

# CLEW'D IN

Newsletter of the Centre for Labour, Employment and Work (CLEW)

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## NOTICES

### Research services

CLEW is able to offer research services and to undertake specific research projects on collective bargaining and employee provisions; to review employee benefits; to develop employee engagement or workplace dynamics surveys.

If you are considering a research project involving your workforce or your membership contact us to see if we can help.

### CLEW CONTACTS

Centre Manager – Sue Ryall. Tel: 04 463 5143; [clew-events@vuw.ac.nz](mailto:clew-events@vuw.ac.nz).

Director – Dr Stephen Blumenfeld.

Tel: 04 463 5706, [stephen.blumenfeld@vuw.ac.nz](mailto:stephen.blumenfeld@vuw.ac.nz).

## LIES, DAMNED LIES, AND STATISTICS! COMMENTS ON THE RECENT WAVE OF STRIKE ACTIVITY

**Dr Stephen Blumenfeld, Director, CLEW**

In June, National Party Leader Simon Bridges claimed, “After less than nine months of this Government 32,000 workers have been involved in industrial action, or signalled their intention to be, compared to just over 27,000 that undertook strike action in the entire nine years of the previous Government.” He highlighted this point with a blue and red bar chart emblazoned with the title “Number of people striking.”

Taken at face value, the data the Leader of the Opposition offered would appear to support his contention that the current Government has opened the floodgates to industrial disruption. Under closer examination, however, Mr Bridges was comparing, not simply apples with oranges, but rather apples with *apples plus oranges*, and there were far more oranges than apples! That is, what he was equating was the number of workers having taken strike action in the previous nine years with the number of workers either having gone on strike or expressing their “intention to” strike in the previous nine months.

Despite the National Party Leader’s dubious use of statistics at the time, around 4000 state sector workers at IRD and MBIE did eventually follow through with their threat to stage two, 2-hour stoppages in pursuit of better wages and conditions the following month. In addition, 29,500 nurses walked off the job for two days in July, and around the same number of primary teachers and principals walked off the job for a full day the following month. Likewise, 39 medical advisers launched half-day rolling stoppages for five weeks from 17 July, and bus drivers in Auckland, Waikato and Wellington have also walked off the job in the past month.

This would appear to give new life to the contention that the Labour-led Government is, as Mr Bridges suggested, opening the floodgates to industrial disruption. It begs the question, though,

of whether strikes are more likely to occur under Labour than National, which was the National Party Leader's original contention.

The answer to this depends on which measure of industrial action one considers. In terms of simply the number of strikes and lockouts, for instance, there appears to have been around three times the number of work stoppages under Helen Clark's Labour-led Government than under John Key's National-led Government. Moreover, the difference in the number of workers involved in industrial disputes between the 1999-2008 period and the 2008-2017 period is even more stark – 195,400 compared to 27,200. Added to this, MBIE's 'official' work stoppage data suggests strike activity dipped to an all-time low following enactment by the National-led Government in 2013 of severe constraints on striking. These include more draconian notice requirements and extension of an employer's right to assess penalties against union members to partial strikes.

*While the current Government intends to enact changes to the Employment Relations Act which would reverse most of those earlier changes, it's important to consider here that the recent wave of strike activity has occurred while those constraints on industrial action remain in effect.*

While the current Government intends to enact changes to the Employment Relations Act which would reverse most of those earlier changes, it's important to consider here that the recent wave of strike activity has occurred while those constraints on industrial action remain in effect. Furthermore, there are serious doubts about the accuracy of the New Zealand's 'official' work stoppage data. For instance, neither a strike in 2016 involving

3000 junior doctors nor a series of strikes involving an equivalent number of anaesthetic technicians, pharmacists, physiotherapists, mental health workers and occupational therapists in 2015 appear to have been included in those counts. Yet, even ignoring discrepancies in the data, considering the recent wave in strike activity, National's policy changes enacted five years ago have clearly done little if anything to prevent strikes.

Also, despite emphasis typically placed on the number of strikes or the number of workers involved in industrial action, the most reliable indicator of industrial action is 'strike volume', the number of working days lost due to strikes and lockouts. By this measure, the peak – by a wide margin – in annual strike activity in terms of both working days lost and estimated loss in wages and salaries over the past 25 years is 2012. In that year, during John Key's National Government's 2nd term, a total 78,589 working days were lost from only ten work stoppages. Although, if facilitation fails to break the current deadlocked contract negotiations between NZEI Te Riu Roa and the Ministry of Education, or if the 16,500 workers covered by the Secondary Teachers' Collective Agreement which expired on October 27 take strike action, total working days as a result of industrial action could top that figure by year end.

