways or restaurants. The pay is minimum wage and usually weekend Saturday work is more than 10 hours with no extra benefits, last week I came to work on Sunday and it was not busy during the day and I was told to go home and that the manager and the wife will manage it”.

Malaysian female, 20 years. Works in a restaurant, waitressing: “Good to earn some money, but late nights, long hours. It is hard to get home (at that time). And I can’t get time off when I need, only when he wants. There is no minimum working hours - makes it difficult when there is no work”.

Health and Safety

Growing evidence indicates migrant workers are frequently exposed to hazardous work conditions, and have higher rates of injury and illness compared to non-migrant workers in standard employment (Bohle et al., 2004; Sergeant and Tucker 2009; McKay et al 2006; Bennett, 1993). In addition, workers employed in informal work arrangements are much more likely than formal workers to be exposed to poor working environments, low safety and health standards and environmental hazards, and report higher levels of work-related stress compared with workers employed in more formal working arrangements within the primary labour market (Withiam, 1997; Quinlan and Mayhew 2001; Virtanen et al, 2005). As a result, there is acknowledged difficulty in accurately measuring the wellbeing of all migrant workers as government databases rarely capture the working experiences, occupational injury, fatalities, and compensation claims of precariously-employed workers (Boocock et al, 2010).

Taking an encompassing view of health and safety by recognising factors, such as workplace security and working conditions, survey respondents were asked whether they felt safe in their workplaces, and why or why not. Of the 74 surveys, five chose not to respond while 46 (62.2 percent) answered that they did feel safe. However, a number answered with qualifiers such as “but I get left alone at night”, “drunk men make me feel nervous” or “I know some of what I do is not my job and I shouldn’t (be performing the tasks), but that’s ok”. The remainder (23 or 31.1 percent) answered that they felt unsafe in the course of their work and had experienced unsafe working practices:

Chinese female, 19 years. Enrolled at a private training institute. Working in a gift shop (Sole charge): “Often I don’t feel safe... Late nights and by myself. I worry... hope they (the customers) are not shoplifting. My English is not good to tell them no”.

Vietnamese, male, 24 years. Cleaning in a hotel: “Language difficulties you know. Sometimes it hard to understand what they (bosses) saying. Cleaning job is so hard, and it makes a lot of physical problems”.

Working Experiences

While the variety in students demonstrates diverse working experiences, universal themes were identified relating to job types, equity issues as well as workplace safety. Indicators of vulnerability were also identified, namely working hours in excess of visa conditions, rates of pay below legal minima, and insecurity of work: either through contractual arrangements or in the type of work engaged in. Nevertheless, not all findings were negative; with 35 per cent (26 out of 74) of survey respondents citing gaining New Zealand work experience, meeting New Zealanders and financial security as positive factors of their work. Overwhelmingly though, at both surveying and interviewing stages recurring themes of fairness, equity and poor working conditions were evident:

Indian female, 19 years. Works for an Indian restaurant, cleaning dishes: “I got the job from a guy I met here, he knew the family. Everyone is Indian, they know we work hard. The job is bad, but I have a loan, and if I stay I need (work) experience. They (the owners) are not friendly - if you ask for anything they (the owners) let you go. So I just do my job”.

Indian male, 20 years: “It took me 5 months to find a part time job in Auckland, when I finally found one as store man in a large Indian grocery store I was asked to do 3 weeks free training, I said yes because I thought training will allow me to get the job, but after my training finished I was told its not busy now and that I will be called when it gets busy again, I later found out that the manager did this for other students before me. Not only did I waste my time I did not get paid for training”.

A common trend was identified where a number of students felt that they had been given inaccurate information before arrival regarding high living costs in Auckland, as the statement below illustrate:

Malaysian male, 22 years. Working as a liquor store manager without a manager’s license: “It’s expensive to live... more than they said. So sometimes I miss class, for extra money. I don’t like it (the job), but I need to work”.

Russian female, 21 years. Working in a clothing shop and office cleaning: “I was told there were good jobs in New Zealand, better (than Russia). (That may be) true but I cannot get them”.

Interviewees were asked whether they knew their employment rights. All ten had extremely limited knowledge of legislation governing employment practices while some had been threatened with being reported to immigration if they questioned the terms of their employment. They also indicated that jobs are quickly obtained through ‘word of mouth’ within ethnic communities, where student migrants assume positions in low-skilled manual labour, service and hospitality, or in agricultural positions such as fruit picking. Often positions are organised through networks soon after arrival, and pressure is applied so more hours are worked than the legitimate twenty. This type of work has been found to be over-represented in having poor and/or illegal working conditions (Shelley, 2007; Pai, 2008; Minto, 2009).

Responses indicate that the scope of contingent youth labour practices is not just limited to young people simply having part-time jobs while studying. Initial findings indicate workers on overseas student visas provide a supplementary source of labour, with relatively little protection of work availability of conditions. Indicators of vulnerability were identified, namely working hours in excess of visa conditions, rates of pay below legal minimum, and insecurity of work, either through lack of protection or the type of work performed evident is that fear and poor knowledge are used as tactics by some employers of student migrant workers to mitigate wage demands and employment conditions. The Department of Labour’s 2010 *Life After Study: International Students’ settlement experiences in New Zealand* indicates that 69 percent of international students surveyed did not transition to work or residence, and most had left New Zealand within five years of getting their first student visas³. These concerning findings indicate structural problems in New Zealand student migrant protections where student workers may be vulnerable not only due to their working conditions, but also limited in their future opportunities within the labour market. It is therefore, appropriate to discuss the ILO’s role in multilateral governance, and its potential influence on domestic regulation.

A Role for the ILO?

As we have argued, the 90th Anniversary of the ILO was a fitting time to examine the organisation’s role in establishing multilateral convention framework aimed at protecting and promoting the rights

of all workers and, more specifically, to see whether or not the ILO is capable of exerting pressure on domestic policy to ensure the legal protection for student migrant workers. Notwithstanding, the role played by the ILO in influencing labour rights policies in various contexts is a matter of contention (Simpson, 1994; Alston, 2005; Rodgers, 2007) and while it may appear that the student migrant workers are covered by multiple conventions, there are inherent difficulties and a level of ambiguity for a number of reasons.

First, at an initial glance, student migrant workers are not only covered by conventions related to educational access, namely ILO Conventions' Numbers 169 and 182, (which is considered a social protection in and of itself), but they could also be covered by the ILO Conventions Numbers 97 and 143 pertaining to migrant workers. In addition, the Decent Work Agenda⁴, which seeks to address exploitative and hazardous working conditions and poor wages, may also extend to student migrant workers. The Decent Work Agenda (which is not subject to ratification) is an articulation of the ILO's four strategic objectives of creating jobs, guaranteeing rights at work, extending social protection, and promoting social dialogue (ILO, 2010; International Labour Office, 2009). However, under closer scrutiny, student migrant workers, *per se*, are not necessarily classified as 'vulnerable workers' under standard ILO definitions and are specifically excluded from the ILO's definition of migrant workers (see Elder, 2009 for further discussion; Nyland et al., 2004). Deumart, Marginson, Nyland, Ramia and Sawir (2004) argue, however, that student migrant workers in general should be covered by ILO protective conventions as they are indeed "vulnerable workers" given that as

...a globally mobile population they fall between the borders of the two national citizenship regimes, the nation of origin and the nation of education. There is no bilateral or multilateral framework whereby these national regimes are reconciled. Nor do the international agencies take up questions of student security (ibid: 1).

Second, for those young, student migrant workers employed in hazardous working conditions for long, non-standard hours and poor pay, there is a raft of protective ILO Conventions, commencing with the most basic rights pursuant under Conventions 1, 2, 5, 6, and 7 that pertain to minimum working age, including restrictions around working at night. But for many of the interviewees and respondents in this study, working in the informal economy was a reality; and while the ILO Conventions are as relevant in the informal economy as they are in the formal economy, there is a tension within the ILO between its position of 'promoting' employment in the informal economy as a convenient, low-cost way of creating jobs versus eliminating the often appalling conditions and pay inherent in this segment of the economy (see ILO, 1991; 2002 for further discussion). Moreover, the lack of resolve by most governments, including New Zealand, to either ratify or enforce the ILO Conventions or enact related regulations remains a significant barrier to universal protection of young student migrant workers.

Third, in a world where there is an unprecedented diaspora of labour and where businesses typically operate across jurisdictions, combined with a demand for labour market flexibility and increased labour productivity, questions are being raised as to the efficacy of both the ILO and governments to address the needs of vulnerable workers. Constrained by its tripartite structure, its generally pragmatic approach and the inability to reconcile the divergent national interests have undermined, some would argue, the ability of the ILO to be effective in maintaining a coherent protective framework for "invisible" vulnerable groups of workers, such as student migrant workers (Douglas, Ferguson and Klett, 2004). Keohane and Nye (1977) also argue that given the multitude of different agendas operating within the multilateral institutions like the ILO, the line between domestic and foreign policy becomes blurred. However, Cerny et al (2005) negate the conception of international and domestic politics as being two separate arenas, "but parts of an interpenetrated set of webs of politics and governance that increasingly cut across and entangle the nations of the

world...” (ibid: 1), consistent with Ohmae’s (1990) early theorising of globalisation as moving towards a “borderless world” (ibid: 7).

Moreover, migrants and youth rarely engage with established institutions or organisations that could represent their interests, such as trade unions, either at a local or international level. As the survey and interviews revealed, no respondents belonged to a union and no interviewees had noticed a union presence in their workplaces. Some of the reasons for the lack of trade union membership among student migrant workers are their lack of knowledge of trade unions and, because of the diminishing resources, an absence of union reach into the sectors where the student migrant work. Thus, attempting to develop and maintain protective standards and rights for vulnerable workers is clearly difficult when reliant on reconciling the divergent international and national interests while set against a changing labour market and declining trade union density (Employment Relations Service, 2009).

Finally, while New Zealand is a signatory to numerous ILO Conventions, regrettably the rhetoric of worker protection is not matched with government legislation or enforcement. Although immigration policies are touted to “attract and retain international students” (Merwood, 2008: 6), a lack of commitment by successive governments and their agencies to investigate or reform this problematic area of the labour market indicates that this is not the case. Improving labour legislation is the responsibility of domestic governments but the available national data does not consistently or accurately reflect what is occurring in New Zealand’s labour market. This information deficit has been noted in the ILO’s 2002 Report where New Zealand data was listed as not available. Furthermore, New Zealand domestic monitoring and enforcement capabilities are constrained by lack of numbers as well as funding. Combined with a lack of policy coherence, reporting and monitoring capacity between the ministries responsible for migration, labour and education, such weaknesses cannot be addressed by a multilateral mode of governance. Suffice to say, domestically, the government must work to establish a framework to ensure student migrants are adequately protected as the ILO’s reach is influenced by the quality of information it receives to provide recommendations.

Conclusions

There continues to be criticism that the ILO has more bark than bite, given its weakness in monitoring or enforcement capability. By lacking the capability or capacity to enforce labour standards, its role could be seen as limited to advising and reprimanding. This has led to frequent allegations that the ILO ‘has no teeth’ and that its work consequently makes little difference in the labour practices of governments (Claude and Weston, 2006; Langille, 1997). Further, interpretation of multilateral legislation, domestically, does not give policy uniformity across countries, and the ratification and application of standards is uneven. Therefore, while the ILO advocates a ‘best practice model’ of legislative compliance, its reach is weakened by the need to ensure ‘buy in’ from countries to apply labour standards. Nonetheless, the rhetoric of multilateral governance is countered by the continued primacy of domestic legislation. In New Zealand’s case, geographic isolation and distance from the seat of power means the ILO may not be perceived as relevant or useful by stakeholders.

