

Erling Rasmussen & Robin White (a)

Through the eyes of the media: the Employment Relations Law Reform Bill

The Bill

During 2003, there were several media reports about a so-called forthcoming Review of the Employment Relations Act and an associated ‘fine-tuning’ to the Act. The Review appeared to be based on three different developments. First, the Department of Labour had launched several research projects to estimate the employment relations changes prompted by the Act (see the research report of Waldegrave *et al.* (2003) on the Department’s website: www.dol.govt.nz). Second, a tripartite working party, which included employer and union representatives, had discussed ways of dealing with issues surrounding contracting out and business transfers. Subsequently, this led to the ‘transfer of undertakings’ provision. Third, the constant delay of rumored changes to the Employment Relations Act resulted in several media reports and it was speculated that the Cabinet was divided over the proposed changes (see Rasmussen & White 2004b).

The long awaited unveiling of the Employment Relations Law Reform Bill on the 4th of December 2003 generated extensive media coverage. The next day, the *New Zealand Herald* published several articles and analyses which outlined the changes and included comments from the major labour market actors. Headlines provocatively stated that the bill would “force firms to negotiate” and would “give unions more power”. While the Council of Trade Unions (CTU) stated that the Bill was very modest piece of legislation, it welcomed the new measures and particularly the ‘transfer of undertakings’ provision. Meanwhile, Nurses and Teachers Unions were reported as being angry that the Government could use the new good faith provisions in the Bill to ‘muscle in’ on negotiations. Business New Zealand stated that the transfer of undertakings provision would hamper growth and innovation, and attacked the Bill in general for undermining individual agreements and freedom of choice in the workplace. The Employers and Manufacturers Association (Northern) pointed to the confusion that the new good faith provisions would introduce.¹ This theme of confusion and legal conflict between the various sections of the Act and Bill was explored further in later articles.²

Besides serious employer discontent with the Bill, there were also several employment lawyers also expressed their worries.³ Concerns were raised about the good faith provisions, the transfer of undertakings provision and the new ‘objective’ test to assess what a fair and reasonable employer should do when an employee is dismissed. The Employers and Manufacturers Association (Northern) and Business New Zealand both demanded more time to prepare submissions on what they saw as the myriad of changes

¹ ‘Nurses, teacher fear meddling’, *New Zealand Herald*, 5 December, 2003. ‘Unions to get more power’ *New Zealand Herald*, 5 December, 2003. ‘Bill will force firms to negotiate’ *New Zealand Herald*, 5 December, 2003. Jim Eagles: ‘New Bill just more of the old’ *New Zealand Herald*, 5 December, 2003. ‘Good faith at the heart of employment reform bill’, *New Zealand Herald*, 5 December, 2003.

² For example: ‘Experts shake heads over job relations bill’, *New Zealand Herald*, 6 December, 2003

³ Rob Towner: ‘Grounds to worry over work bill’, *New Zealand Herald*, 10 December, 2003. ‘Bill limits right to fire says lawyer’, *New Zealand Herald*, 13 December, 2003.

in the Bill and declared that they would miss the mid-February close-off.⁴ Through the eyes of the mainstream media, it now seemed that employers had reason to be afraid. The *Dominion Post* devoted an article to this subject, accusing Margaret Wilson of a sneaky, pro-union stance funded by a lifetime in tax-paid academia.⁵ The *New Zealand Herald's* editor forcefully communicated his opposition in an editorial stating that the Bill was a series of small steps which would cumulatively force employers to conform with the unions' agenda.⁶

Overview

From the media's perspective, there was conflict between the expectations of employers, unions and the government regarding the process and outcomes of the Review of Employment Relations Act. However, media reports also developed the themes of union and government collusion, and government efforts at gaining cooperation and consensus between its 'social partners'. The growing sense of union displeasure at the delays in introducing the Bill was obvious and was accompanied by persistent rumours about the Review raising difficulty issues and a Cabinet split over the proposed Bill.

