
NOTES AND TOPICS

The Impact of New Zealand's Employment Contracts Act: A Preliminary Assessment

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ON 15 May 1996, supporters of the Employment Contracts Act (ECA) — arguably New Zealand's most controversial piece of reform legislation in recent years — celebrated its fifth anniversary. To mark the event, a major business survey conducted by the New Zealand Institute of Economic Research (NZIER) was released. Of 562 New Zealand firms surveyed, 55.6 per cent reported that the ECA had enhanced labour productivity, 66.3 per cent that it had improved operational flexibility, and 50.1 per cent that it had increased training (Savage et al., 1996). These findings reinforced the encouraging results of a public opinion poll that the New Zealand Employers Federation commissioned in late 1995, which reported a significant shift of support towards the ECA. It indicated employees' job satisfaction at a combined positive and neutral rating of 76 per cent; an even higher rating for employees satisfied with their employer at 78 per cent; and a hitherto unheard-of rating of 85 per cent of employees satisfied with their existing terms and conditions of employment (Moore & Stockwell, 1995).

Nevertheless, the ECA started to come under constant attack from a loose coalition of left-leaning parties as New Zealand approached the general election of 12 October 1996, the first under its new Mixed Member Proportional electoral system. The alleged labour productivity improvements under the ECA have proved especially contentious. A recent report published jointly by the Australian Council of Trade Unions (ACTU) and the Australian Council of Social Service (ACOSS) claimed that Australia consistently out-performed New Zealand during the period 1984-95, particularly on the key indicator of labour productivity (ACTU-ACOSS, 1996:6-7). Research undertaken by New Zealand labour market economists Tim Maloney and John Savage (1996) on the effects of New Zealand's economic reforms tend to support these findings. But whereas the ACTU-ACOSS report attributes Australia's superior performance to its Prices & Incomes Accord, Maloney and Savage speculate that New Zealand's relatively poorer performance may be a temporary effect of accelerated job growth as lower-skilled, less productive workers have found employment during the rapid economic expansion that has occurred over the most recent phase of the reforms. This would explain the significant drop

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in unemployment from a peak of nearly 11 per cent in September 1991 to 6.1 per cent in December 1995, a drop all the more impressive as it coincided with a rising labour force participation rate.

Comparative labour productivity can be notoriously difficult to analyse effectively by any method other than long-run detailed studies. In the absence of these, any preliminary assessment of the impact of the ECA must rely on the inherently less reliable and more subjective findings of business surveys that tend to espouse the virtues of the ECA.

Outline of the Employment Contracts Act 1991

The key principles of the ECA are freedom to negotiate and freedom of representation. They underpin the legislation's express objective 'to promote an efficient labour market'. The ECA achieves this by placing employment contracts on largely the same basis as other commercial contracts. Accordingly, employers and workers are free to negotiate whatever arrangements that may suit them with either individual or collective contracts (or a combination of both, though collective contracts must be in writing and have an expiry date). Some regulation remains: all employment contracts must observe statutory requirements for a minimum wage, public and annual holidays, special and parental leave entitlements; and an Employment Tribunal and Court exist to settle labour disputes.

Compulsory unionism, briefly dispensed with in 1983-84, has again been outlawed under the ECA through a broad 'freedom of association' provision allowing workers a virtually unfettered choice of bargaining agent.

Bargaining Outcomes

Collective bargaining has ceased to be the predominant method utilised by employers and their employees in negotiating terms and conditions of employment. The New Zealand Department of Labour's (1996) bargaining statistics show that only 20 per cent of the employed labour force, or 330,900 workers, are covered by collective employment contracts. More tellingly, the same statistics show that New Zealand unions represent 80 per cent of this minority bargaining group, and are involved in only 67 per cent of the negotiations for collective employment contracts. This means that only 16 per cent of the workforce are now covered by union-negotiated collective contracts, which is about 272,000 employees. The remainder of New Zealand's labour force, well over 1.3m employees, are either on some form of self-represented informal collective contract, or have individual arrangements. It would appear that most are not union members.