Recently, there has been considerable interest in poor working conditions experienced by migrant workers. This has arisen against the backdrop of broader debates surrounding precarious work and definitions of worker vulnerability. Nevertheless, little concern has been raised regarding the working lives and experience of *student* migrants despite their comprising an important category of migrant workers. Research to date has primarily concentrated on either the working experiences of migrants or the educational experiences of international students, rather than examining the working experiences of international students – many of whom can be considered a growing component of

the migrant workforce. Initial exploratory research indicates that international students' working experiences are typical of migrant workers: they are often located in contingent and precarious employment, working long hours in hazardous conditions for low wages, in dangerous positions, with little regulation, supervision, and poor remuneration. While these working conditions are often illegal, there appears to be little government impetus for monitoring or enforcement. Additionally, for many migrants, the working conditions they routinely labour under add little to their prospects of securing permanent residency or work related to their studies. While a small sample size, findings are consistent with other overseas studies showing that migrants exhibit many of the working conditions that would classify them as vulnerable workers.

Such findings have significance for the ILO's role within the multilateral system, but there are a number of limitations. It remains to be seen whether the Decent Work Agenda and associated conventions can be translated into sustained and more effective promotion of international labour standards, and if the ILO actually has scope and reach in mitigating concerns associated with student labour. The answer ultimately depends on whether the commitment to the ILO's goals is more than skin-deep for member states (Elliot, 2000). Inconsistencies are evident within the ILO's application of governance, combined with conflict between domestic and international policy imperatives. These weaknesses may mean a 'watering down' of public policy in the tripartite structure and the 'one size fits all' model will successfully address the myriad of employment issues associated with student migrants. Combined with a lack of monitoring and enforcement of labour regulations, perhaps the ILO continues to be an institution of compromise within a flawed mechanism (Alston, 2005). Further research is needed to ascertain whether student migrants *in general* are manipulated and mistreated within the current New Zealand immigration and employment legislative policy framework; and whether the ILO is able to play a greater role in addressing the concerns associated with this vulnerable worker cohort.

Notes

¹ Export education industry was adversely impacted in 2002-2003 when crimes committed on and by Chinese students in New Zealand made headlines internationally, leading to a sharp decline in student numbers

² While there is an assumption many students coming to New Zealand to study are wealthy, this is often not the case. Some may have their parents financially supporting them, but this may be seen as an investment, to be 'paid back' in kind later. Many will be the first in their family to attend a tertiary institution so will have considerable financial pressure, as well as familial expectations. Cases of borrowing dowry money and obtaining loans through money lenders were mentioned in the interviews.

³ To counter, it could be argued that greater opportunities are afforded so they are able to pursue overseas work. Also, those who remain in New Zealand and gain residency are able to move to live and work freely in Australia. As this data is not collected, little is actually known about the final destination of student migrants leaving New Zealand.

⁴ The ILO actively promotes the ratification of International Labour Conventions No. 97 and No. 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The 1949 Convention No. 97 Migration for Employment Convention stipulates that legal foreign workers must have equal access to social security and trade union membership, good conditions of work, and equal pay compared to local employees. The 1975 Migrant Workers (Supplementary Provisions) Convention, no 143. protects "the interests of workers when employed in countries other than their own" (ILO, 1975), preventing trafficking and illegal employment of such workers, and promote equality of opportunity and treatment of migrant

workers legally within a country. However, 1998 General Survey the International Labour Organisation found member states had difficulty in applying the detail and ratification (Claude and Eston, 2006). Convention No. 143 has not been ratified by New Zealand.

References

- Allen, J., and du Gay, P. (1994). Industry and the Rest: The Economic Identity of Services. *Work, Employment and Society*. 8 (2): 255-271.
- Alston, P. (2005). Facing up the Complexities of the International Labour Organisation's Core Labour Standards Agenda. *The European Journal of International Law*. 16(3): 467-480
- Anderson, B. (2010). Migration, Immigration Controls and the Fashioning of Precarious Workers. *Work, Employment and Society*. 24(2): 300-319
- Atkinson, J. (1984). Manpower Strategies for Flexible Organisations. *Personnel Management*. August: 28-31
- Bauder, H. (2006). *Labor Movement: How Migration Regulates Labor Markets*. Oxford: Oxford University Press.
- Benach, J. and Muntaner, C. (2007). Precarious Employment and Health: Developing a Research Agenda. *Journal of Epidemiology and Community Health*. 62:276-277
- Bennett, S.A. (1993). Inequalities in Risk Factors and Cardiovascular Mortality among Australia's Immigrants. *Australian Journal of Public Health*. 17(3): 251-26.
- Binning, E. (2010). Focus on students, not dollars, sector told. *The New Zealand Herald*. Retrieved from http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10663973
- Bohle, P., Quinlan, M., Kennedy, D. and Williamson, A. (2004). Working Hours, Work-Life Conflict and Health in Precarious and 'Permanent' Employment. *Rev. Saude Publica*. 38(Supl).
- Boniface, L. (2007, December 18). Cover Story: Open all Hours. *Listener*. 208(3496).
- Boocock, M., Hannif, Z., Jamieson, S., Kjaer, T., Lamare, R., Lamm, F., Markey, R., Martin, C., McDonnell, N., Rasmussen, E., Schweder, P., Shulruf, B. and Wagstaffe, M. (2010). *Methodological Issues Related to Research OHS of Migrant Workers: a Cross-National Comparison*. Paper Presented at Work, Employment and Society Conference on 7-9 September. Brighton: British Sociological Association
- Butcher, A. (2009). Friends, Foreign and Domestic: (re)converging New Zealand's Export Education and Foreign Policy. *Policy Quarterly*. 5(4): 64-70
- Callister, P. and Didham, R. (2010). Workforce composition, *Te Ara - the Encyclopaedia of New Zealand*. Retrieved from <http://www.TeAra.govt.nz/en/workforce-composition>
- Cellier, J.M., Eyrolle, H. and Bertrand, A. (1995). Effect of age and level of work experience on occurrence of accidents. *Perceptual and Motor Skills*, 80: 931-940.

- Cerny, P.G., Menz, G. and Soederberg, S. (2005). Different Roads to Globalization: Neoliberalism, the Competition State and Politics in a More Open World. In S. Soederberg, G. Menz and P.G. Cerny. (eds.). *Internalizing Globalization: The Rise of Neoliberalism and the Erosion of National Models of Capitalism*. (pp.1-30). London: Palgrave.
- Chen, R. and Madamba, M. (2000). *Migrant Labour: An annotated Bibliography*. *International Migration Paper No. 33*. Migration Branch, International Labour Office: Geneva.
- Claude, R.P. and Weston, B.H. (2006). Human Rights in the World Community: Issues and Action. In R.P. Claude and B.H. Weston. (eds.). *Basic Human Needs as Security Rights*. (2nd ed). (pp.161-191). Philadelphia: University of Pennsylvania Press.
- Coppel, J., Dumont, J.C. and Visco, I. (2001). Trends in Immigration and Economic Consequences. *OECD Economics Department Working Paper*. (284).
- Curtis, S. (2000). Undergraduates Are Now Filling the McJobs. *Professional Manager*: 44.
- Curtis, S. and Shani, N. (2002). The Effect of taking paid employment during term time on students' academic studies. *Journal of Further and Higher Education*. 26(2): 129-138.
- Deloitte. (2008). *The Experiences of International Students in New Zealand: Report on the Results of the National Survey 2007*. Wellington: Ministry of Education and Department of Labour.
- Denzin, N.K. and Lincoln, Y.S. (1998). Introduction: The Discipline and Practice of Qualitative Research. In N.K. Denzin and Y.S. Lincoln. (eds.). *Strategies of Qualitative Inquiry*. (2nd ed.). pp.1-45. Thousand Oaks, CA: Sage.
- Department of Labour. (2010). *Life After Study: International Students' Settlement Experiences in New Zealand*. Retrieve from <http://dol.govt.nz/publications/research/life-after-study/index.asp>
- Department of Labour. (2007a). *International Students: Studying and staying on in New Zealand*. Retrieved from <http://www.dol.govt.nz/publications/research/international-students/>
- Department of Labour (2007b). *Migrant and Refugee Youth in New Zealand: Statistical Profile, 1996- 2007*. Retrieved from <http://www.dol.govt.nz/publications/research/migrant-refugee-youth-nz/mrynz-1.asp>
- Deshingkar, P. and Start, D. (2003). Seasonal Migration for Livelihoods in India. *Coping, Accumulation and Exclusion*. ODI Working Paper No. 220, London: Overseas Development Institute.
- Deumert, A., Marginson, S., Nyland, C., Ramia, G. and Sawir, E. (2004). *The Social and Economic Security of International Students in Australia: A study of 200 student cases*. Paper presented at the AARE Conference on 28 November-2 December, University of Melbourne: Australia.
- Docquier, F. and A. Marfouk (2006). International Migration by Education Attainment, 1990-2000. In C. Ozden and M. Schiff (eds). *International Migration, Brain Drain and Remittances*. (pp.151-199). New York: McMillan and Palgrave.

- Douglas, W.A., Ferguson, J.P. and Klett, E. (2004). An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs. *Human Rights Quarterly*. 26(2): 273-299.
- Dyer, S., McDowell, L. and Batnitzky, A. (2008). Emotional Labour/Body Work: The Caring Labours of Migrants in the UK's National Health Service. *Geoforum*. 39: 2030-2038
- Education New Zealand (2008a). *Statistics*. Retrieved from www.educationnz.org.nz/policy-research-stats/statistics
- Education New Zealand. (2008b, November 24). *New Zealand Sees Solid Growth in International Students*. [Press Media Release]. Wellington: Education New Zealand
- Ehrlich, P.F., McClellan, W.T., Ducatman, A., Helmkamp, J.C. and Islam, S. (2004). Understanding Work Related Injuries in Children: a Perspective in West Virginia using the State Managed Workers Compensation System. *Journal of Pediatric Surgery*. 39(5): 768-772.
- Elder, S. (2009). *ILO School-to-Work Transition Survey: A Methodological Guide. Module 4: Key Indicators of Youth Labour Markets: Concepts, Definitions and Tabulations*. Geneva: International Labour Organisation. Retrieved from http://www.ilo.org/wcmsp5/groups/public/-/ed_emp/documents/instructionalmaterial/wcms_140860.pdf
- Elliot, K.A. (2000). The International Labour Organisation and Enforcement of Core Labour Standards. *International Economic Policy Briefs*. 00-6: 1-7. Retrieved from <http://www.iie.com/publications/pb/pb00-6.pdf>
- Employment Relations Service (2009). *Union Membership Return Report*. Wellington: Department of Labour.
- Funkhouser, E. (1993). Do Immigrants have Lower Unionization Propensities than Natives? *Industrial Relations*. 32(2): 248-261.
- Garson, J.P. (1999). *Where do illegal migrants work?* Paris, OECD Observer, 219.
- Gill, S. (1995). Globalisation, Market Civilisation and Disciplinary Neo-liberalism. *Journal of International Studies*. 24(3): 399-423
- Golafshani, N. (2003). Understanding Reliability and Validity in Qualitative Research. *The Qualitative Report*. 8(4): 597-607
- Green, A., Owen, D. and Jones, P. (2007). *The Economic Impact of Migrant Workers in the West Midlands*. Coventry: West Midlands Regional Observatory.
- Haque, R. (2002). *Migrants in the UK: a Descriptive Analysis of their Characteristics and Labour Market Force Survey*. London: Refugee Council.
- Immigration New Zealand. (2010). *Study Opportunities in New Zealand*. Retrieved from <http://www.immigration.govt.nz/migrant/stream/study/arethereopportunities/>
- Informetrics, NRB and Skinnerstrategic. (2008). *The Economic Impact of Export Education*. Retrieved from <http://www.educationcounts.govt.nz/publications/international/35324/35364>

International Confederation of Free Trade Unions. (ICFTU) (2001, 15-16 March). *Informal or unprotected work: Conclusions and Recommendations for the Task Force*, Informal Sector Meeting, Brussels.

International Labour Office. (2009). *Guide to the New Millennium Development Goals including the Full Set of Decent Work Indicators*. Geneva: International Labour Office Employment Sector. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_110511.pdf

ILO. (2010). *Decent Work Agenda*. Retrieved from <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

ILO. (2002). *Report VI. Decent Work and the Informal Economy*. International Labour Conference 90th Session. Geneva. Retrieved from <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>

ILO. (1991). *The Dilemma of the Information Sector*. Report from the Director-General. International Labour Conference. 78th Session. Geneva.