However, there was limited debate about Act during 2003 (as in previous years) and the depth of employer discontent became only visible in the mainstream media after the introduction of the Employment Relations Law Reform Bill. The issues of how the Bill deals with free-riding, transfer of undertakings, changes to good faith and collective bargaining provisions, and the introduction of an objective test for assessing the actions of a fair and reasonable employer were all serious points of contention. Besides 'technical issues' and interpretations, the reader was left with the clear impression that employers and business groups were strongly opposed to the Bill. Moreover, given the stance taken in several articles by the major newspapers, it seemed that the media believed employers were justified in their concerns.

[This extract is based on a longer report – see Rasmussen & White 2004b – on: www.employment.org.nz]

Questions

1. What sources would you consult to establish your own impression of the key issues associated with the Employment Relations Law Reform Bill?
2. How would you verify (or dispute) the above impressions of the media reporting?
3. Does the debate surrounding the Employment Relations Law Reform Bill resemble the debates surrounding the introduction of the Employment Contracts Act in 1990-91 and the Employment Relations Act in 1999-2000?

⁴ 'Lobbyists' threat to miss Employment Relations Act deadline', *NZ Herald*, 17 December 2003.

⁵ 'Beware the plans of the wily Ms Wilson', *Dominion Post*, 8 December 2003.

⁶ *Editorial*: 'Labour law change comes at a price', *NZ Herald*, 6 December 2003.

Erling Rasmussen & Robin White (b)

Through the eyes of the media: the Employment Relations Law Reform Bill

The debate between the Government, the Opposition, employers and the unions before the enactment of the Employment Relations Act in 2000 gave the media plenty of fodder for provocative and interesting reporting. However, the Act faded quickly out of focus and it generated relatively few headlines over the next couple of years (Rasmussen & Ross 2004). From late 2003 onwards, the introduction of the employment Relations Law Reform Bill again brought employment relations to the fore of media reporting. This paper examines how the Employment Relations Law Reform Bill has been depicted in the print media. The time period covered, at this point, is the year 2003. At the time of writing this paper, the Bill had just been introduced to Parliament, and more interesting reports will undoubtedly appear before the law change is finally enacted.

There have been three major themes evident in the reporting of the Employment Relations Law Reform Bill: conflict, cooperation, and background pressure from the various labour market actors. The media has reported plenty of conflict between unions and employers and between Government and employers. However, rumblings of dissent between the Government and the unions have been more than balanced by suggestions of union and Government collusion prior to the Bill. Meanwhile, the background stories from Employment Court cases and comments by the various labour market actors have all contributed to the context surrounding the Review of the Employment Relations Act. The major issues portrayed by the media have been free-riding, the behaviour of the Employment Institutions, the 'transfer of undertakings' discussion and the effects on productivity and compliance costs.

Fine-tune or Tune up?

In February 2003, reports began appearing about the Governments intentions to fine-tune the Employment Relations Act, stating that a Bill amending the Employment Relations Act should be before Parliament by mid-year. According to the *NZ Herald*, Government spokespeople said the review was not aimed at rewriting the Act or changing its aims:

“It was to identify whether fine-tuning was required to ensure the act promotes - rather than simply permits - collective bargaining.

The review will also consider whether more administrative support should be given to facilitate multi-employer collective bargaining, particularly where the size of firms in certain sectors makes enterprise bargaining inefficient. Reductions in compliance costs associated with the bargaining process will also be studied. The department is consulting Business New Zealand and the Council of Trade Unions on the review. ⁷

The topic did not seem to be ‘big news’ – and it certainly was not generating the kind of reporting evident before the introduction of the Act in 2000 (see Rasmussen & Ross, 2004). It was not until July, when the Government was reported as being close to reveal its plans to ‘tweak’ the ERA, that the subject received in-depth media attention. In a major article titled ‘Battle lines drawn on jobs law review’ the *NZ Herald* listed ‘what unions want’ and ‘what employers want’:

“Unions wanted: protection of the conditions of workers when a business is sold or contracted out; promotion of, rather than merely permission for, collective bargaining; more concrete and meaningful good faith provisions; and moves to combat free-loading. /... / Employers wanted: prevention of unions having a monopoly over the negotiation of collective agreements; a ban on strikes to force employers into multi-employer collective agreements; abolition of the rule requiring staff who join a business that has a collective agreement to be subject to those conditions for 30 days and the freedom to replace striking and locked out members”⁸