But, is it fair – or even reasonable – to place the blame for strike activity on the party holding sway in Parliament

*Strike activity is significantly linked to economic rather than political factors. On the one hand, working time lost due to strikes and lockouts moves in inverse proportion to growth in real wages.*

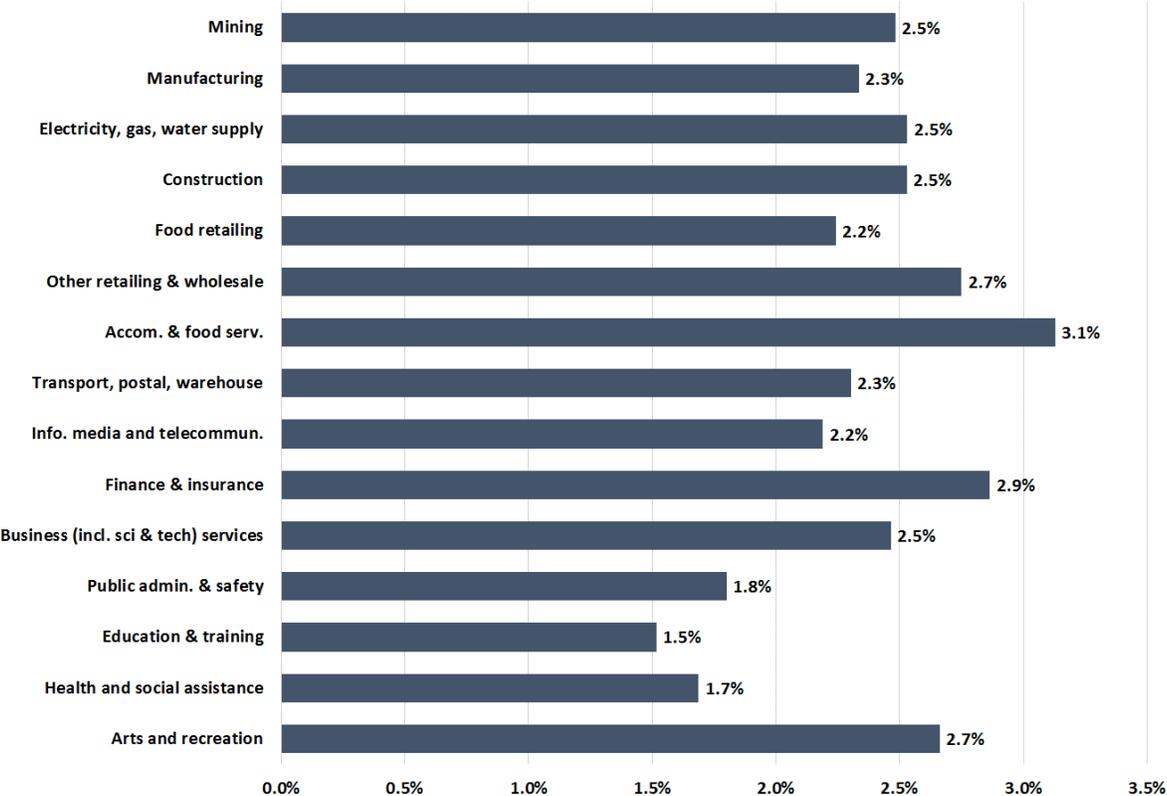
at the time when such activity occurs? International research would suggest otherwise. That is, strike activity is significantly linked to economic rather than political factors. On the one hand, working time lost due to strikes and lockouts moves in inverse proportion to growth in real wages. Therefore, when real wages fall, there is an upsurge of

strikes, presumably aimed at satisfying workers’ demands associated with the loss of purchasing power. Conversely, when real wages increase commensurate with the rate of inflation, industrial action declines. Yet, because inflation has been running at record low levels since the GFC, this doesn’t help explain the recent wave of strike activity in New Zealand.

On the other hand, though, when unemployment is relatively low, as is currently the case, there is often an intensification of strike action. For instance, due to workers’ increased fear of job loss and the lack of alternative job prospects, strike activity has been shown to decrease when unemployment is on the rise. This was the case during the early 1990s, notwithstanding the significant decline in union membership and density following enactment of the ECA, and between 2008 and 2012, in the aftermath of the GFC.

Conversely, strike activity intensifies in periods of increased employment, when unions are better able to demand pay increases from a position of power. It is noteworthy, in this regard, that the recent work stoppage activity is primarily centred in areas of the labour market experiencing severe labour shortages, such as nursing, education and public transportation. As the research suggests, supply and demand for labour clearly plays an important role in determining strike activity.