ILO. (1975). *ILO Convention No.143. Migrant Workers (Supplementary Provisions), 1975*. Retrieved from http://www.ilocarib.org.tt/projects/cariblex/conventions_7.shtml

Jayaweera, H. and Anderson, B. (2009). *Migrant Workers and Vulnerable Employment: a Review of Existing Data*. Report for TUC Commission on Vulnerable Employment. UK: Centre on Migration Policy And Society. Retrieved from <http://www.vulnerableworkers.org.uk/wp-content/uploads/2008/08/analysis-of-migrant-worker-data-final.pdf>

James, R., Bexley, E., Devlin, M. and Marginson, S. (2007). *Australian University Students Finances 2006: Final Report, a National Survey of Students in Public Universities*. Canberra: Universities Australia

Keohane, R. and Nye, J. (1977). *Power and Interdependence: World Politics in Transition*. Boston: Little, Brown and Company.

Khoo, E.K. and Birrell, B. (2002). The Progress of Young People of Migrant Origin in Australia. *People and Place*. 10(2): 30-44

Kritz, M.M. (2006). *Migration and Globalization of Tertiary Education: International Student Mobility*. Paper presented at the United Nations International Symposium on International Migration and Development. 28-30 June. Turin, Italy. Retrieved from http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P02_KRITZ_Rev3_Augst21.pdf

Langille, B.A. (1977). Eight Ways to think about International Labour Standards. *Journal of World Trade*. 31: 27-53

Loh, K. and Richardson, S. (2004). Foreign-born Workers: Trends in Fatal Occupational Injuries. *Monthly Labor Review*. 127(6): 42-53

McDonald, P., Bailey, J., Oliver, D. and Pini, B. (2007). Compounding Vulnerability? Young Workers' Employment Concerns and the Anticipated Impact of the Work Choices Act. *Australian Bulletin of Labour*. 33(1): 60-89.

-
- McInnis, C. and Hartley, R. (2002) *Managing Study and Work, The Impact of Full- Time Study and Paid Work on the Undergraduate Experience in Australian Universities*. Canberra: Evaluations and Investigations Programme, Department of Science, Education and Training.
- McKay, S., Craw, M. and Chopra, D. (2006). *Migrant Workers in England and Wales: An assessment of Migrant Worker Health and Safety Risks*, London: Health and Safety Executive.
- McLaren, E., Firkin, P., Spoonley, P., Dupuis, A., de Bruin, A. and Inkson, K. (2004). *At the Margins: Contingency, Precariousness and Non-Standard Work*. Research Report 2004/1, Albany/Palmerston North: Labour Market Dynamics Research Programme. Massey University. Retrieved from <http://lmd.massey.ac.nz/publications/At%20the%20Margins.pdf>
- Mackenzie, R. and Forde, C. (2009). The Rhetoric of the “Good Worker” versus the Realities of Employers’ Use of the Experiences of Migrant Workers. *Work, Employment and Society*. 23(1): 142-159
- Manthei, R.J. and Gilmore, A. (2005). The Effect of Paid Employment on University Students’ Lives. *Education and Training*. 47(2/3): 202-215
- May, J., Wills, J., Kavita, D., Yara, E., Herbert, J. and McIlwaine, C. (2006). *The British State and London’s Migrant Division of Labour*. London: Queen Mary University of London.
- Merwood, P. (2007). *International Students: Studying and staying on in New Zealand*. Wellington: Department of Labour. Retrieved from <http://www.dol.govt.nz/publication-view.asp?ID=235>
- Ministry of Education (2006). *Export Education in New Zealand: A Strategic Approach to Developing the Sector*. Wellington: Ministry of Education. Retrieved from http://www.educationcounts.govt.nz/publications/international/export_education_in_new_zealand_a_strategic_approach_to_developing_the_sector_-_an_overview
- Minto, J. (2009). *Migrant Workers: A Unionists Position*. Unite Union. Retrieved from <http://www.unite.org.nz/node/595>
- Naidu, K. (2011). *Employers’ Use of Professional Contractors: Supplement or Substitute?* MCom Thesis. Auckland: University of Auckland (publication forthcoming).
- Neill, N., Mulholland, G., Ross, V. and Leckey, J. (2004). The Influence of Part-time Work on Student Placement. *Journal of Further and Higher Education*. 28(2): 123-137.
- New Zealand Visa Bureau (2009). *Number of international students studying in New Zealand grows*. Retrieved from <http://www.visabureau.com/newzealand/news/07-07-2009/number-of-international-students-studying-in-new-zealand-grows.aspx>
- Nicole-Drancourt, C. (1992). L’idée de Précarité Revisitée. *Travail et Emploi*. 52: 57 -70.
- Nyland, C., Forbes-Mewett, H., Marginson, S., Ramia, G., Sewer, E. and Smith, S. (2008). *International Student-Workers in Australia: A New Vulnerable Workforce*. Melbourne: Centre for the Study of Higher Education, Monash University.
- OECD (2010a). *Very Recent Changes In Migration Movements And Policies (Country Notes): International Migration Outlook*. Paris: SOPEMI. Retrieved from <http://www.oecd.org/dataoecd/6/18/45629398.pdf>

OECD (2010b). *International Migration Outlook*. Paris: SOPEMI. Retrieved from <http://www.oecd.org/dataoecd/12/9/45612617.pdf>

OECD (2009). *The Future of International Migration to OECD Countries*. Paris, OECD.

Ohmae, K. (1990). *The Borderless World: Power and Strategy in the Interlinked Economy*. London: HarperCollins.

Pai, H. (2008). Migrants: Britain's hidden labour army. *Socialist Review*. Retrieved from <http://www.socialistreview.org.uk/article.php?articlenumber=10389>

Patton, M.Q. (1990). *Qualitative Evaluation and Research Methods* (2nd ed). California: Sage.

Pledger, M., Cumming, J., McDonald, J. and Poland, M. (2009). The Health Status of New Zealand Workers: an Analysis of the New Zealand Health Survey 2002/3. *New Zealand Journal of Social Sciences Online*. Retrieved from <http://www.royalsociety.org.nz/Site/publish/Journals/kotuitui/2009/006.aspx>

Pollert, A. and Charlwood, A. (2008) *Vulnerable Workers and Problems at Work, Centre for Employment Studies Research Working Paper 11*. Retrieved from <http://www.uwe.ac.uk/bbs/research/cesr/workingpapers.shtml>

Quinlan M., Bohle P. and Lamm F. (2010) *Managing Occupational Health and Safety: a Multidisciplinary Approach* (3rd ed). Sydney: Macmillan

Quinlan, M., and Mayhew, C. (2001). *Evidence versus Ideology: Lifting the Blindfold on OHS in Precarious Employment*. Working Paper. Sydney: University of New South Wales.

Reitz, J.G. (1998). *Warmth of the Welcome: The Social Causes of Economic Success for Immigrants in Different Nations and Cities*. Boulder, CO: Westview Press.

Riggert, S.C., Boyle, M., Petrosko, J.M., Ash, D. and Rude-Parkins, C. (2006). Student Employment and Higher Education: Empiricism and Contradiction. *Review of Educational Research*. 76 (1): 63-92.

Rodgers, G. (2007, July). *Labour Market Flexibility and Decent Work*. United Nations DESA Working Paper No. 47. Switzerland: United Nations.

Ross, C. and Rasmussen, E. (2009). Chronicle: June–September 2009. *New Zealand Journal of Employment Relations*. 34(3): 92-101.

Sargeant, M. (2009). *Health and Safety of Vulnerable Workers in a Changing World of Work*. Working Paper. Rome: Adapt.

Sargeant, M. and Tucker, T. (2009). Layers of Vulnerability in Occupational Health and Safety for Migrant Workers: Case Studies from Canada and the United Kingdom. *Policy and Practice in Occupational Health and Safety*, 7(2), 51-73.

Shelley, T. (2007). *Exploited: Migrant Labour in the New Global Economy*. London: Zed.

- Simpson, W.R. (1994). The Internatoinal Labour Organization and Tripartism: Some Refelections – Labour Standards Cooperation. International Labor Organization's 75th Anniversary. *Monthly Labor Review*. 117(9): 40-45.
- TUC Commission on Vulnerable Employment. (2008). *Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment*. London, Trades Union Congress.
- Virtanen M., Kivimaki M., Joensuu M., Virtanen, P., Elovainio M. and Vahtera, J. (2005). Temporary Employment and Health: a Review. *International Journal of Epidemiology*. 34(3): 610-622.
- Walsh, J. and Deery, S. (1997). *Understanding the Peripheral Workforce: An Examination of Employee Diversity in the Service Sector*. Working Paper No. 112. Melbourne: Department of Management and Industrial Relations, University of Melbourne.
- Ward, C. (2008). *The Experiences of Migrant Youth: A Generational Analysis*. Wellington: Department of Labour.
- Withiam, G. (1997). Give me your tired, your poor... *Cornell Hotel and Restaurant Administration Quarterly*. 38(1): 9.
- Zimmer-Gembeck, M. J. and Mortimer, J. T. (2006). Adolescent Work, Vocational Development, and Education. *Review of Educational Research*. 76(4): 537-566.

The International Labour Organisation: A View From Within.

EDWARD DOWDING*

Chance often plays an important part in one's life and it certainly did in mine. While I was working on a New Zealand Government sponsored project for the training of technical teachers at the Teacher Training College in Sri Lanka, I met a field expert working for the ILO in the field of labour relations. The information he gave me about the ILO was instrumental in my applying for a posting, and I was offered one in a project with the Ministry of Industry in Egypt. After two years and on my return to New Zealand, I worked for one month with a management specialist from Headquarters on a survey of industrial training needs in Cambodia. Some months later and much to my surprise I received an offer of a one year contract to work at ILO headquarters in the Vocational Training Branch. Such an opportunity could not be turned down. The Branch undertook research, documentation and publication of training material and was responsible for all technical co-operation industrial training projects. This was the start of a long international career. During the introduction to the office on the edge of Lake Geneva, now the headquarters of the World Trade Organisation, and entering the conference rooms for the first time, one could almost feel the history of the ILO. Professor Margaret Wilson, in her paper, has very ably described the reasons which brought into focus the need for an international body to improve the working conditions in industry and thus the establishment of the ILO.

Created by the Treaty of Versailles along with the League of Nations in 1919, the ILO, probably due to its tripartite structure, survived the collapse of the League and continued as an independent body and remained based in Geneva. This city has always been the home of the ILO except for a period during the second World War when it moved to Canada. Strange as it may seem, Switzerland, although it has always hosted the ILO, only became an actual member after it joined the United Nations Organisation in 2002. When the United Nations Organisation was established, the ILO became a Specialised Agency. This arrangement provided additional funding without limiting the ILO's freedom to continue its principal work of encouraging social justice throughout the world. The term ILO, in English language, is a generic form and represents both the Organisation and the Office. The French language does it rather better. BIT (Le Bureau Internationale du Travail) represents the Bureau (Office) and OIT (L'Organisation Internationale du Travail) signifies the Organisation. From the outside, the two may seem synonymous but from within there is a vast difference. The Office is responsible for implementing the decision of the Organisation and, in the early days, was a highly centralised body and responsible for all research, documentation and publication concerning the drawing up of Recommendations and Conventions dealing with labour standards. If countries were to be in a position to not only ratify ILO Conventions as agreed by the Organisation but also to implement them, it was essential that there was an active industry development programme and the employment opportunities that would result. This resulted in the start of technical assistance programmes for developing countries, later called technical co-operation.

