Compulsory Arbitration in New Zealand, 1894-1901

THE EVOLUTION OF AN INDUSTRIAL RELATIONS SYSTEM

WILLLIAM PEMBER REEVES was the principal author of the Industrial Conciliation and Arbitration Act (1894), and New Zealand's system of compulsory arbitration was based upon that Act. Nevertheless the arbitration system was not simply an embodiment of Reeves's ideas about industrial relations, as these familiar facts appear to suggest. In the late 1890s trade union leaders, and to a lesser extent employers, found that the Arbitration Act could be used for purposes that had never been anticipated by Reeves, and consequently the system of labour relations which emerged bore only a distant relationship to the ideas which he had put forward in support of his bill during its troubled passage through parliament.

Early commentators frequently drew attention to the discrepancy between Reeves's predictions as to how the Arbitration Act would work and how it actually did work, but the point has often been ignored in more recent historical writing.[1] Noel S. Woods, for example, has written that the 'industrial conciliation and arbitration system had been introduced to create orderly industry-wide patterns of wages and conditions of employment'.[2] Others have described the Arbitration Act as 'legislation against sweating'.[3] Yet at no point before the passage of the Arbitration Act did Reeves suggest that the purpose of his measure was to

1 Henry Broadhead, *State Regulation of Labour and Labour Disputes in New Zealand: a Description and a Criticism*, Christchurch, 1908, p.10; James E. Le Rossignol and W.D. Stewart, *State Socialism in New Zealand*, New York, 1910, p.226; Bernhard Wise, in *National Review*, 1902, quoted in Mary T. Rankin, *Arbitration and Conciliation in Australasia: the Legal Wage in Victoria and New Zealand*, London, 1916, p.131.

2 N.S. Woods, 'Industrial Relations Legislation in the Private Sector', in John M. Howells, Noel S. Woods, and F.J.L. Young, eds, *Labour and Industrial Relations in New Zealand*, Carlton, Victoria, 1974, p.89.

3 Miles Fairburn, 'The Rural Myth and the New Urban Frontier: An Approach to New Zealand Social History, 1870-1940', *New Zealand Journal of History* IX, 1 (April 1975), 11.

establish legal minimum wages for industry in general or sweatshops in particular. Indeed, if the Act had worked as Reeves had predicted it would, with the majority of industrial disputes being settled voluntarily before Conciliation Boards and appeals to the Arbitration Court being 'very few and far between', then a system of general wage-fixing by the Court could not have developed.[4]

Historians have also greatly exaggerated the importance of the phrase in the Act's original title stating that one of its purposes was 'to encourage the formation of Industrial Unions and Associations'. These words have been taken to mean that Reeves was deliberately seeking to bolster the strength or at least the numbers of trade unions in New Zealand and, since the number of trade unions did rise rapidly under the auspices of the arbitration system, a direct relationship between the purpose and the outcome of the legislation is inferred.[5] Yet Reeves did not say that this was his purpose when the legislation was under discussion. He claimed that his measure was even-handed, favouring neither employers nor employees, and he strenuously denied the charge that the Arbitration Act would drive non-union labour into trade unions.[6] As to the phrase about encouraging the formation of industrial unions, which Reeves borrowed verbatim from C.C. Kingston's South Australian bill of 1890, it applied to unions of employers as well as employees, and was paid very little attention while the bill was being debated. In 1896, however, the first President of the Arbitration Court, Mr Justice Williams, justified his award of preferential employment for trade unionists in the boot trade by referring to these words in the Act.[7] Conservatives were outraged and argued that Reeves's intentions had been distorted. He had merely wished, they said, to ensure that only unions had *locus standi* before the Court.[8] If Reeves did have any further intentions in 1894 he did not say so.

Of course it is possible that Reeves and his supporters in the trade unions did anticipate that the Arbitration Act would greatly strengthen the unions, but for tactical reasons chose not to say so. The fact that trade union leaders and labour men in parliament supported the measure indicates that they hoped organized labour would benefit in some way from it. But it seems likely that neither Reeves nor his union supporters

4 The words quoted are from a speech Reeves delivered in Auckland some time in 1892. See a newspaper clipping without specific date, William Pember Reeves MSS., Turnbull Library, Wellington. He said the same kind of thing on many occasions. See for example, *New Zealand Parliamentary Debates* (NZPD), LXXVII (1892) 32; ibid., LXXXIII (1894), 129.

5 See, for example, Keith Sinclair, *William Pember Reeves, New Zealand Fabian*, Oxford, 1965, p.206.

6 James Holt, 'The Political Origins of Compulsory Arbitration in New Zealand: a Comparison with Great Britain', *New Zealand Journal of History*, X, 2 (October 1976), 108.

7 *Christchurch Press*, 21 November 1896.