**Weighted mean annual wage change by industry, 2011-2018**



A third ostensibly non-political factor known to exacerbate strike activity is a widening pay gap and growing pay disparity between comparable groups of workers. This too is undoubtedly relevant to the current spate of strikes over pay and conditions around the country. As shown in the figure above, while these employees fared better than CPI inflation over that period, pay increments negotiated through collective bargaining in health and social assistance, education and training and public administration and safety, which together comprise the central

Government sector, has lagged considerably behind that for workers in all other areas of the labour market since June 2010.

Importantly, employees of central government on collective agreements have fallen well behind the rate of increase in the labour cost index (LCI), which accounts for pay increments of all workers in the labour market, irrespective of whether they are on collective or individual employment agreements. All collectives covering central government employees settled during the nine years of under the previous Government were subject to fiscal constraint. Hence, if one insists on placing blame for the current situation involving public sector workers either striking or merely threatening to take strike action, the former Government's cost-cutting and spending constraints in health, education and the broader public service over that period would perhaps be a good place to start!

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## **LEGAL UPDATE: PAY RATES IN COLLECTIVE AGREEMENTS – JACKS HARDWARE AND TIMBER LTD V FIRST UNION INC [2018] NZEMPC 94**

**Peter Kiely, Partner, Kiely Thompson Caisley**

In this case, First Union successfully obtained external intervention to conclude collective bargaining by applying for the Employment Relations Authority (the **Authority**) to fix the provisions of a collective agreement under section 50J of the Employment Relations Act 2000 (the **Act**). At the time of writing, Jacks Hardware and Timber Ltd (**Jacks**) has challenged this determination in the Employment Court and has been granted a stay of the Authority proceedings.

### **Factual Background**

Jacks and First Union commenced bargaining in October 2013. In particular, First Union wanted to address Jack's use of remuneration reviews for setting wage increases by ensuring that the collective agreement provided for minimum wage rates and wage rate increases.

Jacks' position was that the remuneration structure proposed by First Union was entirely different to the existing structure because it was not fundamentally based on rewarding individual performance.

After protracted bargaining and a failed mediation, Jacks unilaterally declared on 20 February 2015 that it had taken bargaining as far as it could and had a genuine reason based on reasonable grounds to conclude the bargaining without reaching an agreement (as was required under the 'old' section 33 of the Act before it was amended on 6 March 2015).

The matter went to the Employment Court, which found that Jacks' objection to the inclusion of a remuneration clause was not a genuine reason for refusing to enter into a collective agreement, and the refusal was not based on reasonable grounds. The Authority was directed to undertake facilitation to address the wage rate issue. Jacks ultimately rejected a recommendation issued by the Authority and requested further facilitation. First Union opposed further facilitation arguing that it would not assist the parties. It subsequently lodged an application with the Authority to fix the wage rate provisions of the collective agreement.

The Authority was required to determine under section 50J(2) and (3) of the Act whether it was appropriate in all the circumstances for it to fix the wage rate provision of the collective agreement on the grounds that:

- a) there had been a breach of good faith which had occurred in relation to bargaining;

- b) that the breach had been serious and sustained so as to significantly undermine bargaining;
- c) that all reasonable alternatives for reaching agreement had been exhausted; and
- d) that fixing the provisions was the only effective remedy for the party affected by the breach of good faith.

### Employment Relations Authority Determination

The Authority found that Jacks' earlier breach of good faith (its unilateral declaration that it would not conclude a collective agreement) which had been identified by the Employment Court had not been remedied by the Employment Court's direction for facilitation and as such, was sufficient to satisfy the first part of the test.

In assessing whether the breach had significantly undermined collective bargaining, the length of time parties had been engaged in bargaining was a highly relevant factor. The Authority also found that all reasonable alternatives for reaching an agreement as to what wage rates were to be included in the collective agreement had been exhausted. These included mediation, facilitation and litigation, all of which had failed.

Furthermore, the Authority rejected Jacks' proposal of leaving the collective agreement un concluded as an available alternative. As a result, the Authority found that fixing the wage rate provision in the collective agreement was the only effective remedy to conclude bargaining. However, before it could fix the terms of the collective agreement, Jacks challenged the Authority's determination and the parties now await the Employment Court's judgment.

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### 2018 CONFERENCE ON LABOUR, EMPLOYMENT AND WORK IN NEW ZEALAND – “WORK AND WELLBEING”

The 2018 Conference on Labour, Employment and Work, at Victoria University of Wellington aims to tackle some of the big issues facing employers and employees, including gender equity, health and wellbeing, and the future of technology in the workplace.

