

New Zealand's new industrial law enshrines unions as enforcers of "productivity" and "efficiency"

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New Zealand's Labour-Alliance coalition government, voted into office at the general election held last November, tabled its reform of the country's industrial laws in parliament last month. During the election campaign, the new legislation had been criticised by employer lobby groups, which accused the Labour and Alliance parties of wanting to return workplaces to a period of "union domination".

A careful reading of the bill shows that the government has no intention of re-establishing even the limited rights, which were ripped up under the previous National government's 1991 Employment Contracts Act (ECA). This legislation led to a wave of assaults on the working class over the past decade to drive down wages and conditions. It included a new system of individualised employment contracts, casualisation and the removal of existing rights, voluntary unionism and the banning of most forms of industrial action, in particular any strikes not connected with contract negotiations.

Labour's Employment Relations Bill, in the words of the government, aims to improve "productivity" by instituting "fairness" and "good faith" in the industrial bargaining process. In plain English, this means assisting employers to step up the exploitation of workers behind a façade of class collaboration and inclusiveness. In a speech to a seminar at Victoria University in Wellington this week, Labour Minister Margaret Wilson claimed that in framing the bill she had taken into account the requirements of "not only those representing employees and employers, but also the legal community". She went on to state that the employment relationships had to be built on "good faith and mutual trust".

What this means is that while the bill preserves many of the key features of the ECA, it restores the union bureaucracy to a central role in enforcing them. The new legislation is based on a document with the same name, prepared by the NZ Council of Trade Unions (CTU) prior to the 1999 elections. The law promotes collective bargaining, in which workers will be under the control of the unions, and establishes that negotiations between employers and the unions be carried out on the basis of "fairness" and "balance".

The new bill will set up a sophisticated legal mechanism intended to contain and suppress the struggles of the working class. All of the restrictions on the right to strike contained in the Employment Contracts Act remain, except for one change that allows for strikes in support of multi-employer contracts. The new bill goes further than the ECA in establishing a "cooling off" period at the beginning of contract negotiations, during which strikes and lockouts are banned for 40 days. Essentially, strikes are only legal where a contract has expired and workers have entered into negotiations to renew it.

Under the new legislation, the unions have the exclusive right to negotiate collective contracts. So the more than 80 percent of workers who are not union members have, in practice, no legal right to strike,

unless they now rush to rejoin the unions. Under the former ECA, any two workers could strike for a collective contract even if they were not in a union. That right has been written out of the legislation ensuring that any industrial action—if it is to be legal—is firmly under the control of the trade union bureaucracy.

Union leaders point to the fact that the legislation bans the use of scabs during a strike or lockout. However, Employers Federation chief executive Anne Knowles has indicated that employers are already looking at ways to circumvent this provision. She believes that the bill will allow for volunteers or workers on individual contracts to carry out duties "as required" to keep operations going. The provision does not apply in broad circumstances where a threat to "public health and safety" can be demonstrated.

Moreover industrial disputes will be shunted into a complex series of mediation processes. The powers of the mediation service and the Employment Court are to be increased, along with the creation of a new Employment Relations Authority. A layer of union delegates and workers will be schooled in the new mechanisms with the aid of "employment relations education leave" with the object of "improving relations among unions, employees and employers".

At the core of the legislation is the central role assigned to the trade union bureaucracy. Only the unions will have the right to negotiate collective and multi-employer agreements, to be party to collective agreements and agree to variations in these agreements. Protocols on "good faith" bargaining will be drawn up by joint employer-union committees, chaired by nominees of the government, most likely on an industry-by-industry basis. Union officials will have access to company financial forecasts and the right to enter workplaces to recruit members. There is also a legal entitlement for unions to organise two paid stopwork meetings per employer per year.

For the CTU bureaucrats, who have long lost any credibility in the eyes of the working class, all of this is like a lifeline. Recently elected CTU President Ross Wilson proclaimed that the new law would spark a "union revival". He no doubt calculates that the legislative provisions will force workers to rejoin the unions despite widespread disillusion and anger over their record of the last decade.

When the Employment Contracts Act was first introduced into parliament in 1991, a groundswell of opposition developed against the proposed legislation and rank-and-file unionists began demanding that the unions launch a nationwide strike. At a Public Service Association conference, a resolution calling for a national stoppage against the ECA was carried by 45,000 card votes to just over 15,000 against. At the same time, industrial disputes erupted among factory workers, nurses, teachers, pulp and paper workers, shop employees and bus drivers. Savage cutbacks to welfare in the 1991 budget also led to large-scale public demonstrations

against the government's economic and social policies.

Led by its president Ken Douglas, the CTU worked vigorously behind the scenes to break up the strike movement. CTU leaders visited the affiliated unions and argued that it should not lead a campaign against either the ECA or the welfare benefit cuts. According to Douglas, the era of confrontational industrial relations was over and trade unions had to face "the realities of global competition".