8 NZPD, CV (1898), 675.

foresaw the manner in which unions would be able to take advantage of compulsory arbitration or the extent to which they would do so since initially unions were rather slow to register under the Act.[9] Probably unionists had thought that compulsory arbitration might save them from total disaster if they became involved in a conflict where the employers had the upper hand, such as the maritime strike of 1890, and did not realize the full potential of the Act until the Seamen's Union forced the powerful Union Steamship Company to appear unwillingly before the Otago Conciliation Board in February 1897.[10]

What Reeves did stress above all else in his advocacy of compulsory arbitration was the harmful effects of strikes and lockouts and the need for a means of enforcing industrial peace. There were, indeed, no significant strikes and lockouts in New Zealand for several years after the passage of the Arbitration Act and Reeves, not surprisingly, claimed that his measure was working according to plan.[11] The Act had been designed to prevent strikes. The machinery established by the Act had been resorted to with increasing frequency. Subsequently there were no strikes of significance until 1906. Surely here at least there is a direct link between what was intended and what was achieved.

But was the Arbitration Act responsible for the industrial peace of the late 1890s and the early years of the twentieth century? One cannot, of course, be dogmatic about what would have happened in the absence of the Act but there are good grounds for scepticism. First of all, there was no more industrial conflict in the years immediately preceding the establishment of the conciliation and arbitration machinery than there was in the years which followed. Although the Act was passed in 1894 it did not take affect till 1895, and the unwillingness of employers to participate in elections for their representatives on the Conciliation Boards delayed matters further. Reeves was forced to introduce amending legislation in 1895 giving the government power to fill vacancies on the Boards by appointment.[12] Not till 1896 did the Conciliation Boards actually begin to deal with disputes. Thus 1894 and 1895 were the last pre-arbitration years and the Department of Labour reported for 1894-5 that 'labour troubles during the year have been few and insignificant', and for 1893-4, 'strikes during the year have been few in number and only one of these has caused more than local interest.'[13]

Furthermore, a close examination of the cases which came before the

9 Shelly Griffiths, 'Compulsory Arbitration and the Unions: Dunedin, 1893-1898', B.A. Hons research essay, Otago University, 1975, pp.10-12.

10 *Otago Daily Times,* 5 February 1897.

11 William Pember Reeves, *State Experiments in Australia and New Zealand,* London, 1902, II, 171.

12 NZPD, CV (1898), 669-670; *New Zealand Herald,* 22 September 1899; New Zealand Department of Labour, *Annual Report,* 1896, *Appendices to the Journals of the New Zealand House of Representatives* (AJHR), 1896, H-6, vi; *Industrial Conciliation and Arbitration Amendment Act,* 1895, Section Six.

13 Department of Labour, *Report,* AJHR 1894, H-6, 1. ibid., 1895, 6.

Boards and the Court in the late 1890s shows that only a small minority of them arose from situations that would seem likely to have produced strikes or lockouts had there been no Arbitration Act.[14] There were some such cases. The first dispute to be dealt with by a Conciliation Board involved coal-miners in the Westland district. At Denniston, the Westland Coal Company reduced hewing rates in 1896 and dismissed miners who refused to accept them. The case was referred to the Westland Conciliation Board in May, and when the company refused to accept the Board's recommendations, it was sent on to the Arbitration Court.[15] Another early case of a similar kind was brought before the Westland Board by goldminers from Inangahua who had struck when the employing company lowered wages from 10/6d. to 8/4d. a day on May 30, 1896. Again, the case went via the Board to the Court for a decision.[16] It is hard to think of a situation more likely to have produced a strike than a wage cut in an isolated mining community like Denniston and Inangahua, and these disputes were settled in the Arbitration Court.[17]

The resort to compulsory arbitration may also have averted a strike or strikes in the boot trade during 1896 and 1897. The Bootmakers may not have been willing to risk strike action at that time since their most recent strike, an attempt to force Auckland manufacturers into line with an agreement accepted by the southern employers, had failed dismally in 1891. On the other hand the Union was not without resources; a manufacturer admitted in Court that there were few non-unionists employed in the skilled branches of the trade. Without doubt relationships between employers and employees in the boot trade were strained, and the Court was dealing with a genuine dispute when it made its award.[18]

But none of these early cases was typical of those which came before

14 In general, the historian who wishes to find out what went on before the Boards and the Court in these years must rely on the daily newspapers, which fortunately gave detailed summaries of the proceedings when the Boards or the Court sat in their localities. The Award Books, published by the Department of Labour from 1901 onwards, contain only the recommendations and awards themselves, and the first Award book, which covers the period up to mid-1900, does not include many critical rulings and statements of principle handed down from the bench by the Judges of the Court. From time to time the Department of Labour's *Reports* and *Journals* provide information about the activities and rulings of the Boards and the Court but not on any systematic basis.

15 Department of Labour *Report*, AJHR 1897, H-6, vi; Department of Labour, *Awards, Recommendations, Agreements* etc., Vol. I, 1901, 172, 175.

16 Department of Labour, *Report*, AJHR 1897, H-6, vi; *Grey River Argus*, 24 September 1896; *Awards*, Vol. I, 174, 176-7.

17 Clark Kerr and Abraham Siegal, 'The Interindustry Propensity to Strike—An International Comparison', in Arthur Kornhauser *et al.*, eds, *Industrial Conflict*, New York, 1954.