Organised biennially by the University's [Centre for Labour, Employment and Work \(CLEW\)](#), the conference was established more than 30 years ago and brings together leading labour market scholars, researchers of work and workplaces, and policymakers. The theme of [the 2018 conference](#) is 'Work and wellbeing' which will be explored by the two keynote speakers from very different perspectives.

## Employment Agreements Update 2017/2018

The 2018 edition of Employment Agreements: Bargaining Trends and Employment Law Update is available from CLEW.

The book is seen as the essential reference for employment relations experts and the only source of information on current provisions in employment agreements. In our 2018 survey year we added more than 1000 agreements to our database to give a sample of around 2000 collective agreements current between 1 June 2017 to 31 May 2018.

It also includes an excellent overview from the team at Kiely Thompson Caisley of key recent employment law cases across the past year.

[Download](#) a subscription form from our publications page or order and pay with a credit card through our [payment portal](#). If you need the booked delivered urgently there is an option to have it couriered by paying an additional \$10.

We are very pleased to have the Minister of Finance, the Rt Hon Grant Robertson opening the Conference. The Government has committed to a budget that puts wellbeing at the centre and the Minister's strong interest in future work and the impact on wellbeing makes him an ideal person to launch the Conference.

Marian Baird, Professor of Gender and Employment Relations from the University of Sydney will give the MartinJenkins keynote address that explores the four 'life stages' of women's employment, and equality gaps in working hours, pay and superannuation. Last year Professor Baird was named in Apolitical's Top 100 Most Influential People in Gender Equality list and she is recognised internationally as a leader in research on women and work.

The MBIE key note address on the second day of the conference is **Göran Roos**, a Swedish academic and businessman. His address focuses on what is required in work futures in the face of digital and climate changes – 'Moving to a digital low resource footprint future – implications for work'.

The papers submitted for the conference include topics on health, safety and wellbeing - attitudes to health and safety, mental health at work, and workplace structures for health and wellbeing at work; Gender equity in the workplace - pay equity, occupational segmentation, and workplace provisions that support gender equity; employment relations and institutions including inequality and skills and training.

**The Conference is due to be held on November 29 and 30 at Victoria University's Pipitea Campus (Rutherford House). Information is available on the [website](#).**

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## UPDATE ON EMPLOYMENT RELATED LEGISLATION

With much activity that impacts on employment on the legislative agenda we thought it was timely to update everyone on what is happening with the various pieces of legislation and the government working groups.

### Legislation:

**Equal Pay Amendment Bill** - submissions to the Education and Workforce select committee close on 28 November.

**Employment Relations (Triangular Employment) Amendment Bill** - the select committee report is due back to the House on 29 November.

**Employment Relations Amendment Bill** - the select committee report was due back to the House on 7 September but has yet to have its second reading.

### Working Groups:

**Fair Pay Agreement Working Group** is expected to report back to the Minister by the end of November.

**The Holidays Act Working Group** will report back to the Minister in mid-2019.

## CLEW – WHO ARE WE?

The Centre for Labour, Employment and Work (CLEW) is situated in the School of Management at Victoria University of Wellington. Our research and public education programme are centred on three pillars of research:

### **Organisational dynamics and performance**

- What happens in organisations matters. From strategies, business processes, management practices, worker experiences to knowledge sharing, collaboration, innovation, productivity, engagement and trust – these all impact how individuals and organisations perform.

**Contact person: Dr Geoff Plimmer**

**Tel: 04 463 5700**

**Email [geoff.plimmer@vuw.ac.nz](mailto:geoff.plimmer@vuw.ac.nz)**

### **Employment rights and institutions**

- What is the role of trade unions and of collective bargaining in New Zealand's contemporary economy and society? Is the current system of employment rights and the institutions and processes for enforcement of those rights in New Zealand still relevant? Is it efficient, and does it contribute to overall productivity growth?

**Contact person: Dr Stephen Blumenfeld**

**Tel: 04 463 5706**

**Email: [stephen.blumenfeld@vuw.ac.nz](mailto:stephen.blumenfeld@vuw.ac.nz)**

### **Changing nature of work and the workforce**

- Rapid and increasing change in the external environment of organisations has fundamentally changed the world of work. Factors shaping how we organise and participate in work include rapid technological development, intensifying environmental and resource pressures, globalised markets, mobile workforces and changing demographics.

**Contact person: Dr Noelle Donnelly**

**Tel: 04 463 5704**

**Email: [noelle.donnelly@vuw.ac.nz](mailto:noelle.donnelly@vuw.ac.nz)**



Centre for Labour,  
Employment and Work

*CLEW Contacts:*

*Centre Manager – Sue Ryall. Tel: 04 463 5143*

*Director – Dr Stephen Blumenfeld. Tel: 04 463 5706*