For information about the specific measurable outcomes of contract bargaining as it applies to self-represented groups or individual employees, we must for the moment rely on the NZIER business survey, which indicates that, under the ECA, around half the companies studied reported increases in ordinary-time wage rates, performance-based remuneration, and multi-skilling, as well as in flexibility, training and labour productivity. However, more systematic information is available about

the 20 per cent of the work force covered by collective employment contracts. Victoria University's Industrial Relations Centre (Harbridge & Honeybone, 1995) reports a modest but increasing trend of weighted wage increases for all employees in the collective group rising from 0.1 per cent a year in December 1992 through to 1.5 per cent a year in June 1995.

When adjusted for headline inflation, the resulting outcome, as measured by Statistics New Zealand's (1995) Real Wage Rate Index, is a net overall fall in real wages of 2.1 per cent since December 1992: hardly a ringing endorsement of the predicted benefits to New Zealand workers flowing from the labour market reform.

However, the index suffers from certain methodological limitations. It does not measure performance-based pay, productivity incentives, profit-sharing deals and other forms of lump-sum income payments that are increasingly characterising individual contract bargaining. Nevertheless, the surveys do suggest that those industry sectors and employee groups that are predominantly covered by collective bargaining structures have made the smallest gains under the ECA reforms. Inevitably, however, the picture will remain unclear until in-depth research is undertaken on this apparent and growing divergence between collective and individual bargaining outcomes.

Employee Representation

As a percentage of the total New Zealand labour force, union membership has shrunk to a fraction of the peak coverage of 65 per cent achieved in the 1960s and 1970s. However, while the evidence clearly demonstrates that union membership in New Zealand has been in a steady and relentless decline over a long period, it is also clear that the membership slump significantly accelerated following the arrival of the ECA.

Research conducted by Victoria University's Industrial Relations Centre (Crawford et al., 1996) shows that in December 1985 union membership had already dropped 20 percentage points over the preceding 20 years, to 683,006 members in 259 unions, covering 43.5 per cent of the employed workforce. Interestingly, this membership shrinkage occurred at a time of legislated compulsory unionism, although some of the fall-off would be due to rising unemployment from 1973 onwards. A decade later, four and a half years after the ECA had come into effect and compulsory unionism abolished, membership had further plummeted to 362,200 in 82 unions, covering only 21.7 per cent of the workforce.

From December 1985 through to May 1991, union membership density declined by only 2 percentage points (from 43.5 per cent to 41.5 per cent), an average annual reduction of only 0.35 percentage points. But between May 1991 and December 1995, it fell nearly 20 percentage points, an average annual reduction of 4.4 percentage points. The most devastating drop occurred in the 18 months immediately following the passage of the ECA in May 1991, when union membership density fell by 12.7 percentage points.

With only a 1.7 percentage point decline in the most recent twelve-month period on record, December 1994 to December 1995, that trend now appears to be

tailing off. But it is not yet clear whether this means that the decline in union representation has reached its so-called 'natural level' in a free and contestable labour market, or whether it represents no more than a brief respite in a continuing decline, as the parallel slump in collective bargaining would suggest. Some commentators support the levelling-out hypothesis, claiming the recent trend in New Zealand reflects similar international experiences. Harbridge argues that the bottom of the trough has been reached and that New Zealand unions, inspired by the industrial action of their ACTU comrades at CRA's bauxite mine in Weipa, Queensland, have similarly drawn 'a line in the sand — albeit a late line' (Harbridge, 1995).