18 Department of Labour, *Report*, AJHR 1896, H-6, xxviii-xxxiv; ibid., 1897, vi-vii; H. Roth, 'The Bootmakers' Strike of 1891', *Here and Now*, IV, 1 (October 1953), 17-19; J. Hutchison, (comp.) *The Wellington Bootmakers' Union, 1885-1917: A Short Review of the Work of the Organization Incorporating the Great Auckland Strike of 1891*, Wellington, 1917, pp.16-23; Griffiths, 'Compulsory Arbitration and the Unions', pp.14-26; Henry D. Lloyd, *A Country Without Strikes*, New York, 1900, pp.33-60.

the Boards and the Court during the 1890s. Generally there were few indications that strikes or lockouts were in the offing when conciliation proceedings opened. When the Seamen's Union brought the Union Steamship Company before the Otago Conciliation Board in 1897, the Company's managing director, James Mills, stated that his company had had no dealings with the Union since 1890 and knew of no dispute.[19] During hearings on the Wellington Furniture Trades dispute one employer said that his employees were all non-union men, had 'expressed satisfaction with the existing state of affairs' and he had 'not a single point of dispute with them'.[20] An employer in the Dunedin Brass-founders' case said he only knew he was involved in a dispute when he read about it in the newspapers.[21] In these, and in most of the cases which came before the Boards in the 1890s, the 'disputes' which were discussed were technical disputes within the meaning of the Arbitration Act, but they did not arise from the kind of situation which is ordinarily associated with the term 'industrial dispute' such as a breakdown in negotiations between the parties, or an actual strike or lockout.

In the 1890s most of these disputes were small scale affairs. Occasionally firms which were quite large by contemporary standards were involved. For example the Northern Steamship Company employed about 300 men on its vessels when it was cited to appear before the Auckland Board in 1897, and the Kauri Timber Company had 282 men on its payroll when it became involved in a dispute in 1899.[22] But the overwhelming majority of the employers who appeared were small masters employing a handful of skilled craftsmen, and the total numbers of workers affected by most Board recommendations and Court awards were quite small. The Wellington Furniture Trades dispute involved about 160 employees of whom forty-eight were union members.[23] The Dunedin Tailors' dispute affected approximately sixty journeymen, sixty apprentices, and twenty-three employers, or an average of about five employees per firm.[24] The Wellington Bakers' Union represented sixty-five men in 1898, and admitted the existence of five non-union men. There were said to be about thirty-five employers in the trade.[25] The Wellington Carpenters' dispute pitted fifty-two employers against a workforce of 434 men and forty-one boys, but some of these worked for the government.[26] This is not the stuff of which titanic industrial struggles are made.

Furthermore, press accounts of the proceedings before the Boards in

19 *Otago Daily Times*, 5 February 1897.
20 *Evening Post*, 2 September 1897.
21 *Otago Daily Times*, 27 May 1898.
22 *New Zealand Herald*, 25 August 1897, 15 July 1899.
23 *Evening Post*, 2, 3 September, 10 November 1897.
24 *Otago Daily Times*, 8 December 1897.
25 *Evening Post*, 15 November 1897, 31 January 1898.
26 ibid., 2 November 1897.

the 1890s reveal that only rarely were the contending parties deeply divided over what, to a later generation at least, would appear to be the basic issues of wages, hours and conditions. On wage matters, the employers often accepted the unions' claims with only the mildest qualifications. In the Wellington Bakers' dispute, the President of the Master Bakers' Association conceded before the Board that the wage rates sought were 'reasonable'.[27] In the Dunedin Brassfounders' dispute, one employer, Mr Sparrow, commented that the wage rates demanded were what he was paying already. Another employer, Mr Shacklock, concurred, though he grumbled that wages were too high.[28] A wage claim by Dunedin carpenters amounted to 'practically what the respectable builders of Dunedin had been doing for years' according to an employer appearing before the Otago Board.[29]

There was odd occasions on which employers and unions were deeply divided on wage questions. A notable one was the Wellington Tailoresses' dispute where the employers objected strongly to a demand for piece rates which would amount to a weekly wage of 35/- and argued that 10/- to 25/- was the going rate. When the Union produced a string of witnesses who testified that they were paid 30/- to 35/- per week, the employers countered by saying that these particular women were all unusually experienced, an episode which gives some idea of the scale and flavour of early conciliation hearings.[30] More commonly the employers accepted the union's wage claim for 'good men' but objected to paying the same rates to the less skilled, the less industrious, and the aged or physically handicapped worker. What is striking about the wage disputes of the 1890s however is how non-disputatious most of them were. Time after time it is clear from the proceedings of the Boards that a fundamental consensus existed about what a 'fair' standard wage was for any given occupation. Employers were inclined to argue that many workers did not deserve to get the standard wage but rarely did they disagree fundamentally with the union about what the standard wage should be. More than a generation of stable or declining price levels no doubt helps to account for the situation.