As a result of intense pressure from the CTU hierarchy, union leaderships either ignored, or in the case of the Public Service Association, simply overturned rank-and-file resolutions demanding action. The CTU executive voted against industrial action over the ECA—a decision subsequently endorsed by affiliated unions at a CTU conference later that year. Douglas defended the CTU's perfidy by blaming the working class, claiming that workers would not have supported a general strike.

The Employment Contracts Act passed into law unchallenged and, combined with the cuts to welfare, had devastating results for working people. One consequence was that workers turned away from the unions in droves. From a total union membership of almost 600,000 workers in 1991, or about 45 percent of the workforce, union membership by the end of 1998 had dropped to just 17 percent. Many industries, such as construction, agriculture and mining have been almost entirely de-unionised.

The unions have no plans to use the new legislation to rock the boat. In fact, CTU economist Peter Conway criticised the ECA for failing "miserably" to deliver on its promise of increasing economic "efficiency" and "productivity", claiming that the new legislation would achieve both these ends. "We do believe the new law will encourage increased loyalty, trust and confidence in relationships between employers and employees so people will be prepared to go the extra distance. This, combined with more emphasis on skills training and innovation, will probably have a positive effect on the economy," Conway boasted.

Employers are also warming to the new legislation. The April issue of the *Employer* was fulsome in its praise of government ministers for their "balance" and "willingness to listen" during the drafting phase of the bill. The magazine is produced by the Employers' Federation, which was previously a vociferous critic of the legislation. But the latest issue reported that the government had responded to employer "concerns" with "practical suggestions" and "openness to change". In plain language, this means that employers have succeeded in influencing the final form of the legislation, and are intending to pursue further changes as it moves through the parliamentary select committee process.

The *Employer* identified a number of areas where the government has made changes specifically to accommodate the wishes of big business:

* Transport remains designated as an "essential industry," which means that 14 days' notice of strike action must be given where it would affect the operations of the ports, shippers, airlines or the Inter-Island ferries. In the past, the military has been used to break strikes in these "essential industries".

* The link between collective and individual contracts has been broken. Even under the Employment Contracts Act, many individual contracts were, in theory, meant to be "not inconsistent" with collective contracts prevailing in the same industry. This very limited protection is no longer a requirement.

* The Employers' Federation claims it has succeeded in watering down the government's pre-election commitment to observe provisions laid down by the International Labour Organisation. In particular, the federation boasts that the government has now accepted that the "prescriptive and largely outdated case law that has been built around (ILO) conventions over the past 50 years", for example the legal right of workers to conduct "political" strikes, should not be regarded as establishing any precedents.

* A "compromise" has been reached with the government to prevent dependent contractors—i.e. workers who are currently deemed to be self-employed—from being turned back into employees. This saves employers millions of dollars annually because they do not have to bear the costs of accident insurance, holiday pay, superannuation and other entitlements for independent contractors.

* The time limit for lodging a personal grievance case is kept at 90 days, insisted upon by the employer lobbyists. The unions had argued for a 12-month limit.

Some employers have already amended their operations to take advantage of the new laws through arrangements with the unions. At the end of February, the fast-food chain McDonald's negotiated a collective agreement with the Service and Food Workers Union to cover 5,100 workers in 146 restaurants. The deal provided for a 3 percent pay rise and gave formal recognition to the union for the first time in five years. The company said it had been "happy" to reinstate the collective contract, under which most McDonald's workers still earn little more than half the national average wage.

The practical workings of the new legislation have already been revealed in the health sector where Health Minister Annette King and Finance Minister Michael Cullen have written to hospital administrators instructing them to limit pay rises and make staff work harder. Their letter demanded that "increases in pay should be offset with productivity improvements so that all settlements will be cost neutral". While the letter endorsed "good faith bargaining", it directed hospitals to consider "alternative remuneration structures that minimise increases in personnel costs". Responding to union criticism, King said: "I don't know what they would expect from both Mr Cullen and myself. It would be very strange for a Government to say 'pay what you like'... it's not just open slather."

The introduction of the new legislation also reveals the degree to which the junior coalition partner, the Alliance, has dropped its "left" posturing and has openly embraced the program of the Labour Party. NewLabour, the main component of the Alliance, was formed as a breakaway from Labour in the late 1980s in an attempt to contain the hostility of workers angry at the Labour government's implementation of pro-market restructuring, including extensive privatisation, job cuts and cutbacks to social services. The Alliance has always presented itself as the "left" alternative, running at the last elections on a promise that it would act in government to keep Labour "honest".

The Alliance has raised no principled or fundamental differences with the new legislation. During its preparation, Associate Labour Minister Laila Harre, an Alliance MP, huffed and puffed a little, claiming to have "substantial differences" with Labour's proposal to make collective contracts available only to union members. She was joined by the Trade Union Federation, a rival union group to the CTU, which insisted that the Alliance make "no compromise" on the issue. In the event, the "dispute" proved to be a storm in a teacup with the Alliance agreeing to Labour's demands.



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