The trouble with this hypothesis is that trade unions appear to have become somewhat irrelevant in the deregulated labour market. Although the recovering New Zealand economy has created 217,000 new jobs over the last five years, the evidence suggests that virtually none of these have been unionised. Not surprisingly, the market for contestable bargaining representation services has become very competitive. Even the predominant New Zealand Engineering, Printing and Manufacturing Union (NZEPMU) has found it difficult to translate significant employment growth in its own sector into greatly increased union membership. Instead, it has managed to survive by sustaining its membership base through those organisational strategies characteristically adopted by any dominant player in a shrinking market: mergers and acquisitions. Yet the NZEPMU has still been unable to regain its most spectacular loss: the 1,200 aluminium workers from the Tiwai Point smelter operation owned by the CRA subsidiary Comalco, almost all of whom are on individual contracts.

The membership drop in other unions, such as the once-big National Distribution Union and Service Workers' Union, has been substantial, often in excess of 60 per cent of their pre-ECA membership. Survey evidence suggests that this is largely due to strong employment growth in the services sector, which unions find difficult to organise.

The Impact on the Public Sector

The one bargaining representation experience that goes against this trend is that of the public sector. Not only have the public sector unions suffered the smallest decline — only 13 per cent since pre-ECA days — but their industrial campaigns have also accounted for the recent rapid increase in work stoppages. Teachers, air traffic controllers, fire fighters and many public servants from core government departments have now become the new union vanguard. This heightened activity may consist of nothing more than predictable attempts to gain an advantage in an election year. But another explanation is that public sector unions are under little pressure to change. Protected in many cases by occupational regulation, and seemingly ignored by a government reluctant to address the national collective employment contracts that sustain their professional fiefdoms, many such unions remain quarantined from the reform process.

This has given rise to a curious paradox. New Zealand's current National government, as legislator, boldly introduced what has been recognised as the most radi-

cal labour market reforms by any modern state in the industrialised world. But, as employer, it has tentatively pursued mostly ineffective strategies in attempting to extend its own labour market reforms into key public sector workplaces. One explanation of this is that the government is not yet confident that it can effectively handle the bargaining reforms, particularly those involving individual arrangements, without exposing itself to fiscal risk. Support for this theory comes from the fact that the government has demanded fiscally-neutral bargaining outcomes from all its agencies, and will not provide additional expenditures to fund contract-driven increases.

Another explanation is that national collective contracts and their associated collective bargaining processes are more effective than individual arrangements in driving down employee expectations and actual net wage outcomes that could otherwise threaten current expenditure controls. As Harbridge and Honeybone (1995) demonstrate with their sectoral comparisons of weighted mean annual wage movements, increases in the central government sector where national collective agreements predominate are rising at a much lower rate than in the private sector. While this may appear an ironical result for a sector characterised by high union membership and national collective bargaining arrangements, it should not be forgotten that the current New Zealand government remains committed to reducing overall government expenditures to below 30 per cent of GDP.

The upshot is that the government wants to implement bargaining reform in the public sector only where its own management can guarantee the flexibility and productivity improvements to sustain internally any resultant real wage growth. This stance appears to be reflected in the results of the NZIER survey, which showed that firms with individual contracts had consistently higher employment intentions, whereas companies with multi-employer collective contracts had a significantly worse profitability performance, lower output and productivity expectations, and lower investment intentions than the other types.

These findings support not only the belief that individual contract bargaining is out-performing its collective counterpart in terms of both quality of outcome and relevance of process, but also the corresponding belief that contract bargaining outcomes appear to become relatively less advantageous to the employee parties in proportion to the degree of collective coverage and union representation.

Conclusion: New Zealand and Australia

Comparison with the recent Australian experience suggests that New Zealand's deregulated labour market has yet to deliver demonstrable real wage growth. One of the lessons of New Zealand's reform experience it is that structural adjustment following labour market deregulation requires both time and pain before the gains flow through in the form of improved labour productivity. But one of the lessons of Australia's experience is that maintaining regulatory control over the national labour market, with the aim of driving up the labour price for existing workers and delivering guaranteed monopoly-created revenues to union representatives, disadvantages the next generation of workers by denying them access to the labour mar-

ket as lower-priced entrants. Such controls and distortions ultimately create market pressures that, in turn, generate pressure for reform, such as is now occurring.

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