Once the ILO became involved in technical co-operation, there was a considerable change in the number of its staff and in their qualifications. As much of the technical assistance was geared towards industrial activities, many of the new staff had managerial and industrial training experience. It also tended to spread the nationalities of staff over a larger geographic area. People who had languages in addition to one or more of the three official languages of the ILO – English, French and Spanish – could be of great value when working in developing countries. This was particularly so with the large number of projects being established in Arab countries. The establishment of the United Nations Special Fund and the greater amount of finance made available permitted the growth of much larger projects with ten and more staff. The ILO has always had a very closely knit headquarters staff but this gradual change of emphasis within the ILO, tended in some ways, to bring about a certain separation of the traditional type of staff and the new arrivals.

* Retired Director – the ILO.

This was accelerated when an annex was established in Petit-Saconnex to house those involved in the technical co-operation programme. After a few years, the annex was destroyed by fire but rebuilt after a period of some months. Headquarters continued to maintain a strict control of technical co-operation projects for many years through project officers responsible for a number of projects. These project officers had, in most cases, worked in the field on similar activities and were well aware of the difficulties in establishing new industries in countries which, at that time, had limited staff with the required knowledge. These were exciting days for me, personally, as I had been brought to Geneva after working on field assignments and at the time when there was a sudden increase in the work of ILO in developing countries. It gave me, personally, a wonderful opportunity to visit many countries and assist the governments in preparing plans for training the workforce to meet their industrial development requirements. While all this activity in technical co-operation was gaining momentum in the ILO, other international organisations were also increasing their activities and overlaps were starting to appear. To help avoid these, committees were set up to meet as needed. This brought me into close contact with senior officials in other United Nations Agencies and after the United Nations Industrial Development Organisation body was established in 1966, much of the work of the ILO in this field was gradually being taken over by UNIDO. Many of the activities undertaken by the ILO, at that time, had come about because no other organisation had taken that responsibility and today would not be considered typical ILO work.

While this new emphasis on technical co-operation absorbed a lot of staff time, the basic activities of the Office continued and each May/June the Annual Conference was held in Geneva. Two governments, one employers' and one workers' representative arrived from each member country; this gave officials a chance to meet their national representatives and representatives from developing countries' direct contact with officials handling their projects. Apart from the long hours of work the conference involved, it was a time of cocktail parties, lunches and dinners and most officials were pleased to get back to normality when the conference was over. However, several of the friendships developed during these times lasted for life. It is this part of ILO's work that is probably best known from the outside and remains crucial to its whole structure. While every member country has an equal vote irrespective of size, the posts in the ILO are allocated by the amount of the budget each country pays. Thus New Zealand, as a small financial contributor, had, at that time, between 3 and four posts available and like other small countries, often exceeded the quota. Large countries, particularly the USA, often failed to fill the posts allocated to them and the available funds were used to pay the salaries of staff from other countries.

International organisations have always been and will continue to be subject to political pressures when decisions, which affect member government interests, are made. In 1970, a Soviet citizen was appointed to a post as Assistant Director General and there was an immediate reaction from the USA, which reduced its financial contribution to the ILO by 50%. As the USA pays 25% of the total budget, this raised a serious financial problem and staff took a voluntary 10% cut in salary for two years to help cover the loss. A few years later, after the admission of the Palestine Liberation Organisation as an observer, the USA withdrew for a period in protest but later resumed full membership.

The Director General has a considerable influence on the internal activities of the Office and changes of emphasis soon become apparent to officials. In the early 1970s, the centralising of power in Geneva, particularly for technical co-operation, was starting to be questioned and operational staff were being transferred to regional offices in Africa, Asia, Latin America and the Middle East. Research and documentation remained firmly in Geneva. With this change in emphasis, an Operations Branch was set up to handle the supervision of existing projects and as deputy chief of this branch I saw it was time for me to part company with headquarters and to go to the field. When it was mooted that an office for the South Pacific might be established, I let it be known that I would be interested in taking over that office and I duly negotiated the agreement with the then Prime Minister of Fiji, Ratu Sir Kamasese Mara and took over as director for the South Pacific. This office presently serves 22 South Pacific countries, eight of which are members. It is unlikely that the number of South Pacific members will increase notably because of their small populations but all countries can and most do benefit from the work of the Organisation.

The activities of the office in Suva have changed considerably over the years from being mainly involved with technical co-operation projects and organising a few conferences and meetings to being much more active in the traditional activities for which the ILO is well known – the collection and publication of information on labour matters and meetings and seminars to discuss and disseminate such important facts.

To work in such a beautiful part of the world and to bring the work of the ILO to these smaller countries was a great privilege and to finish a career close to home had many advantages. When one looks back at the work of the ILO in the training of workers and managers in countries in all parts of the world, there have been some great successes and some of the powerhouses of industry such as those in Asia can be grateful for the help which ILO gave at the critical time. However, not every project was a success. Some failed due to changes of government in the recipient country and the consequent changes of policy, some where the human element played a role and necessary adjustments to the approach were not made with sufficient speed.

Much of what has been described happened by calendar years quite a while ago but to me seems like yesterday. As stated earlier, the staff of the ILO have always been a closely knit group and a very active Section of Former Officials continues to keep retired staff well informed. There are regular meetings in Geneva and every five years, there is a major gathering when retired officials from all over the world meet and socialise with their old colleagues and present staff. Also thanks to the internet, it is possible to follow closely the programmes and actions of the ILO. While there will always be criticism of international institutions, often due to their cost and often their bureaucracy, the world would be a poorer place without them and the ILO will continue to evolve to meet the needs of workers throughout the world.

Unions and Union Membership in New Zealand: Annual Review for 2008

STEPHEN BLUMENFELD* and SUE RYALL**

Introduction

This report continues the series of annual surveys on trade union membership in New Zealand, which Victoria University of Wellington's Industrial Relations Centre (IRC) began in 1991, when the *Employment Contracts Act* (ECA) ended the practice of union registration and the collection of union data. Although the Department of Labour subsequently recommenced both the process of union registration and the collection of official union data under the *Employment Relations Act* (ERA), the IRC has continued to conduct its survey of union membership. We are, therefore, able to report on trends in union membership, composition and density from the enactment of the ECA to the present.

In this report, we update our reporting of those trends to include the period extending from December 2006 to December 2008. Between 1991 and 2006, information pertaining to membership of trade unions was compiled through an annual survey carried out by the IRC, with funding from the Public Good Science Fund, administered by the Foundation for Research Science and Technology. Following more than a year without such funding, the IRC has recommenced running that survey and reporting its results with publication of this report. Since the IRC did not conduct a survey in 2007, comparisons in union membership in this document are based on the IRC's 2006 survey data.

Union membership survey

The IRC's union membership survey for 2008 includes those unions registered as at 1 March 2009, as per the Department of Labour's (DOL) list of registered unions reported in the Department's *Union Membership Return Report* 2009 on its website, www.ers.dol.govt.nz/union/registration.html (DOL, 2009a). In late May of 2009, each registered union in New Zealand was sent a survey requesting membership numbers as at 31 December 2008. Thirty-six unions, representing 93 percent of total union membership reported by the New Zealand Department of Labour in its 2009 *Annual Report* (DOL, 2009b), responded. For those that did not, details were obtained from the DOL *Union Membership Return Report* 2009 and the industry distribution for that union was carried over from the data included in the IRC's 2006 union membership survey (DOLc). In addition, to enable comparison and monitoring of trends in future years, the DOL figures reported in the *Union Membership Return Report* 2008 have been added to our database as 2007 data. It is important to note, however, that the DOL survey is for the year ending 01 March, while the IRC survey is to 31 December the previous year.

Ten unions that remain officially registered did not provide survey returns to either the IRC or the DOL for 2008; all have been designated 'inactive' for this report and no membership figures are included for those unions herein. In the time between the 2006 survey and the return of this year's survey, 13 new unions were registered, 12 unions deregistered and a further 2 went into recess, 2 unions (ASTE and AUS) amalgamated to form one union (TEU), and a further union (Clothing,

* Stephen Blumenfeld, Director of the Industrial Relations Centre. Victoria, University of Wellington

** Sue Ryall is the Senior Administrator of the Industrial Relations Centre. Victoria, University of Wellington.

The authors are grateful to the union officials who contributed to this research; and to Dilip Mathew, Research Assistant at the Industrial Relations Centre, for his assistance with data entry, analysis and presentation.

Laundry and Allied Workers) merged into another (NDU). In addition, 13 unions did not submit surveys to the DOL for March 2008; these unions remain 'active' in our database for 2007 and their membership numbers have been rolled over from our 2006 survey. The total number of unions included in our data is 141 of the 159 unions officially registered with the DOL at 1 March 2009

Trade union membership and density

Table 1 summarises the historical trend in trade union membership and union density in New Zealand from the enactment of the *ECA* in 1991. Under the *ECA*, there was no requirement, let alone official process, of union registration in New Zealand. In addition, some employee organisations included in tallies of union membership in that period were effectively established by employers under the *ECA*. In light of this, and because unions under the *ERA* must be constituted and operate 'at arm's length from any employer', one would expect members of employer-dominated organisations not to have been counted in union membership tallies for the past decade. For these reasons, though, union membership totals given in Table 1 for the 1990s are not directly comparable to those for later years.

Table 1: Trade Unions, Membership and Union Density 1991-2008

Year	Union membership	Number of unions	Potential union membership		Union Density	
			Total employed labour force ²	Wage and salary earners ²	(1) / (3) %	(1) / (4) %
	(1)	(2)	(3)	(4)	(5)	(6)
Dec 1991	514325	66	1509400	1199000	34.1	42.9
Dec 1992	428160	58	1514200	1190500	28.3	36.0
Dec 1993	409112	67	1545400	1215300	26.5	33.7
Dec 1994	375906	82	1612000	1269600	23.3	29.6
Dec 1995	362200	82	1686600	1331700	21.5	27.2
Dec 1996	338967	83	1741200	1375100	19.5	24.7
Dec 1997	327800	80	1750600	1401700	18.7	23.4
Dec 1998	306687	83	1739300	1387000	17.6	22.1
Dec 1999	302405	82	1766400	1395600	17.1	21.7
Dec 2000	318519	134	1800000	1425200	17.7	22.3
Dec 2001	329919	165	1846100	1482200	17.9	22.3
Dec 2002	334783	174	1906500	1540100	17.6	21.7
Dec 2003	341631	181	1955900	1579700	17.5	21.6
Dec 2004	354058	170	2024100	1637900	17.5	21.6
Dec 2005	377348	175	2084800	1702100	18.1	22.2
Dec 2006	382538	166	2134700	1759700	17.9	21.7
Mar 2008¹	373327	147	2173000	1792000	17.2	20.8
Dec 2008	384777	141	2188200	1811200	17.6	21.2

Source: HLFS-Persons Employed by Sex by Employment Status (Annual-Dec)-Table Ref. HLF005AA; Industrial Relations Centre Survey, 2008

Note: 1. The 2007 figures are from the DOL Union Membership Return Data; HLFS-Persons Employed by Sex by Employment Status (Annual-March)-Table Ref. HLF002AA

2. Figures in column 3, 4, 5 & 6 are different from those reported in previous years due to the population rebase by Statistics New Zealand to take account of the latest census results.

Union membership counts offer an indication of the absolute power of unions and their power relative to business and government. Nonetheless, as a measure of relative rather than absolute size, union density rates are better suited to making comparisons between sectors than are absolute membership figures. Union density expresses trade union membership as the proportion of potential union members who belong to a union. What constitutes potential union membership, however, is not always entirely clear. For instance, if union membership is measured against the total employed labour force, then only employed union members should be included in the numerator of the union density fraction. Yet, some unions count self-employed individuals, those that have retired, and others not currently in the labour force amongst their membership.

In New Zealand, the relevant workforce would seem to encompass all wage and salary earners, even though the self-employed, unpaid family members, and other groups of workers, who are very unlikely to be union members, are included among wage and salary earners. In spite of this, we provide union density figures based on both the total number of wage and salary earners and the total employed labour force in this report.

As can be seen in Table 1, both total union membership and overall union density in New Zealand decreased markedly, commencing in May 1991, with enactment of the *ECA*. During the era of the *ERA*, although never coming close to achieving its pre-*ECA* level, union membership has, for the most part, continued to increase each year over that preceding it. Union density, on the other hand, has remained relatively constant around 21 or 22 percent of wage and salary earners and between 17 and 18 percent of the total employed labour force since October 2000, when the *ERA* was enacted.