Even less did matters of hours and conditions arouse serious contention during Conciliation and Arbitration hearings. Hours of work claimed by the unions were often agreed to by the employers without any debate whatsoever. For tradesmen a 44-hour week with time and a quarter paid for the first two hours overtime and time and one half thereafter was the usual rule. Only in trades with unusual starting hours, or regular night work, such as baking, did questions of working hours draw forth much debate.[31] On conditions of work other than wages and

27 ibid., 11 November 1897.
28 *Otago Daily Times,* 27 May 1898.
29 ibid., 21 December 1898.
30 *Evening Post,* 3, 18 March 1898.
31 See, for example, Dunedin Bakers' dispute, *Otago Daily Times,* 28, 29 July 1899.

hours, the only one which persistently aroused much conflict was whether and to what extent the number of apprentices in the skilled trades should be limited. The craft unions invariably inveighed against over-supplying the labour market; employers decried the scarcity of good tradesmen and opportunities for the colony's youth. But after the rhetorical flourishes the parties do not seem to have had much difficulty in agreeing on a mutually acceptable formula.[32] Given the broad consensus that existed on most issues in these early disputes, it is little wonder that so many of them were carried on in a most amicable spirit with the parties congratulating each other at the conclusion upon the fine spirit and excellent presentation displayed by the opposition.[33] Nor is it surprising that in such an atmosphere the country experienced industrial peace.

There was, it is true, one union demand which was made very commonly and resisted very strongly from the very outset. This was the issue of 'preference for unionists', i.e., the demand that employers be compelled to fill vacancies with union members in preference to non-union men. This claim was supported and opposed on grounds of high principle by both sides. For the unionists the chief argument was that the unionists did all the work and made all the sacrifices in the struggle for improved conditions and were entitled to be given preferential treatment over non-union men who showed no concern for the common good but were prepared to accept the benefits of other men's struggles. The employers raised the banner of individual liberty and defended the freedom of the employer to choose his own employees unhindered. On this issue the parties could rarely find common ground.

This is not to say, however, that the preference issue would have given rise to serious industrial strife during the 1890s in the absence of the arbitration system. Once unions had decided to register under the Act and to take cases to the Boards they had nothing to lose by demanding preference for unionists. Without the Arbitration Act they would have had to rely on the threat of strike action to enforce their demands and there is little evidence that any significant number of unions possessed the kind of industrial muscle required to use such militant tactics successfully at this time. Only a handful of New Zealand's trade unions could boast of continuous existence over a long period, and even some which could, such as the Seamen, were not recognized by the major employers at the time they resorted to arbitration. Of the first twelve unions from Auckland city which took disputes to the Conciliation Board, only three, the Bootmakers, Seamen, and Carpenters had been in existence at the beginning of 1889, just before the great upsurge of so-

32 Shirley J. Wilson 'Industrial Conciliation and Arbitration in Auckland, 1894 to Mid 1900'. M.A. research essay, University of Auckland, 1978, pp.33-35.

33 See, for example, remarks made at the completion of the bakers', plumbers', and carters' disputes in Auckland, *New Zealand Herald*, 7 May 1898, 20 January 1899, and 15 April 1899.

called 'new unionism' occurred, and the Seamen's union had collapsed in Auckland after the maritime strike of 1890.[34] Significantly, these three unions, and the Tailoresses, a rather special case, were the only ones not represented before the Board by Mr James Regan, Auckland's first professional arbitration unionist, a man who talked quite openly about 'getting together' the unions he acted for.[35] Throughout the country, the majority of the unions which referred disputes to the Boards seem to have been formed specifically to take advantage of the Arbitration Act's provisions, either from the remnants of previous organizations or from entirely fresh beginnings.

Reeves had argued in the early 1890s that compulsory arbitration was necessary to prevent the kind of industrial warfare that broke out when strong unions clashed with powerful employers. In fact it was precisely because few such strong unions existed in New Zealand after 1890 that compulsory arbitration was resorted to so frequently. The whole point of the Arbitration Act, from the unions' point of view, was that it enabled them to exact concessions from employers without the need for strike action or collective bargaining backed by the threat of strike action.

Under the Arbitration Act, the process was very simple and quite costless. Any group of seven men could register as a union under the Act by forming a society, adopting suitable rules and passing a resolution in favour of registration at a general meeting. No registration fee was required. To bring an employer or group of employers before a Board a registered union then drew up a list of demands and presented them or sent them by mail to the employers. If the employers failed to respond favourably or merely ignored the demands, the union then referred the dispute to the Board.[36]

In many of the early cases, employers objected strongly to these proceedings, not because they felt the unions' claims were outrageous but on the grounds that they had perfectly amicable relationships with their employees, were involved in no disputes, and saw no reason why they should have to waste their time appearing before the Boards. The unions replied that they had a clear legal right to bring disputes before the Boards. The number of men they represented was immaterial, and whether or not their unions were recognized was irrelevant.[37] The Boards and the Court accepted the unions' view of the question from the outset. When in 1906, some Otago employers brought a case before the Supreme Court in Dunedin to test the jurisdiction of the Arbitration Court on such matters, Mr Justice Cooper ruled that the intervention of a Board or the Court in a dispute did not require that 'a condition of actual or

34 W. Russell, 'The Auckland Labour Movement, 1884-1890', M.A. research essay, University of Auckland, 1979, p.40.

35 *New Zealand Herald*, 9 May 1898, 12 April 1899.

