Submission on the Employment Relations Amendment Bill 2013

Hon Simon Bridges, Minister of Labour. I am Kevin Broughan, a professor in mathematics at the University of Waikato, making a submission on my own behalf. Thank you for giving me the opportunity to do so.

The wonder of work

Human beings need to work for fundamental physiological, intellectual and psychological reasons, as well as to survive and thrive within their environments. Humans need to gain satisfaction from their work. They need to enjoy and take pride in what they are doing by way of work, and understand its values, not just for themselves. I have restated these obvious facts because, since the 1980's there has been a belief, strongly held in some quarters, that it is good for society for us to have 6-10% unemployment, to have a desperate and disciplined work force, casualized and lowly paid, and not to be overly concerned with the 24% NEAT generations. The proposed legislation reveals a strong and overarching desire, on the part of the Government, to have such a society.

It must be the task of any and every government to create conditions in which a great and growing variety of work is available for citizens, and that they are suitably rewarded and encouraged. Since the 1980's the relationship between effort and value for work on the one hand and its rewards and privileges on the other has continued to become more invalid. For example in the London financial sector, in spite of the GFC, over 2,500 workers received more than $1,000,000 in the last financial year. The proposed changes will increase inequities in society, so overall, no one benefits: crime rates increase, depression becomes more widespread, third world illness in children increase etc etc.

Why businesses fail

The proposed changes are aimed at satisfying the perceived needs of businesses, although there is no evidence that these needs are other than anecdotal. We need businesses to thrive and not fail, so why do they fail? Not because wages and salaries are too high – that we are a low wage economy is well documented. Many studies have shown that it is poor management and undercapitalization in the main. This includes too much concentration on retail, an economy which has too narrow a range of options, too shallow and small clusters of related industries, and too much reliance on cheap imported goods. Finally the imbalances caused by lack of efficiency in the construction industry, including housing, and a "get rich quick" approach in the non-banking finance sector.

There are other reasons why businesses fail, based on bad management decisions. The education sector does its best to prepare students for an exciting and changing world, only to register with dismay the lack of courage to try anything new, the lack of experimentation, the lack of imagination on the part of managers. That's when graduates can find a job. This translates to poor motivation on the part of workers. The low levels of expenditure on R&D in NZ companies has been well documented and is an important part of this business failure

problem. So business failure will be reduced once management improves. Giving workers incentives by way of paths to higher salaries will be part of this success story.

Parts of the current system are working

The current system has benefited both employers and employers. The number of stoppages has declined from 60 in 2005 to 10 in 20012. This is remarkable. Admittedly, some of the recent disputes have been large, caused by pent up wage demands and attempts by employers to obtain significant advances in control over their employees.

The mediation service provided by the then Department of Labour has worked well. In 2008 just under 6000 cases were referred to mediation, with about 80% being settled. The resolution rate of cases is increasing markedly.

That there should be such a large number of cases requiring mediation should be a wake-up call for the Government. It shows that there is a high degree of disharmony between employers and employees. That the picture of "employee satisfaction and integration" painted above does not exist in many companies. The situation will become much worse should the proposed legislation be enacted and implemented.

A brief report on the First Reading

I am including these notes since the speeches in the house were of very uneven quality and, for some, lacking in content of any value. The Minister gave a brief summary of the changes in the Bill. His presentation lacked data analysis or convincing motivation. Darien Fenton focused on the potential effect on workers of the changes. She expressed passion and anxiety, since the consequences for NZ and workers could be great and negative. David Bennett gave a very brief summary of the content of the Bill, which was unnecessary given the Ministers introduction.

Andrew Little gave a clear exposition on the history of employment law, why it is special, why workers need protection under the law, and what modern legislation should support. These new elements are an important part of the debate. Denise Roche made new points, referring to the Ports of Auckland dispute and the weakening of worker protections in collective bargaining and multi-employer agreements in the Bill. She also emphasised the negative effect on low paid workers with the removal of protections for when contracting companies are sold and bought. Finally she proposed that health and safety would be effected, since workers would be even less inclined to speak out when a problem in this area is perceived.

Mike Sabin's speech can only be described as scrappy. Barbara Stewart addressed the new issues of business failure and youth unemployment – the first speaker to do so. This is amazing, given the importance of both issues. I believe many members are losing touch with NZ reality, talking only to a narrow group of citizens. Chris Auchinvole made a personal attack on Labour, i.e. wasted the time of the house in a similar manner to David Bennett. I

recommend these two members read the Hansard report and see what they think of their performances.

Sue Moroney discussed the recession and job losses, and the progressively weakening position of working people, especially the low paid. She also discussed the removal of required lunch and tea breaks, and the strong evidence that this change was not been sought by employers. Finally she emphasised the health and safety implications of the Bill. Cam Calder, in comparision gave yet another hackneyed summary of the Bill.

There were other speakers, but this section of my submission is already long – so please read the Hansard transcript, it's very revealing.