As shown in the third column of Table 1, the number of trade unions in New Zealand has also changed over the last 20 years, as single enterprise unions have come and gone, long-standing unions have merged, and new unions have come into existence. At the end of 2008, there was a total membership of around 385,000 across 141 unions in New Zealand. Nearly half (43 percent) of registered unions at that time had fewer than 100 members; the median number of members per union was 145. The ten largest unions accounted for more than three quarters (77 percent) of total union membership.

The number of wage and salary earners in the country's economy increased by 2.9 percent, from 1,759,700 in 2006 to 1,811,300 in 2008. The number of union members in New Zealand increased in that time from 382,538 to 384,777, a mere 0.6 percent. Union density dropped slightly over that period but continued to hold at just over 21 percent of wage and salary earners. In the nine years between December 1999 and December 2008, union membership increased by 27 percent, which has lagged behind a 30 percent increase in the number of wage and salary earners. Hence, union density has experienced a slight drop under the *ERA*. Overall New Zealand union density at Dec 2008 was lower than its lowest levels during the period of the *ECA*.

Union membership and wage and salary employment by industry

This section of the paper provides a summary of wage and salary earners and union members according to the Australia New Zealand Standard Industry Classification (ANZIC) during the year to December 2008 in an effort to highlight areas of relative union strength and weakness. As shown in Table 2, union membership remains concentrated in particular sectors, and there continues to be wide variation in union membership according to industry. Despite a small decline in these areas, union density remains high in the public sector and parts of the private sector in which unions have traditionally been strong, in particular manufacturing, and transport and storage. Moreover, despite minor year-to-year shifts, there has not been sufficient change or enduring growth over the past 10 years in any area to suggest established patterns of union membership are changing significantly.

The largest increases in union membership in the two years to December 2008 were in mining (55.5%) and related services industry groups, government administration and defence (38.6%). Both of these groups experienced big increases in union membership despite a decrease in the number of wage and salary earners in each sector. The energy and utility services, construction and building services, and finance, insurance and business services, likewise, each experienced between 20 and 25 percent growth in union membership, in all of these industry groups, well beyond the growth in the number of wage and salary earners.

All other industry groupings currently register fewer than 20,000 members, with several sectors having fewer than 5,000 members. For example, only 19,500 members of the total retail, wholesale, restaurants and hotels labour force of 424,400 (the largest private sector grouping) are unionised.

Finally, unions representing workers in finance, insurance and business services appear to have stemmed the tide of membership decline we have reported in previous years, nearly 1 percent growth in the two year to December 2008.

Table 2: Distribution of union members and wage and salary earners across industry sectors

Industry Grouping	Union Membership Dec 2006	Union Membership Dec 2008	Change in membership 2006-2009		Wage and Salary Earners 2008 (000)	Change in wage and salary earners 2006- 2008 (%)
			(No.)	(%)		
Agriculture, fishing, forestry etc	3015	3295	280	9.3%	81.7	-0.7
Mining and related services	1436	2233	797	55.5%	5.2	-22.4
Manufacturing	75588	66939	-8649	-11.4%	249.2	2.4
Energy and utility services	3346	4195	849	25.4%	11.6	38.1
Construction & building services	5555	6779	1224	22.0%	122.1	-7.5
Retail, wholesale, restaurants, hotels	18335	19485	1150	6.3%	424.4	3.5
Transport, storage and communication	42538	37674	-4864	-11.4%	107.6	3.3
Finance, Insurance and business services	10934	13253	2319	21.2%	239.1	0.9
Personal and other services	18278	8079	-10199	-55.8%	127.2	10.3
Public and community services	203513	218575	15062	7.4%	443.1	4.2
Govt admin and defence	33049	45821	12772	38.6%	82.9	-6.9
Education	81070	84886	3816	4.7%	168.8	9.5
Health and community services	89394	87868	-1526	-1.7%	191.4	5.1
No Industry ¹	NA	4270	NA	NA	NA	NA
TOTAL	382538	384777	2239	0.6%	1811.2	2.7

Source: Household Labour Force Survey; Industrial Relations Centre Survey, 2008

Note: 1. Union Members not allocated to particular industries.

At the other end of the spectrum, unions in the energy and utility services industry experienced substantial membership growth (25.4%) since the end of 2006, but that increase fell well short of the total growth in salary and wage earners in the sector (38.1%) in that timeframe. This has resulted in a 4 percent reduction in union density (see Table 3) in that sector. Manufacturing and the transport, storage and communication industry groups also experienced falls in union membership (11.4%) in the two years to the end of 2008. The largest drop in union membership, though, was in the personal and other services industry; union membership in that industry fell by more than half (55.8%) in 2007 and 2008.

In spite of the growth in union membership under the *ERA*, union density has remained relatively stable, typically in the range of 17 to 18 percent of the total employed labour force and between 20 to 22 percent of wage and salary earners, in that time. Overall union density has not increased, due in large measure to a concomitant and commensurate increase in both the total number of people employed and the number of wage and salary earners in New Zealand since 2000.

In our review for 2005, we reported on the largest single increase in union membership since the IRC surveys began, 6.6 percent (23,290 members). Whereas in 2005 union membership outstripped growth in wage and salary earners, in the two years to December 2008, union membership again fell behind the growth in wage and salary earners, leading to a small decline (0.5%) in union density to 21.2 percent, from 21.9 percent. Overall union density has remained within the narrow range of 21 to 22 percent since 1998, indicating a remarkable level of stability. The data presented in the fourth column in Table 2, however, illustrate that each industry's contribution to the change (loss or gain) in total union membership also varied widely between December 2006 and December 2008.

What is clear from the data in Table 2 is that union membership is increasingly concentrated in public and community services jobs, with some 57 percent of all union members working in those sectors. In 2004, just over half of all union members in New Zealand were employed in public and community services. Four years later, 45 percent of all union members in New Zealand worked in either the education or health sector, with government services and defence accounting for an additional 12 percent of the unionised workforce. The next two highest concentrations of union membership in December 2008 were in manufacturing (18 percent in 2008, down from 20 percent in 2004) and the transport, storage and communication sector (10 percent, down 1 percentage point from 2004). All other industry groups together made up only 15 percent of total union membership at the end of 2008.

Figure 1 highlights the distribution of wage and salary earnings across industry groups as at December 2008. The largest share and, hence largest number, of New Zealand wage and salary earners were found in public and community services (25%; 443,100 employees); retail, wholesale, restaurants, and hotels (23%; 424,400 employees); manufacturing (14%; 249,200 employees); and finance, insurance and business services sectors (13%; 239,100 employees). The largest increases in the number of wage and salary earners in the two years to December 2008, as shown in the last column of Table 2, were in energy and utility services (38.1%) and personal and other services (10.3%).

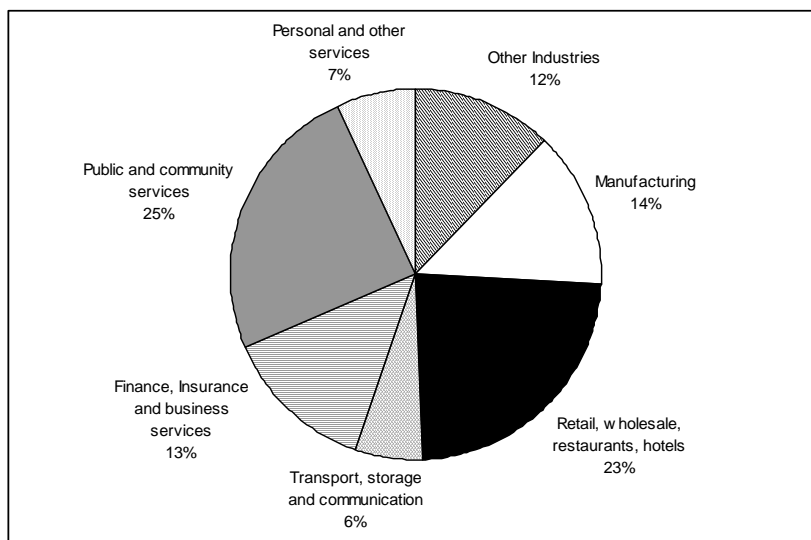


Figure 1: Distribution of wage and salary earners across industry sectors

Source: Statistics New Zealand HLFS 2008.

As depicted in Figure 2, although there also continues to be wide variation across industry sectors in union membership which does not closely reflect the distribution of wage and salary earners shown in Figure 1. To that end, union membership was overwhelmingly concentrated in public and community services (218,600 members), followed by manufacturing (66,900 members) and transport, storage and communication sectors (37,700 members). Together, the two industry groups, having experienced the largest increases in wage and salary employment since the end of 2006 – public and community services and energy and utility services and personal and other services, presently account for nearly one-third of total New Zealand union membership. With some 57 percent of all union members, public and community services remain the contemporary union heartland, having passed the traditional union stronghold of manufacturing long ago, under the *ECA*.

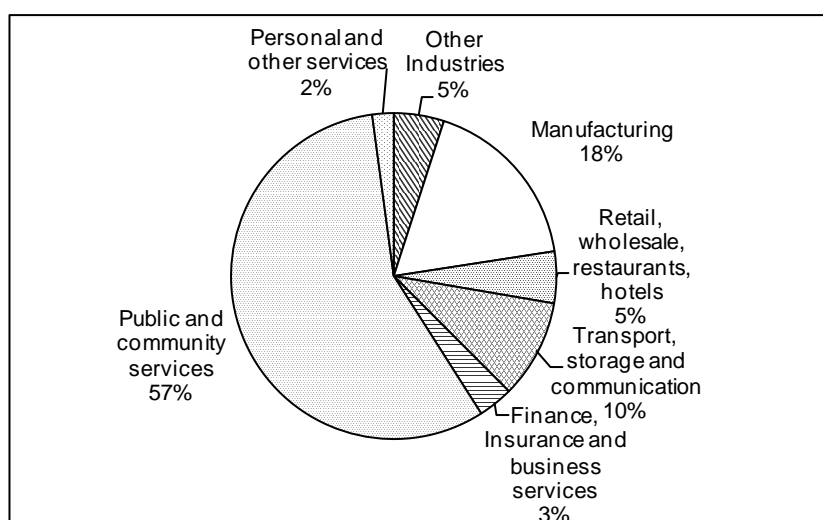


Figure 2: Distribution of union members across industry sectors

Source: Industrial Relations Centre Survey 2008.

Table 3 summarises how union density has changed according to industry grouping since December 2006. The number of wage and salary earners in mining and related services has fallen since 2006. This decline in potential union members contributed to the significant increase in union density in this sector in the two years to December 2008 shown in Table 3. The other industry group to experience a substantial increase in union density over the previous two years is government administration and defence, in which 37 percent of wage and salary earners in this industry were union members in 2006 and, by December 2008, this figure had risen by almost 20 percentage points to 55 percent. Union density in the manufacturing sector has fallen by nearly 5 percentage points to just under 27 percent; this figure has fluctuated, though, between 27 and 31 percent over the last few years and is, therefore, not indicative of a declining trend. A trend of declining union density is evident, however, in the energy and utility services, where it peaked at 52 percent in 2004, only to decline over the next 2 years. Nevertheless, this trend does appear to have levelled off over the past 2 years.

Table 3: Change in union membership across industry groupings

Industry Group	Approx. density 2006 (%)	Approx. density 2008 (%)
Agriculture, fishing, forestry etc	3.7	4.0
Mining and related services	21.4	42.9
Manufacturing	31.3	26.9
Energy and utility services	39.8	36.2
Construction & building services	4.2	5.6
Retail, wholesale, restaurants, hotels	4.5	4.6
Transport, storage communication	40.8	35.0
Finance, insurance & business services	4.6	5.5
Personal and other services	15.9	6.4
Public and community services	47.8	49.3
<i>Govt administration & defence</i>	37.1	55.3
<i>Education</i>	52.6	50.3
<i>Health & community services</i>	49.1	45.9

Source: Industrial Relations Centre Survey, 2008

In our union membership surveys, we ask our union respondents how many of their members work in the private and public sectors, respectively. This year, as we did in 2006, we have included the additional ‘not-for-profit’ category (4,783 union members). It should be noted, however, that union members identified as being in the not for profit sector in 2008 were likely identified as being in the private sector in the past. Not surprisingly, then, as union respondents had previously included these members in one of these two sectors, this inclusion has had a corresponding impact on the figures for private and public sectors.