36 Broadhead, *State Regulation of Labour*, pp.37-38.

37 See the remarks of the Seamen's secretary, William Belcher before the Otago Board, *Otago Daily Times*, 5, 10 February 1897.

probable strife' existed.[38]

Furthermore, in an early decision the Arbitration Court ruled, rather casually, that an employer could be brought under the jurisdiction of the Arbitration Act even if he employed no union men at all. The proprietors of a Christchurch bootmaking firm, Suckling Brothers, argued in July 1897 that the Court's jurisdiction did not apply to them since they did not belong to the Bootmakers' Association, covered by an earlier Award, and did not recognize the Union. The President of the Court, Judge Williams, at first expressed doubt about the jurisdiction of the Court in this case, and requested evidence from the Union that Suckling Brothers employed union men. The Union representative however was unwilling to admit that the Court's jurisdiction depended upon whether or not Suckling Brothers employed unionists. In a case like this, he argued, where a non-union shop refused to abide by an agreement made with other employers it would be 'struck' by the Union. (How this would be done when the Union had no members in the shop he did not explain.) Yet the purpose of the Arbitration Act was to prevent strikes and it 'would be a dead letter if there was no jurisdiction'. After consulting with Mr Justice Dennison over lunch, Judge Williams ruled that the Court did have jurisdiction in the case. He based this judgement partly on evidence that Suckling Brothers did indeed employ some union men. However, he went on, even if the company employed none at all 'the Union objected to the boy labour and it was difficult to say if the union could not move. [*sic*] Though the firm might say that it had nothing to do with the Union, the Act recognized the Union and it could raise these questions. If it were not so, the Act would be nugatory.'

Judge Williams had come to this position with obvious hesitancy. Even lunch with Judge Dennison did not seem to have resolved all his doubts. The *Christchurch Press* quoted him as saying 'that was the position he took up at present', as though implying he might take up some other position later.[39] But in fact the Court continued to take the view that even employers who employed no union men were covered by the Act. Two months after the Suckling Brothers dispute, the Chairman of the Wellington Conciliation Board dithered over the same question but eventually announced that he had consulted Judges Dennison and Williams and there was no doubt that employers of non-union labour could be legally cited to appear before the Boards.[40]

Once brought before a Board, an unwilling employer had no escape since the Arbitration Act gave either party the right to appeal to the Arbitration Court. The proceedings of the Conciliation Boards were supposedly voluntary whereas the Arbitration Court exercised powers of compulsion, but with an unfettered right of appeal from Board to Court

38 Broadhead, *State Regulation of Labour*, p.47.

39 *Christchurch Press*, 8 July 1897. This critical judgement is not contained in the Award book.

40 *Evening Post*, 2, 3, 16 September 1897.

the distinction meant little as far as the employer was concerned. If he ignored the voluntary proceedings before the Board he would only be dragged before the Court eventually, and the end result would still be a legally-binding award covering every aspect of the conditions of employment in his business.

It is true that in a large minority of cases (twenty-nine of the first eighty-six disputes) the recommendations of the Boards were accepted by both parties but even in these cases the shadow of the Court hung over these proceedings.[41] Employers knew that if they resisted the Boards' recommendations they would be hauled before the Court which had indicated from the outset that its awards would in most cases follow the recommendations of the Boards quite closely.[42] Usually, therefore, employers were no worse off if they accepted the Boards' recommendations, and by doing so they saved themselves the time and expense involved in a Court hearing. Nevertheless the majority of the cases did go to the Court. In some cases this was because one party or the other objected strongly to some part of the Board's recommendations and felt it could do better before the Court, but as we have seen, violent disagreements on basic issues were the exception rather than the rule at Board hearings and contemporary observers looked for other explanations for the frequency of referrals to the Court.[43]

It was alleged by the Secretary of the Labour Department that the unions insisted on taking disputes to the Court because the Boards' recommendations were not legally binding as were the Court's awards.[44] It is difficult to see the force of this argument since the Boards could and did issue recommendations in the form of draft agreements which, once signed by the parties, were as legally binding on them as a Court award. According to Henry Broadhead, who became deeply involved in the arbitration system as secretary of the Canterbury Employers' Association, unionists preferred Court awards to Board recommendations, because the former bound not only the parties involved in the dispute, but also any other employers who entered the business concerned at a later date.[45] But this was not true until the so-called 'blanket clause' was added to the Arbitration Act as part of the 1900 amending and consolidating legislation.[46] In 1897, when Kirkcaldie and Stains and another

41 These figures were given by John Rigg in the Legislative Council, NZPD, CXV (1900), 24. See also Broadhead, *State Regulation of Labour*, pp.34-35.

42 This point was made by John Rigg, NZPD, CV (1898), 665. But it is quite evident to anyone glancing through the first Award book.

43 It is impossible to find out from the official records and often unclear in the press accounts just why one or the other party referred a dispute to the Court. But on occasions they spelled out their objections. For example, in the Auckland Curriers' dispute, Mr J. Regan said for the union that he had to insist on the preference clause and referred the dispute to the Court for that reason. *New Zealand Herald*, 26 September 1899.