Employer Discontent

In contrast to the above, there were in July and August a number of articles which focused on the conflict between the Government’s plans and business groups’ opposition. For example, the *Dominion Post* posted a large headline on the front page of their business section attesting to a ‘job law backlash’. The Government was seen to be bracing itself for a negative business response to its transfer of undertakings proposals and its plans to introduce four weeks annual leave. Business NZ’s Executive Director, Anne Knowles, stated that she had not been consulted on transfer of undertakings proposals since February, and that such proposals would be an anathema to business.⁹ The *NZ Herald* published a strong comment against the Government’s ‘worker-friendly’ proposals for their ‘union pals’, in the form of a business editorial. The free-rider issue was described as “...unions wanting to get a free lunch from people who do not want anything to do with them.”¹⁰ and, subsequently, that business should be wary of the “grumpy socialist elves” working in the “beehive basement”.¹¹ In the *Dominion Post*, the Government was described as being aware that it was ‘skating on thin ice’ with business,

⁷ ‘Employment Relations Act fine-tune underway’, *NZ Herald*, February 17 2003

⁸ ‘Battle line drawn on jobs law review’, *NZ Herald*, 21 July 2003

⁹ ‘Job Law Backlash expected’, *Dominion*, 16 August 2003.

¹⁰ Jim Eagles, ‘Unions after free lunch’, *NZ Herald*, 23 July 2003

¹¹ Jim Eagles: ‘Grumpy elves try new potions’, *NZ Herald*, 20 August 2003

but hoping that the select committee and consultation with Business New Zealand would diffuse opposition.¹²

On balance, there did not appear to be the same depth of employer discontent reported in the mainstream newspapers as there was in the business press. For example, the employers' argument seemed to be much more powerfully communicated in the *National Business Review*. Here an editorial described the workplace as being "under attack" and focused on Act MP Deborah Coddington's description of the ERA being part of a wider programme of 'death by 1000 cuts'.¹³ Again in the *National Business Review*, the ERA was described 'as a thorn in employers flesh', with business leaders, employers and recruitment consultants forecasting that the proposed changes would restrict productivity and deter investors.¹⁴

Rumblings in the Ranks

As the Bill to amend the Employment Relations Act was further delayed until just before Christmas¹⁵, other reports began to suggest a level of dissent between the Government and the unions, and within the Cabinet itself regarding the changes. At the biennial CTU conference in late October, Margaret Wilson's promise to 'curb the free-ride' made headlines, but her inability to reveal other details of the bill because of a suspected Cabinet hold-up 'unsettled' and 'disappointed' delegates. Reconsideration of the Bill was reportedly due to lobbying by the Food and Services Union for more radical changes to the transfer of undertakings clause. The clause was approved by Cabinet two months previously but the union's pressure to include 'succession contracts' had caused Cabinet to delay its final decision. Dissent between Cabinet ministers was reported, with more conservative ministers questioning the timing and practicality of the clause.¹⁶

Background Posturing.

The media debate over the ERA review was supported by background coverage of the various issues involved. The *free-riding* issue received extensive coverage. Act MP Rodney Hide was continuously reported in his campaign to expose preferential and bonuses payments made to PSA members in various government department collective agreements. Headlines such as 'Union Pay bribes anger Hide' and 'Hide uncovers another PSA deal' were used.¹⁷ Earlier in the year, the deal between Fonterra and the Dairy

¹² 'Discontent has a familiar refrain', *Dominion Post*, 28 August 2003.

¹³ 'Workplace still under attack', *National Business Review*, 22 August 2003.

¹⁴ 'ERA deemed a thorn in employers' flesh', *National Business Review*, 12 September 2003

¹⁵ 'More delays hit employment law', *NZ Herald*, 4 November 2003.

¹⁶ 'Changes in labour law go back to Cabinet', *Dominion Post*, 23 October, 2003; 'Unions fear Government holiday over annual leave', *Dominion Post*, 30 October 2003; 'Holidays the good news but unions seek more changes', *NZ Herald*, 7 November 2003

¹⁷ 'DOC forks out more to union members', *Dominion Post*, 10 July 2003; 'Hide uncovers another PSA deal', *NZ Herald*, 28 July 2003; 'Union pay bribe angers Hide', *Dominion Post*, 23 June 2003.