The public/private sector divide

Table 4 shows that the small (0.5%) increase in aggregate union membership across all sectors of New Zealand’s labour market between December 2006 and December 2008 (shown in Table 1) occurred as a result of a 1.6 percent increase in union membership in the public sector. On the other hand, union membership in the private sector fell by nearly 4.6 percent over that period. To the extent to which membership numbers, i.e., not the members themselves, have shifted from the private to the not-for-profit sector, the actual decrease in union membership in the private sector in the two years to December 2008 was closer to 1 percent. As can be seen in Table 4, the public sector retains the majority of all union members, with a much higher density (see Table 5).

Table 4: Public, private union membership

Sector	Dec-06	Dec-08	Change 06-08	Change 06-08 %
Private Sector	180360	172431	-7929	-4.6
Public Sector	197395	200711	3316	1.6
Not for profit ¹	4783	11635	NA	NA

Source: Industrial Relations Centre Survey, 2008

1. There are major differences in the reporting and analysis of the not for profit union membership which makes comparison difficult. The 2008 figures will be used as a base for future survey comparison.

The relative strength of New Zealand public sector unionisation and the weakness of its private sector unionisation are best seen in comparison with other Anglo-Saxon nations, shown in Table 5. In other industrially developed countries, the exception being the United States, regularly published union membership data emanate from union reports – either in compliance with a statutory requirement and supplied by unions or provided on a voluntary basis to government statistical agencies, which then compile and publish the data. In fact, prior to 1980, the US Bureau of Labor Statistics (BLS) reported data obtained directly from unions in response to a biennial questionnaire.

Table 5: Public/private sector union density – international comparisons

Country	Union density	Public sector	Private sector	Public/Private Ratio
New Zealand ¹	21	62	12	5.2
Australia ²	19	42	14	3.0
UK ³	25	57	16	3.7
USA ⁴	12	37	8	4.6
Canada ⁵	29	71	16	4.4

Sources:

1. Statistics NZ, QES, Dec 2008b Industrial Relations Centre Survey, 2008b.
2. Australian Bureau of Statistic, Table 63100Ts0001, published in April 2009.
3. Department of Business Enterprise and Regulatory Reform, TRADE UNION MEMBERSHIP 2008, April 2009 (Barratt, 2009).
4. United States Department of Labor (Bureau of Labor Statistics, January 28, 2009).
5. Statistics Canada, (Perspectives on Labour and Income, August 2008).

As is true of the data we report, union membership data gathered in other countries, regardless of their source, are subject to reporting errors. With specific regard to membership counts provided by individual unions, though, many unions have difficulty keeping accurate and up-to-date records of their membership. Members who have left the union for one reason or another may not be deleted from the records for some time as employers are not required, unless by agreement with the union, to inform the union of those members who leave the organisation's employ. This also points to the very real possibility that, if some or all of those members join another union, they may be counted in each for a period of time.

Another factor to consider in this regard is that self-reported membership numbers may reflect institutional or even political biases and may yield unreliable results. To that end, unions may overstate or understate their membership figures to influence policy-makers. In addition, different unions may apply different norms regarding who is considered a member and some may be slow to remove those who have left the union or simply ceased paying their subscriptions. To this end, they may also include people who no longer consider themselves union members. Therefore, membership reports by unions in all countries are subject to inaccuracies. Yet, notwithstanding these potential sources of bias, comparisons in other national and international contexts with data on union membership derived from other sources suggests that, while some overstatement in self-reported union membership by trade unions is common, for the most part, it is inconsequential (ILO, 1997)

With these caveats in mind, the data reported on Table 5 appear to indicate that the public/private sector union membership ratio continues to be higher in New Zealand than in other Anglo-Saxon countries. A slightly higher proportion of New Zealand's labour force is unionised than is the case in

Australia, but New Zealand union density lags behind that in both the UK and Canada – the only country listed in Table 5 with a higher public sector union density than New Zealand. Union density in New Zealand’s private sector, though, is low relative to most other English-speaking countries, the one key exception to this being the US. A regeneration of private sector membership, in particular, remains a major challenge for New Zealand unions.

Trade union numbers, distribution of membership by size, gender and affiliation

Table 6 shows the number of identifiable trade unions, categorised by size, at the commencement and conclusion of the *ECA* period (1991 and 1999, respectively), and under the *ERA* as at December 2006 and December 2008. The clearest effects of regulatory regimes on the industrial relations landscape in New Zealand are in relation to the number of trade unions. Union amalgamations followed the *Labour Relations Act (LRA) 1987* requirement that unions have a minimum membership of 1000. This produced a dramatic drop in trade union numbers from 259 in 1985 to 104 in 1990. The abolition of registration provisions under the *ECA* made identification of unions difficult, but estimates suggest there was a further decline in numbers during this period. Reversing this decline, the *ERA*’s requirement that only registered unions can participate in collective bargaining, and the setting of a low membership threshold for registration at 15 members, has seen the number of registered unions more than double. Refer to Table 1 for the number of trade unions for all years from 1991 onwards.

Although the *ERA* has seen a growth in the number of unions, most new unions are small, enterprise or workplace based and do not see themselves as unions in the traditional sense. Many exist solely for the purposes of negotiating a collective agreement, and they tend to have extremely limited resources. Moreover, their entry has done little to change the distribution of union membership. As depicted in Table 6, small unions (those with fewer than 1000 members) still only account for 4 percent of overall membership, and large unions (those with more than 10,000 members) account for more than three-quarters of all membership in New Zealand. It is also these large, well established, and better resourced unions that account for most of the membership growth under the *ERA*.

Table 6: Membership by union size 1991 – 2008, selected years

Membership range	Dec 1991			Dec 1999			Dec 2006			Dec 2008		
	#	Members	%	#	Members	%	#	Members	%	#	Members	%
Under 1000	4	2750	1	48	12703	4	129	20358	5	105	17112	4
1000 - 4999	39	87119	17	22	43709	14	22	53199	14	23	52044	14
5000 - 9999	9	76489	15	3	19669	7	5	38375	10	3	20149	5
10000+	14	347967	68	9	226324	75	8	270606	71	10	295472	77
Totals	66	514325	100	82	302405	100	166	382538	100	141	384777	100
Av. Size		7793			3688			2437			2729	

Source: Industrial Relation Centre Surveys 1991, 1999, 2006 and 2008.

As we have reported in the past, there is an increasing concentration of union membership into larger unions. We noted earlier in this document that 77 percent of union members are now in unions of more than 10,000 members and Table 6 shows that there has also been an increase in the number of unions in this level (8 in 2006 to 10 in 2008). There has been a large decrease in the number of unions with under 1000 members since December 2006 and it is this group that is contributing to the overall reduction in the number of unions registered in New Zealand.

The gender composition of New Zealand’s union membership has changed considerably since the era of predominantly male, full-time employment. The data in Table 7 shows this trend for the years 2004, 2006 and 2008. As has been the case for most of the *Employment Relations Act* era, women comprised the majority (55.3%) of union members in 2008, although they constituted only 46.5 percent of the country’s labour force (Statistics New Zealand, 2008a). The proportion of union members who are female has steadily increased over the previous 4 years. Factors contributing to this change include the high representation of women in public and community services and the decline in traditionally unionised areas of male employment, such as manufacturing and mining.

Table 7: Female union membership 2004-2008

Year	%Female
2004	52.0
2006	54.9
2008	55.3

Source: Industrial Relations Centre Surveys 2004, 2006 and 2008

The number of CTU affiliated unions dwindled throughout the 1990s, from 43 in 1991 to 19 in 1999; the proportion of union members covered by CTU affiliates also declined, from 86.5 percent to 78 percent. In the wake of the *ECA*, the New Zealand union movement fell into some disarray, which saw the emergence of a second central trade union organisation in May 1993. The Trade Union Federation (TUF), however, never threatened the New Zealand Council of Trade Unions' (CTU) position as the primary national body for trade union organisations. At its peak membership, in 1995, its affiliates represented only 7 percent of reported total union membership, while the CTU's affiliates accounted for 79 percent of union members in New Zealand at that time.

In fact, the impact of the *ECA* and, in particular, the ability of employers to establish their own 'in-house' unions under that Act is likely to have had a far greater effect on the share of the unionised workforce covered by CTU affiliates during the 1990s. To that end, following the 1999 election of a Labour-led government and the introduction of the ERA, the TUF was disestablished and the unions which remained affiliated rejoined the CTU.

As can be seen in Table 8, the number of unions affiliated to the CTU has risen under the *ERA* to 37 (of the 159 registered unions in New Zealand) in 2008 while the proportion of union members belonging to CTU affiliates has increased to 89.4 percent. However, with 333,395 members, CTU affiliates have close to 90 percent of total union membership and represent 18 of the 20 largest unions in New Zealand. This proportion has been more or less consistent throughout the period of the *ERA*.

Table 8: NZCTU affiliation 1991 – 2008

Year	NZCTU Affiliate unions	Members	Percentage of total m'ship in CTU affiliates
1991	43	445116	86.5
1992	33	339261	79.2
1993	33	321119	75.8
1994	27	296959	78.9
1995	25	284383	78.5
1996	22	278463	82.2
1997	20	253578	77.4
1998	19	238262	77.7
1999	19	235744	78
2000	26	273570	85.9
2001	32	289732	87.8
2002	34	293466	87.7
2003	36	297440	87.1
2004	38	310451	87.7
2005	37	333395	88.4
2006	39	340281	88.9
2007	38	330130	88.7
2008	37	343017	89.4

Source: Industrial Relations Centre Surveys 1991-2008

Discussion

Despite retention of many changes ushered in with the *ECA 1991* that could potentially undermine unions' organising effectiveness, such as voluntary unionism, enterprise-based bargaining, and

extension of personal grievance procedures to non-union workers, it did not seem unreasonable to expect that the *ERA* would have a positive effect on unionisation. For one, by restricting collective bargaining to registered unions, the *ERA* returned to unions the exclusive right to negotiate collective agreements, a right they had enjoyed for nearly 100 years prior to enactment of the *ECA*. In addition, the *ERA* offered unions access to workplaces, including those without union members, and it provided for employment relations education leave, effectively supporting union delegates in their role.

It would appear, at least on the face of it, that membership in New Zealand trade unions has, in fact, grown incrementally, albeit slightly, since the late 1990s. This picture of relatively stable growth, however, belies considerable variation among industry sectors as well as in the fortunes of New Zealand's trade unions in different sectors. For instance, two unions with strong representation in the health and community services sector have experienced significant growth in membership numbers since December 2006, yet union density in the health sector as a whole declined in that period. A similar picture emerges in the education sector. With the addition of 3300 more members by the end of 2008, one of the largest unions experienced the highest absolute growth in union membership of any union in New Zealand over the previous two years. In spite of this, the rate of growth of wage and salary workers – the denominator in our union density fraction – outstripped growth in union membership across the broader education sector.

Overall, increases in membership numbers in some sectors have been offset by commensurate losses in other sectors, in particular, in the traditional union strongholds of manufacturing and transport, storage and communications. In addition, while union membership numbers have increased, they have barely kept pace with the increasing number of workers entering the labour force over the past decade. Hence, union density has remained relatively constant across the country's labour market under the *Employment Relations Act (ERA) 2000*. This is somewhat surprising in light of the predicted favourable effect of that legislation on union organising efforts.