44 Department of Labour, *Report* AJHR (1898), H-6, v.

45 Broadhead, *State Regulation of Labour*, p.32.

46 This was Section 86, sub-section 3 of the Industrial Conciliation and Arbitration Act, 1900.

Wellington firm expressed concern about new employers coming into the tailoring trade who would not be bound by the Tailors' Award the Judge had only been able to find a way around the problem by adding a special clause to his award binding the union to take proceedings against any such firm under the Act or lose its award.[47]

Before the appearance of the blanket clause, the main reason why cases went from the Boards to the Court appears to have been the need to bind the odd recalcitrant employer to an agreement which had been accepted by the majority.[48] The Christchurch Painters, for example, were compelled to go to the Court to bring T. Gapes and Company into line with a Board recommendation which had been accepted by every other employer.[49] At Dunedin, in 1900, the Otago Board gave the Millers Union advocate, Mr Arnold, extra time to get the signatures of outlying employers to an agreement, an effort which Arnold said required a thousand miles of travel. But eventually the case went to Court because three millers out of forty refused to sign.[50] In Wellington, two master bakers named Tonks and Isaacs refused to sign an agreement acceptable to the other employers in 1897, and forced the union to go to the Court where Tonks, who employed five men, two of them his sons, and Isaacs who employed only one son, 'protested their right as British subjects to be free and untrammelled in the choice of their workmen and the manner of conducting their business'. Even then the union was not done with Tonks and Isaacs for the following year a technical flaw in their Award forced the union back into conciliation proceedings again where Tonks and Isaacs, still protesting their rights as British subjects, forced the dispute to go to the Court a second time.[51]

Thus the arbitration system, in its early years, only occasionally provided the means of settling disputes which had arisen from a bargaining situation or a threatened strike or lockout. In most cases the unions activated the arbitration machinery in order to initiate formal proceedings with employers and often they existed only for that purpose. In a sense the arbitration system created the disputes it then settled. It is arguable that the introduction of compulsory arbitration did make a major contribution to industrial peace in New Zealand by establishing wage-fixing arrangements which, in favourable circumstances, gave rise to fewer strikes and lockouts than collective bargaining or any alternative system would have done. But this is not to say that the Arbitration Act prevented any significant number of strikes and lockouts in the 1890s, and certainly not in the manner that Reeves had predicted.

47 *Evening Post*, 9 October 1897; *Awards*, Vol. 1, 90.

48 *Appendices to the Journal of the Legislative Council*, (AJLC), 1901, No. 4, pp.32, 38.

49 *Christchurch Press*, 10 July 1897.

50 *Otago Daily Times*, 16, 23 May, 6, 23, 30 June 1900.

51 *Evening Post*, 11, 22 November 1897, 31 January, 1, 4 February, 22, 23 August, 14 October 1898.

The unions did not get everything they wanted from the system in the 1890s. For example, the stated policy of Judge Williams on the contentious issue of preference was to grant it only where there was evidence that the preferential hiring of unionists had been a general rule in the trade previously.[52] Whether later judges stood by this principle or not is unclear, but whatever the grounds, the Court had declined to grant preference in about one-third of the awards it had made by June 1900. Furthermore, it became the usual practice of the Court, when granting preference, to qualify its awards by requiring the union concerned to follow an open admissions policy; to keep membership dues low; in some cases to maintain an employment book, easy of access, where employers could find a list of union members available for work; and by specifying that preference only apply where unionists were equally qualified with non-unionists for the particular job concerned.[53] Union leaders were highly critical of the Court on this issue both for its failure to grant preference in every case, and also because of the qualifications attached to the preference clauses, and they launched a long campaign to make unqualified preference clauses mandatory in all awards.

It is much more difficult to judge how the unions benefited or failed to benefit from the Court's policies on wages, hours, and conditions, because the Court did not announce what its policies were. Indeed, Judge Edwards, the second President of the Court, was adamant that the Court did not follow policies, principles or even precedents, but judged each case 'on its own merits', an attitude which helped convince Beatrice Webb that Edwards was 'hopelessly unfit for his job'.[54] Nor, in specific cases, was the Court 'in the habit of giving reasons for its decisions', Judge Williams explained in an early case.[55] The judges did, however ask questions and make comments during the proceedings, often reported in the press, which give the historian some clues as to what criteria they considered relevant to their decisions. It is also possible to deduce something from comparisons of the claims originally lodged by the unions, the recommendations of the Boards, and the Court's ultimate awards.[56]

One attitude held quite firmly by the early Presidents of the Court was a preference for equality of wage rates and conditions of labour between regions. The Court did not yet have the power to issue awards covering more than one district; nor did it deny that there were sometimes valid

52 *Christchurch Press,* 10 July 1897.

53 According to my count, the Court granted a preference in twenty-seven of its first forty major awards, but there is some difficulty determining what should count as a 'major award'. Hence my use of the rather vague phrase 'about one-third'. For examples of qualifications to early preference awards see *Awards,* Vol. 1, pp.65, 257.

54 *Otago Daily Times,* 22 November 1898; Beatrice Webb, *Visit to New Zealand in 1898: Beatrice Webb's Diary, with Entries by Sidney Webb,* Wellington, 1959, pp.38-40.