The proposed legislation critiqued

Information supplied to employees

(Act p11, Bill p6) Regarding good faith and procedures to remove an employee, the bill is unclear and somewhat contradictory. An employee can obtain information relating to their situation from the employer, but cannot obtain information which is evaluatory, or even the name of any persons making an evaluation. The bill should state clearly that an employee should be able to obtain a clear and complete description, not a summary, of any **facts** relating to their situation which are being relied on by the employer. The **correctness or otherwise** of these facts can then be determined.

Not concluding a collective agreement

(Act p21, Bill p7) The employment contracts act enshrined individual contracts as the "gold standard" for employer-employee relationships. It is a matter of history that many employers found negotiating with a large number of individuals separately burdensome and expensive. Employee relationships suffered, becoming suspicious of the confidential arrangements of their coworkers. So concluded and agreed collective agreements were recognized as having important values for both parties. This Bill ignores these realities, so will be bad for business and the economy. We have learned nothing from the past.

By defining away the requirement to conclude, in whole or in part, a collective agreement, even for capricious reasons, the proposed act would become contradictory. The extensive sections on good faith and good faith bargaining and good faith relationships are in stark contradiction to this new provision. The Bill proposes two ideas which are complete opposites. Lawyers will benefit.

We have had a long period of industrial peace. The measure of wages lost through stoppages during the last 7 years, estimated at less than $30M in total, is a tiny fraction of GDP. This new provision, as some employers play once again with their new toy of a provision enabling them not to engage purposefully with their staff, will end this period of harmony, with dire consequences for the economy. The proposed **change to section 33 of the Act must not go ahead**.

Collective Agreements covering groups of companies

(Bill p8, 44A-44C) In my experience (44 years employee, two years Branch President 2 years, AUT, Chair of Mathematics 6 years, Member of the University Council which was an employer), unions are helpful in modulating the relationships between employers and employees. They enable efficient negotiations to take place. Through employee-employee discussions they enable sensible positions to be articulated. In many individual disputes, between employees and between employees and the employer, they work to lower the temperature of the discussions and ensure reasonable resolutions. If you read Hansard regarding MP's attitude to unions, you might think many of our MP's live in outer space!

Because of earlier changes to industrial relations legislation, unions were forced to amalgamate. This was to assist employers so that they would have fewer employee representatives to deal with. Smaller companies could not have their own union or unions, so it became reasonable for collective agreements to cover groups of companies in the same industry. Successive lessening of union influence (no qualified preference) has reduced the size of unions making collective agreements efficient and sensible.

There are other reasons for collective agreements covering groups of companies. These include health and safety. A small union covering a small group of employees would not have the resources to deal with health and safety aspects. Yet these are in many cases crying out for attention. A larger union can see the common problems facing companies in an industry, do some research and analysis, call for reports, take up problems with the authorities and so on. No one wants injuries and deaths in an industry.

Under the current proposals opting out could easily become the standard practice, and the years of development of labour relations in NZ put to naught at the stroke of a pen. Again I refer to Hansard - The lack of data and analysis in the speeches is profound. I wonder if our legislators know the consequences of this new world they are attempting to create.

Tea and Meal breaks

(Bill 69ZC) In my experience good and excellent workers will serve the customers of their employer well, no matter what, sacrificing often what they should fairly be giving to their families and selves. But we are not legislating for this extreme, but for normal situations.

The proposed revision to this section lacks good sense. Rest breaks and meal breaks are given for good reason – workers need them, managers need them. My experience is that students can concentrate on lecture material well for at most 10 minutes. Certainly great effort can only be expended for short periods, but even lesser efforts if repetitive, are detrimental if carried on too long. Performance deteriorates with time and mistakes are made at an increasing rate. Can you negotiate away health and safety? Are a few more deaths a good "compensatory measure"? Health and safety are the fundamental drivers behind the current act.

When reading the proposed legislation one would think that none of these laws of nature ever applied, that everything was "negotiable", that employers were generous and benign, that all of us knew precisely our limits, and were time management experts.

And the good workers will not want to spoil a relationship with a niggardly employer, who does not recognize laws of nature, and simply vote with their feet, leaving the company weaker.

The cynical view of this proposal is that workers forced to negotiate over tea and meal breaks will lack the energy to negotiate for a higher wage or salary. This won't happen. The result, I believe, will be a souring of the good relationships between employers and employees when they exist. Where is the evidence that these breaks, as legislated at present, are a problem? Where is the data?

Our international obligations

The ILO convention C098 "Right to Organise and Collective Bargaining" Article 1 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment" and Article 4 "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the fill development and utilization of machinery for voluntary negotiation between employers and employer's organisations and worker's organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

The proposed legislation subverts collective bargaining since an employer could leave negotiations for no good reason or no reason at all. Hence it contravenes C098 Articles 1 and 4.

Youth Unemployment

So please read again the model for work espoused in the first paragraph of this submission, and compare it with the mind-set revealed in the proposed amendments. Please worry more and worry often about youth unemployment, about the lack of good opportunities for our people of all ages. Ask yourself whether satisfying the desires of a few bad managers is for the general good, or just simply politically advantageous. And finally, this legislation, and many other amendments enacted previously, will not survive a change in government: good legislation will survive.

Kevin Broughan

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