In sum, overall union density has, for the most part, remained within the narrow range of 21 to 22 percent for the past decade, indicating a remarkable, and somewhat unexpected, level of stability. New Zealand unions experienced a small increase in union membership (0.5%) between 2006 and 2008, but that growth was more than offset the much larger (2.9%) increase in the number of potential union members, all wage and salary earners in New Zealand. Union membership also remains concentrated in particular sectors. To that end, there is a considerably greater degree of unionisation in the public sector and amongst a few particular industries (manufacturing, and transport and storage) in the private sector. These are areas of traditional union strength and existed as such prior to the *ERA*. Although annually there are minor changes, there has not been sufficient change or enduring growth to suggest established patterns of union membership growth or decline are changing significantly.

References

Australian Bureau of Statistics. *1 in 5 are Trade Union Member: ABS*. Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/6310.0Media%20Release1Aug%202008?opendocument&tabname=Summary&prodno=6310.0&issue=Aug%202008&num=&view=>

Barratt, C. (2009). *Trade Union Membership 2008*. Retrieved from <http://stats.bis.gov.uk/UKSA/tu/tum2008.pdf>

Bureau of Labor Statistics. (2009). *Union Members in 2008*. Retrieved from http://www.bls.gov/news.release/archives/union2_01282009.pdf

Department of Labour. (2009a). *Union Membership and Registration*. Retrieved from www.ers.dol.govt.nz/union/registration.html

Department of Labour. (2009b). *Annual Report 2009/10*. Retrieved from http://www.dol.govt.nz/publications/general/ar0910/ar-0910_28.asp

Department of Labour. (2009c). *Union Membership Return Report 2009*. Retrieved from <http://www.ers.dol.govt.nz/union/pdfs/union-membership-2009.pdf>

International Labour Organization (ILO). (1997). *World Labour Report 1997-98: Industrial Relations, Democracy and Social Stability*. Retrieved from http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221103315_EN/lang--en/index.htm

Statistic Canada. (2008, August). Unionization. *Perspectives on Labour and Income*. Retrieved from <http://www.statcan.gc.ca/pub/75-001-x/pdf/topics-sujets/5100160-eng.pdf>

Statistics New Zealand. (2008a). *Household Labour Force Survey Population Rebase: December 2008*. Retrieved from http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/employment_and_unemployment/householdlabourforcesurvey_hotpdec08qtrrebase.aspx

Statistics New Zealand. (2008b) *Quarterly Employment Survey: March 2008*. Retrieved from http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/employment_and_unemployment/quarterly-employment-survey-info-releases/previous-releases.aspx

Statistics New Zealand. (2009) *Household Labour Force Survey: March quarter*. Retrieved from http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/employment_and_unemployment/HouseholdLabourForceSurvey_HOTPMar09qtr.aspx

Chronicle: June 2010 – September 2010

June 2010

The *Dominion Post* reported on the plight of around 200 meat workers at the AFFCO works in Wairoa. June did not start well for these meat workers as they were laid off following a stand-off with their employer following employer threats that they needed to work faster and agree to not being paid overtime. The workers were told that they would be out of work for up to five months. The meat workers union representing the workers lodged a claim in the Employment Relations Authority alleging that the ultimatum given to the workers was a breach of their employment agreement.

The normal round of the ‘weird and unusual’ personal grievance cases appeared in the media in June. Both the *Sunday News* and the *Sunday Star Times* reported on David Page who worked for a Japanese-owned language school and was awarded \$170,000 by the Employment Relations Authority after he was subject to the “Japanese way” of management. This included his boss ranting, berating and humiliating people. The *Dominion Post* also reported on the ambulance paramedic who was dismissed for posting derogatory comments on Facebook after an altercation with a fellow officer. Although this was an early example of this phenomenon the article highlighted that the Employers and Manufacturers’ Association had already released a report showing that employers should not fear disciplining staff for online indiscretions. The Council of Trade Unions (CTU) responded with the comment that employers needed to differentiate between their workers grumbling to friends and running a defamatory website. Finally, the *NZ Herald* reported on the woman who unleashed a “torrent of drunken abuse” at her employer but was found to have been unjustifiably dismissed. The language sprinkled liberally with the F word was used at an office barbecue but the employee concerned could not remember the altercation the next day. The resultant disciplinary meeting and dismissal was found to be unfair because not all the statements from other employees, who witnessed the outburst, had been put to her.

The *NZ Herald* and the *Dominion Post* both reported on the payout awarded to a former employee of Ogilvy New Zealand Limited. The senior advertising executive was asked to relinquish her title in exchange for a directorship on the Board. Before she could make up her mind she found that her colleagues had been informed of her replacement and that it had also been announced in the media. The aggressive nature of the employer was criticised by the Employment Relations Authority who said the actions of the Managing Director as “discourteous, disruptive and uncooperative”. The executive was awarded \$350,000, plus \$27,000 costs and \$15,000 for distress.

The use of social networking media by public servants was highlighted in an investigative article in the *Dominion Post*. The article estimated that public servants spend at least 8,482 hours a year on Twitter. The figure was extrapolated from a one month snapshot which was obtained by the newspaper under the Official Information Act. It was not known how much Twitter browsing was for legitimate work, including maintaining the official Twitter accounts operated by five government agencies. One of the study quoted estimated Facebook reduced work output by 1.5%.

Interestingly, the article mentioned that some companies were blocking “time sucking” sites while other saw social networking as a good way of tuning in to public opinion, without commissioning expensive surveys or focus groups. For example Westpac Bank was formulating a “how to” social media policy and was encouraging staff to use the technology to network.

In fact, there appears to be some confusion amongst employers regarding the risks and benefits of staff using social media such as Twitter and Facebook. Some private companies such as Westpac and Telecom encourage staff to use social media as a means of gathering feedback on the company. A spokesperson for the Department of Conservation Department said that Twitter could be a useful tool for public servants to connect with their counterparts overseas and discover new trends. A later article in the *Dominion Post*

claimed that in 2006 public servants workers spent at least 35,000 hours a year on the Trademe auction website.

Regular legal commentator in the *Dominion Post* Susan Hornsby-Gulek, a partner at law firm Kensington Swan, commented on the dilemma facing employers when employees strike. Although strikes have become less common there are still 'strategic strike actions' such as working to rule or taking breaks at the same time. While she acknowledged employees' right to strike, the employer's argument was that types of strategic strike action "now has become the norm". The Hornsby-Gulek article argued that a decision in the Supreme Court in May 2010 redressed that imbalance by giving employers greater power to require non-striking employees to perform the work of striking employees. The Supreme Court decision related to a six-week strike by Air Nelson's line maintenance engineers in May 2007. Air Nelson brought in contractors to cover for the striking employees, sparking a legal battle that spanned three years which ended with the Supreme Court decision.

Prominent employment lawyer Peter Cullen wrote on the issue of 'incompatibility' and the right of an employer to dismiss a staff member who does not get on with other staff members. Mr Cullen stated that dismissal for incompatibility is unusual. For a dismissal on these grounds to be justified, the incompatibility must be largely the fault of the employee and that the worker is reluctant to attempt to resolve the situation, such as undertaking counselling or changing behaviour. Conversely, where the employer does little to resolve the problem then the onus falls on the employer. If serious incompatibility remains in the workplace despite the identified employee being assisted and even warned of the dangers to his or her employment, then the employer may be entitled to dismiss.

July 2010

The announcement that the Government intended to review the Employment Relations Act created a wave of media reports during July. A number of newspapers predicted that the proposed changes were to be announced during a speech by the Prime Minister at the annual National Party conference. The proposed reforms would probably not be a surprise as many of them were signalled in a discussion document issued in March 2010 by the Department of Labour.

Predictably, the proposed reform that created the most controversy was the extension of the 90 day trial period from firms employing 20 or fewer staff to *all* employers. Both supporters and detractors voiced their views on this significant change to the personal grievance entitlement. A *NZ Herald* article said that unions claimed the proposals were 'outrageous and an attack on workers rights'. The unions also promised to fight the changes and Labour Leader Phil Goff threatened to 'scrap the 90-day scheme altogether if Labour regained power.' The article quoted the Prime Minister as saying that the results of the 90-day trial scheme launched in April 2009 had been stunning and that it had ensured "that a lot more New Zealanders had the opportunity to engage in work" and the "[e]mployers have been willing to take the risk".

To further raise the ire of unions, it was also rumoured that union access to the workplace would be restricted to situations "with the employer's consent which cannot be unreasonably held". In a *Southland Times* article, CTU President Helen Kelly was outraged by the plan to restrict union access to the workplace. Ms Kelly said that, although it was part of National's election manifesto, the Prime Minister had promised to consult with unions before moving to implement the policy.

As the date of the formal announcement at the annual National Party conference got closer, the debate still raged. The *Dominion Post* wrote that John Key was likely to face a fiery reception at the conference as "unions kick off a campaign against employment changes". The article suggested that extending the 90 day trial period could be "the most divisive change since National took office". In the article, the CTU

estimated that around 700,000 people started a new job every year which meant that there would be at least 300,000 people who would be in their first 90 days of employment at any one time.

Employer groups hit back at the unions claiming that they were over-reacting. David Lowe, Employment Services Manager of the Employers and Manufacturers Association (Northern), was quoted as saying that the claim that the provision would be used to exploit workers was scaremongering and did not fit with the reality of employers looking for workers. A *Dominion Post* article quoted figures from a survey of employers with fewer than 20 staff. Of the 414 employers covered by the survey, 72% used the 90-day provision. Of those, 48 employers – 16% of those using the 90-day provision – had used the provision to dismiss workers. In line with this, employment lawyer Ross Crotty from Lowndes Associates said that, if the probation period was extended, it would expose a huge number of low-paid and young staff members. His view was that small employers did not have the resources to train people and tended to take the “easy way out.”

The *Herald on Sunday* took a more pro-government line in its article where it quoted Prime Minister John Key saying that Labour leader Phil Goff was keen to use the issue to “lubricate his party’s rusty links with Labour”. The article also argued that the Employers and Manufacturers Association had figures which showed that three out of four employers who used the scheme had kept almost 90% of the workers they initially employed. Further, the article argued that anything that encouraged an employer to take a punt on a new worker who shows promise but lacks credentials was worth trying.

As predicted, the announcement of the reforms was made at the annual National Party conference. Although the 90 day trial period grabbed, as expected, most of the media attention, other implications of the proposed changes started to be highlighted. Among these was the measure to deal with the so-called ‘mental health day’. The *Dominion Post* reported that under the package that proposed changes to the Holidays Act 2003 would allow employers “who suspect a worker of pulling sickies” to require proof after only one day of sickness. Under the proposal, the employer would have to pay for the cost of a doctor’s visit. Additionally, the proposals include the ability of allowing workers to cash up one week’s annual leave. Once again, CTU President Helen Kelly said that it would erode the hard-fought for entitlement of four weeks’ annual leave and that “[w]orkers short of money will be tempted to cash in such leave when what they really need is a decent pay rise.”

The articles in the newspapers were followed up by numerous opinion pieces from each of the protagonists in the debate. Helen Kelly of the CTU argued in a *Dominion Post* opinion piece that the problem was not the trial period but the removal of all appeal rights along with it. She added that the changes “legislate for unfair dismissal” and proceed to list some real examples where unfair application of the existing law had occurred. However, Phil O’Reilly of Business NZ argued that the proposed changes were “reasonably sensible, middle-of- the-road adjustments that will increase productivity and opportunity”. He added that this was not a return to the Employment Contracts Act. O’Reilly’s view was that the extension of the trial periods was sensible and brought NZ employment law into line with other countries. He also stated that requiring the agreement of the employer to union access was “a better demonstration of good faith than the present rules”.

The practicality of employees being able to get a medical certificate was highlighted in another *Dominion Post* article. In the article, GPs warned that the proposal would be problematic as most GP clinics were unable to offer same day appointments. Medical Association GP council chairman Mark Peterson said forcing workers to get certificates for a single sick day was likely to see doctors being asked to provide retrospective diagnoses.