Workers Union to deduct a bargaining fee from non-union staff was found to be illegal by the Employment Court.¹⁸ Unions were reported as describing the finding as very conservative and as disregarding international laws on collective bargaining.¹⁹ They gained further headlines when they took the issue to the Court of Appeal.²⁰

The subject of compliance costs was often in the media. For example, one article overviewed and calculated the total costs to business from various forms of legislation, including the Employment Relations Act. Business New Zealand and accounting firm KPMG were reported as planning to run a survey annually, 'as a contribution to the debate'.²¹

The Bill

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¹⁸ 'Court rules against Union', *NZ Herald*, 12 February 2003.

¹⁹ 'Court ruling 'conservative''. *Dominion Post*, 12 February 2003.

²⁰ 'Fee bargaining drive advances', *NZ Herald*, 26 June 2003

²¹ 'Compliance cost now \$3400 per employee', *Dominion Post*, 25 August 2003.

²² 'Nurses, teacher fear meddling', *NZ Herald*, 5 December, 2003. 'Unions to get more power' *NZ Herald*, 5 December, 2003. 'Bill will force firms to negotiate', *NZ Herald*, 5 December 2003. Jim Eagles: 'New Bill just more of the old', *NZ Herald*, 5 December, 2003. 'Good faith at the heart of employment reform bill', *NZ Herald*, 5 December 2003.

²³ 'Experts shake heads over job relations bill', *NZ Herald*, 6 December 2003

Serious employer and business discontent with the Bill became apparent, and these were forcefully communicated in long articles by employment lawyers Rob Towner²⁴ and Peter Kiely. Concerns were raised about the good faith provisions, the transfer of undertakings provision and the new 'objective' test to assess what a fair and reasonable employer should do when an employee is dismissed.²⁵ The Employers and Manufacturers Association and Business New Zealand both demanded more time to prepare submissions on what they saw as the myriad of changes in the Bill and declared that they would miss the mid-February close-off.²⁶ Through the eyes of the mainstream media, it now seems that employers have reason to be afraid. The *Dominion Post* devoted an article to this subject, accusing Margaret Wilson of a sneaky, pro-union stance funded by a lifetime in tax-paid academia²⁷. Meanwhile, the *NZ Herald's* editorial stated that the Bill was a series of small steps which would cumulatively force employers to conform with a union agenda.²⁸

Conclusion

From the media's perspective, there was conflict between employer, union and government expectations from the review. However, the themes of union and government collusion, and government efforts at gaining cooperation and consensus between its 'social partners', were well developed. The growing sense of union displeasure at the delays in introducing the Bill was also obvious. However, the depth of employer discontent became most visible in the mainstream media after the Employment Relations Law Reform Bill was introduced. The issues of how the Bill deals with free-riding, transfer of undertakings, changes to good faith provisions covering collective bargaining, and the introduction of an objective test for assessing the actions of a fair and reasonable employer are all serious points of contention. With the Employers and Manufacturers Association's refusal to meet the close-off date for submissions on the Bill, the reader is left with the impression that employers and business groups are now seriously annoyed. Moreover, given the stance taken in recent articles by both major newspapers, it seems that the media believe employers are justified in their concerns.

[this paper is based on a longer research report which can be obtained from Dr Erling Rasmussen, on e-mail: e.rasmussen@auckland.ac.nz. There is also a shorter report – Rasmussen & White 2004a – available on: www.employment.org.nz.

Rasmussen, E. & Ross, C. 2004. 'The Employment Relations Act through the eyes of the media.' in Rasmussen, E. (ed.): *Employment Relationships: New Zealand's Employment Relations Act*. Auckland, University of Auckland Press.

²⁴ Rob Towner: 'Grounds to worry over work bill', *NZ Herald*, 10 December 2003

²⁵ 'Bill limits right to fire says lawyer', *NZ Herald*, 13 December 2003.

²⁶ 'Lobbyists' threat to miss Employment Relations Act deadline', *NZ Herald*, 17 December 2003

²⁷ 'Beware the plans of the wily Ms Wilson', *Dominion Post*, 8 December 2003.

²⁸ Editorial: 'Labour law change comes at a price', *NZ Herald*, 6 December 2003.