55 *Christchurch Press,* 21 November 1896.

56 The unions' claims were usually published in the daily press as part of the coverage of Conciliation Board proceedings. They are not to be found in any official publication.

reasons why awards dealing with the same class of labour in different areas should vary. But Judges Williams and Edwards seem to have been in little doubt that once an award had been issued for say, tailors in Dunedin, then the burden of proof was on clothing manufacturers in Auckland to show why they should not be bound by a similar award. Otherwise there would be 'unfair competition'.[57]

When making the original award for each trade, however, the critical factor seems to have been the recommendation that had been previously made by the Boards. In one of his earliest actions as President of the Court, Judge Williams had ruled that a Board could not refer a few disputed points to the Court but must send on the entire dispute.[58] Once a dispute arrived at the Court, it was gone into again in detail, and, according to Judge Edwards, anything agreed to before the Boards was now 'irrelevant'.[59] Nevertheless, in practice the Court rarely did much more than tidy up, clarify and alter a few details of the recommendations that came from the Boards.[60] Since the Court generally followed lines laid down by the Boards, and the Boards' recommendations were based on a consensus of employer and union opinion about what was considered 'fair', there generally emerged a set of legal minimum conditions which corresponded closely to those which already prevailed in 'reputable establishments'. Typically, the Courts' Awards do not seem to have raised the general level of wages or improved conditions dramatically but to have 'levelled up' or standardized conditions where they fell below the generally accepted norms.

To trade unionists in other places and other times these may not have appeared to represent remarkable gains for the workers. But to a generation of labour leaders who had seen union after union crumble and disappear in the depression of the 1880s, or crushed in the maritime strike of 1890, they were very significant and more than could have been expected from any other available method. In effect the Arbitration Act had guaranteed the unions a form of recognition. Under its provisions the union leader, John Rigg, pointed out in a lecture at the Wellington Trades Hall in June 1897, labour organizations would be able to 'settle such questions as a minimum wage, hours of labour, and proportion of boys to journeymen without the need of special legislation'.[61] What is more they could do all these things without the need of building up a large and loyal membership, accumulating large strike funds, and confronting employers at the bargaining table from a position of strength. Under the arbitration system, all that was required to force a legally binding award on any employer was a membership of seven, careful

57 *New Zealand Herald,* 14 July 1899; *Otago Daily Times,* 22 November 1898, 30 June 1900.

58 *Christchurch Press,* 8 July 1896.

59 *New Zealand Herald,* 14 July 1899.

60 See fn. 42.

61 *New Zealand Times,* 11 June 1897.

attention to correct procedures, and enough funds to pay a skilled and articulate advocate. Little wonder that New Zealand unionists became, by and large, enthusiastic supporters of the Arbitration Act with its '42 different ways in which they could bring about disputes', as the President of the Wellington Trades Council told an amused Trade Union Congress in Britain during 1898.[62] The Arbitration Act was 'a veritable sheet anchor to the Trades Unions of the colony', the executive of the Trades and Labour Councils declared in 1900.[63] The doings of the Arbitration Court had become labour's first consideration the *New Zealand Worker* said a few years later. It had also been 'its second and last consideration'.[64]

For employers, the system was not without advantages. It enabled them to pay their employees good wages, according to the prevailing standards, without fear of being undercut by less generous competitors. On many occasions employers worked closely with unions to bring trade rivals under a Court Award.[65] In some cases, the disputes, though technically being contested by unions and employers, were really quarrels between different factions of employers. The Auckland Carpenters' dispute of 1899, for example, arose essentially out of a conflict between employers in the building and saw-milling trades.[66]

Regional rivalries between employers were also fought out in the Arbitration Court. Mr J.F. Arnold of Dunedin came to Auckland in 1899, for example, to conduct a case for the Bootmakers' Union, in which the goal was to bring Auckland manufacturers into line with the 'federal statement' under which the southern firms were working. Auckland workmen stood to benefit from such an arrangement but also southern manufacturers.[67] In 1900, a major battle was fought out in parliament between representatives of Auckland and southern clothing manufacturers, in which the southerners sought to give the Court power to extend an award beyond the district where it originally applied. This was explicitly aimed at the northern manufacturers who, it was alleged, were paying lower wages and gaining an 'unfair' competitive edge. The Aucklanders, led by George Fowlds, countered by arguing that they were using more advanced methods than their southern rivals and an attempt was being made to penalize them for their superior enterprise. After a good deal of debate before the Labour Bills Committees of both Houses and on the floor of parliament, during which regional rivalries and antagonisms got a good airing, the southerners won most of what they wanted. Section 87 of the Industrial Conciliation and Arbitration Act,

62 Trade Union Congress, *31st Annual Report*, 1898, p.49.
63 Trades & Labour Councils of New Zealand, *Annual Conference Report*, 1900.
64 *N.Z. Worker*, 27 September 1905.
65 Wilson, 'Arbitration in Auckland', p.8; Broadhead, *State Regulation of Labour*, p.73.
66 *New Zealand Herald*, 6 June 1899.
67 ibid., 14 July 1899.