As the month dragged on, the opinion pieces became more and more vociferous. Writing in the *NZ Herald*, Garth George almost celebrated the re-emergence of the unions to fight the changes and, surprisingly, he then proceeded to praise the Employment Contracts Act as one of “the most significant and far-reaching pieces of legislation ever to be passed by the New Zealand Parliament”. George argued

that the changes were long overdue and expressed his surprise at how long it took to address “personal grievance dispute procedures which have become dangerously skewed in favour of employees”. Likewise, Wellington lawyer Susan Hornsby-Gulek compared union access to the workplace with an uninvited visit by a mother-in-law and suggested that the change to union access was reasonable.

Meanwhile, the *Dominion Post* reported that collective agreement talks between the Ministry of Education and the PPTA had broken down. The PPTA walked away from talks after 13 ‘fruitless’ sessions. The PPTA was seeking a 4% pay increase but the employer was offering a 1.5% pay rise for the first year and 1% the year after. A Ministry spokesperson said the offer was realistic in the current economic climate.

There was only one stoppage in the March quarter which was the lowest figure for seven years, according to Statistics NZ. This followed an unusually high number of stoppages – 17 stoppages – in the December 2009 quarter.

More claims of exploitation of seasonal fruit pickers in the Bay of Plenty were reported by the *Dominion Post*. Workers were claiming they were not being paid their wages and holiday allowances. This followed the imprisonment of three men, whose company employed 500 seasonal workers nationwide, on charges of conspiring to keep workers in New Zealand in breach of the Immigration Act.

August 2010

The controversy over the proposed changes to employment legislation announced in July 2010 continued. A comprehensive article published in both the *Press* and the *Dominion Post* foreshadowed that unions were mobilising for a major campaign but it also asked the question whether the labour movement could still ‘pack a punch’ or had it “lost the power and influence to put up a decent fight”. Union leader Matt McCarten promised a ‘name and shame campaign’ to target fast food businesses that had dismissed workers under the 90 day clause with ‘very noisy and unwelcome visitors’ armed with placards. The article said that although there was a raft of changes proposed by the Prime Minister most of the focus had been on the extension to the 90 day trial period to all employees. Professor Erling Rasmussen, Professor of Work and Employment at Auckland University of Technology, argued that although the reduced numbers of union membership meant that unions were less powerful it did not mean that they had no influence. The key issue for him was whether the Government can actually ‘sell’ the extension to the 90 day trial period to the NZ public which came down to influencing the hearts and minds of the New Zealand public. CTU President Helen Kelly said that the failure to come up with any convincing cases before the Prime Minister announced the extension of the scheme was affected by that employees were reluctant to come forward. However, cases were beginning to come through and she was confident that the campaign would be “loud and strong”.

One case before the Employment Court attracted a lot of attention; this was due to its currency as it was about a worker at a Pharmacy in Stokes Valley in Upper Hutt who was found to have been unjustifiably dismissed and unjustifiably disadvantaged. The employee was employed under a 90 day trial period when the new owners of the Pharmacy took over. The Employment Court found that the employers had breached their obligations because they had not provided the regular appraisal meetings specified in the employment agreement and that the employee “had no inkling that her employment was in jeopardy”. Predictably, the union movement was quick to utilise the case as an example of employers abusing the 90 day trial legislation.

The *Press* reported that engineers at Orion subsidiary Connetics rejected their 1.6% offer as paltry and unfair. The Engineering, Printing and Manufacturers’ Union President Andrew Little said that the offer was below the rate of inflation and was in effect a pay cut. Orion’s CEO Roger Sutton claimed that Orion had only made a small profit and was losing money and that the company was trying to find a “balance among everyone’s interests”.

The threat of industrial action by Junior Doctors featured again in the media following an impasse in their collective agreement negotiations. A series of stopwork meetings had been called by the Resident Doctors Union to enable members to discuss their options before negotiations began, according to union spokesperson Deborah Powell.

Ongoing problems in the Health Sector were highlighted by the Press reporting that ten Canterbury Health medical laboratory workers were suspended after eight weeks of strike action. Half of the laboratory staff (totalling about 100 people) had been on rolling strike action since late June and were not performing certain tasks. Canterbury Health Laboratories' General Manager Trevor English said that while staff had the right to take strike action employers had the right to suspend people. The article also stressed that medical staff at the Auckland, Counties Manukau and Waitemata District Health Boards had been suspended. A spokesperson for the District Health Boards said that New Zealand's District Health Boards operated under "extremely tight budgets" and that 75% per cent of all staff had already accepted a pay offer under the National Terms of Service agreement.

Once again, there were a number of personal grievance cases being reported. These cases appeared to be straight summaries of the determinations issued by the Employment Relations Authority. The more sensational of the cases included that of a dispatcher, who worked for Wellington Free Ambulance, found to be unjustifiably dismissed and was awarded the sum of \$4,000. The employee had an argument with a male colleague which 'turned nasty' when it was continued on Facebook. After a complaint of abusive comments being posted on Facebook over what appeared to be a relatively minor dispute over rest breaks, the employer dismissed her after finding that she had behaved in a similar manner in the past. While she received monetary compensation the Authority declined reinstatement because of the "subsequently discovered misconduct and her serious contribution to the situation".

In another case, two customs officers, who were dismissed because they allegedly leaked concerns about a gay officer at Christchurch International Airport, were reinstated after a ruling by the Employment Relations Authority. The officers' claim for hurt and humiliation was declined but they received an order for lost salary. The officers allegedly leaked details of their concerns about a gay customs officer who they alleged was performing more than "his share of strip searches and was making lewd comments about the body parts of male passengers". The officers were opposed to a Customs policy that stated that passengers were not entitled to know the sexual orientation of officers conducting strip searches at airports and ports on the grounds of unlawful discrimination if the officers were required to declare their sexuality. The Department of Customs indicated that it would appeal against the decision.

September 2010

The debate on the controversial 90 day trial period legislation continued. Some of the media reporting focussed on submissions made before the Transport and Industrial Relations Select Committee.

In an opinion piece in the *Dominion Post*, CTU President Helen Kelly responded to an earlier article by CEO of the Business Roundtable Roger Kerr. Kerr had argued that countries such as the US were examples of where either party to an employment contract were free to terminate at any time. Kelly criticised Kerr for his promotion of the US as a place with low worker exploitation. She supported this argument with figures saying that the Federal Minimum Wage had fallen 9.3% in the past ten years and that the top ten per cent of Americans have 70% per cent of the wealth while the bottom 50% shared just 2.5% of the national wealth.

Dr Judy McGregor, Equal Employment Opportunities Commissioner of the Human Rights Commission, wrote that "the proposed legislation to extend the 90-day-trial period to all businesses and New Zealand risks regressing both in terms of its commitment to, and the reality of, equal employment opportunities".

Dr McGregor stated that it was unusual for Parliament to take away rights, particularly the right of access to a hearing. The denial of this right in something as basic as employment had human rights implications. The implementation of the new law would disadvantage, in Dr McGregor's view, various groups with the young, Maori, Pacific and disabled people most at risk. Additionally, the idea that the proposal would rest on agreement between the two parties was unrealistic as a new employee desperate for work was in no position to opt out and had no real choice in the matter. She also argued that the new law would increase casualisation of the workplace at a time where there was increased concern about the low productivity of the New Zealand workforce.

In a response, David Lowe, Manager of the Employment Relations Service of the Employers and Manufacturers Association, argued that the new legislation would increase workers chances of finding work. Lowe claimed that if New Zealand wanted business, the public service and voluntary organisations to be internationally competitive then employers would "need all the confidence they can get, to hire people in the first place". It was his view that the present system discouraged employers from hiring people because of the constrictions on an employer to redeploy or dismiss staff. He expressed surprise that Dr McGregor made no mention of the costs of employing people and the fact that it often took more than 90 days for a new employee to "learn the ropes" which was an incentive for an employer not to start the process of employment lightly.

Dr Judy McGregor repeated her views in her submission to the Transport and Industrial Relations Select Committee. In her submission, she claimed that women were often more at risk under the proposed legislation as they were often in "precarious work" such as domestic work, care work, retail or service positions. She said the 90-day trial period should be dumped because it offended against the "fabled sense of a fair go" and was unnecessary given that probationary period provisions already existed in the Employment Relations Act. However, National Party members of the Select Committee questioned Dr McGregor on her views with National MP Tau Henare quipping that the Human Rights Commission was "a branch of the Labour Party".

The *Dominion Post* published an opinion piece by James Ritchie, Secretary of the Dairy Workers Union, where Ritchie claimed that the proposals were "so small-minded as to miss the point completely". He argued that sustainable economic development through greater productivity was derived from greater worker engagement in the goals of the enterprise and industry growth. To achieve this engagement would require an environment of trust, inclusion and ownership. He cited the example of the workplace programme between Fonterra and the Dairy Workers union over the past decade which had transformed the workplace into a high performance system similar to what was achieved by Toyota. As a result, Fonterra had made huge gains in process and logistical efficiency and waste reduction. Ritchie quoted US research that said that productivity gains were greatest when there was a "unionised workforce with constructive engagement between union and employer".

The Unite Union claimed that some of Vodafone's lowest-paid call centre workers in Auckland have gone three years without a pay rise and it planned to 'shame' the company. About 50 of Vodafone's 405 call centre staff belonged to the union and the action was a response for Vodafone's refusal to increase pay. A Vodafone spokesperson countered that the company offered a competitive package with call centre staff starting on between \$37,000 and \$47,000. They also received benefits including four weeks' holiday, free health and life insurance, free cellphones with calls paid for, 4% superannuation contributions and a day off on their birthdays.

In a somewhat unusual move, Senior Doctors and their District Health Board employers decided to approach the Government with a joint bid for funding in next year's Budget to cover contract negotiations. Both sides agreed to suspend pay negotiations while they worked on the business case to be presented to the Government in time for the 2011 Budget cycle.

Meanwhile Junior Doctors voted to strike if their prolonged pay negotiations were not resolved (see August Chronicle). The *Sunday Star Times* reported that a ballot last week returned a 'strong mandate' for action but a spokesperson said that despite this, doctors were a long way from walking off the job. A further two days negotiation on the Multi-Employer Collective Agreement (MECA) was set down for the end of September. The article continued that the dispute was set against a backdrop of mounting pressure in the health sector, which faced the challenge of an aging population and an increased demand for health care. The District Health Boards were seeking more flexibility in the roster system, which was based on average expected hours of work which often resulted in doctors being paid for more hours than they actually work. The Junior Doctors were seeking rostering changes, including a maximum of 10 consecutive days on followed by four off as well as only one in three rostered weekends. One commentator, Auckland University of Technology's Health Faculty Dean Professor Max Abbott, called for public debate over whether compulsory arbitration should be introduced to prevent industrial action because of the public safety issues when health professionals went on strike.

Meanwhile, another part of the Health Sector was being subject to strike action when radiographers went on strike at Auckland City and Starship hospitals for three days. Furthermore, a nationwide strike for 24 hours was called for. A senior doctor claimed that the strike action could result in deaths to some patients which was criticised by the Apex union (representing radiographers) as a very inappropriate thing to say.

In late September, a simmering dispute involving Sir Peter Jackson (director of the Hobbit movie) and the union representing actors flared into life. Headlines included 'Jackson fights 'Aussie bully' to save Hobbit' (*Dominion Post*), 'Movie Madness' (*Press*) and 'Hobbit in Danger from Dark Forces' (*Bay of Plenty Times*) were published. The dispute centred on a call from the Australia Media, Entertainment and Arts Alliance union for a boycott of the Hobbit film after Sir Peter Jackson refused to negotiate with the union. The stakes were raised when New Line Warner Brothers Pictures said that their "general policy was to avoid filming in locations with potential for 'workforce uncertainty'." Consequently, Sir Peter Jackson threatened to move filming offshore to Eastern Europe. The Government became involved when the Attorney-General Chris Finlayson wrote to Sir Peter Jackson's Hollywood backers to reassure them New Zealand employment law ruled out an expensive union-negotiated collective agreement for actors working on the Hobbit.

Erling Rasmussen & Colin Ross
Auckland University of Technology