1900, gave the Court power to bind new parties to an existing award in industries where products from different districts competed in the same market, provided that objectors were given the right to a hearing in their own district.[68] Here is a case where employers were not merely using the Arbitration Court for their own purposes but seeking to extend its powers.

Some employers may also have felt that the arbitration system did protect them from the danger of strikes. Among those whom the Royal Commissioner from New South Wales, Judge Backhouse, found to be sympathetic to the arbitration system were several who came from industries with a history of industrial strife or at least, relatively strong unions: the managers of the Northern and Union Steamship Companies, Frostick, a Canterbury boot manufacturer, and representatives of the building trades in Auckland, Wellington and Christchurch.[69] Even employers who were critical of the arbitration system would sometimes admit that it might possibly have done something to avert strikes.

But although the Court's awards were usually accepted as reasonable by employers, and although some thought the arbitration system beneficial, there is no doubt that it aroused a good deal of antagonism among employers simply because it interfered with their traditional prerogatives as masters and entrepreneurs.[70] A general resentment against being dictated to by trade unions and government officials was especially evident among smaller businessmen for whom industrial conflict had not been a serious problem and to whom a day spent at conciliation hearings could be a costly and irksome experience. One can imagine the feelings of an Auckland shipowner, Mr Subritzky, whose single vessel was manned entirely by members of his own family (except for the cook) when he was dragged before the Conciliation Board by the Seamen's Union.[71] Or Mr Leyland, part-owner of another vessel, the *Stella,* who brought to the Board's hearing a letter signed by the entire crew saying they were perfectly happy with their wages. Mr Leyland was affronted by what he termed the 'money or your life' manner adopted by the able but abrasive Seamen's Union secretary, Mr Belcher, and thought the entire proceedings an abuse of the Arbitration Act.[72] It was men like these, and like

68 AJHR 1900, 1-10, 2-6, 12-15; NZPD, CXIII, (1900), 250-51, 259-60, 264-66, 269, 561, 650.

69 New South Wales, *Report of the Royal Commission of Enquiry Into the Workings of Compulsory Conciliation and Arbitration Laws,* Sydney, 1901, (Backhouse Report), pp.12, 16-17.

70 In 1899, John MacGregor, a member of the Upper House, argued that no employer or employers' association had yet invoked the Arbitration Act. See his article, 'Compulsory Arbitration at Work', *National Review* (1899) 277. Though it is true that employers did use the Act from time to time, usually against other employers through the agency of a union, MacGregor's point was generally correct. Compulsory arbitration was something imposed on employers, not workers in the 1890s.

71 *New Zealand Herald,* 9 December 1897.

72 ibid., 25 August 1897.

Tonks and Isaacs, the Wellington Master Bakers, who tended to make speeches before the Boards about the rights of freeborn British citizens and the damage that was being done to the 'opening up of the country'.[73]

To such men the Conciliation Boards seem to have become the chief objects of wrath. The awards of the Court they could live with, and the Presidents of the Court, being Supreme Court Judges, were possibly beyond criticism for small businessmen. But to have to go through the entire proceedings twice, and once before a body presided over by an appointee of the Seddon government—that was hard to take. The Wellington Board, which became notorious for public rows, disorderly procedures and interminably long hearings, became a special target for employer displeasure. In the small hours one morning in October 1901, the member of parliament for Gisborne, Mr Willis, who was also the proprietor of a printing business, rose in the House while a debate of an amendment bill to the Arbitration Act was in its committee stages, and struck a blow for the small businessman. He moved that a party to a dispute could by-pass the Boards, and go directly to the Arbitration Court. And though this proposal was opposed by Seddon, who was Minister of Labour as well as Prime Minister, it was passed by thirty votes to eighteen, and became Section 21 of the 1901 Amendment Act. There were various reasons why the 'Willis blot', as its opponents called it, became law, but its origins lay in the fund of antagonism towards the Conciliation Boards which had built up since 1896 among small businessmen like Willis.[74]

On policy matters, the *bête noire* of employers was the preference issue, and here too they scored something of a victory in parliament, if only a qualified one. In 1898, the government introduced an amendment bill which, among other things, specifically authorized the Court to grant preference to unionists, a power which the Court had already exercised but which was not mentioned in the original Act. In the Legislative Council, conservatives sympathetic to employer interests succeeded in striking out this section and substituting another which specifically forbade the Court from granting preference. The Council also struck the phrase 'to encourage the formation of industrial unions and associations' from the Act's title since the Court had used this phrase to justify the granting of preference. This bill came before the lower house at the very end of the session when Seddon was anxious to complete business. In an all-night session he pushed the bill through all its stages and though succeeding in dropping the section outlawing the granting of preference he did not attempt to retain the one specifically granting the Court power to award it, or to restore the old title. In effect, the legislation left the

73 ibid., 9 December 1897.

74 Edward Tregear to William Pember Reeves, 19 April 1907. Letters from Men of Mark in New Zealand to W.P. Reeves, London School of Economics Library; NZPD, CIXX (1901), 169.

question of preference much as it had been before, but the Court had certainly been discouraged from granting it, rather than the reverse, which is what the government had presumably intended.[75]

Employer antagonism to the arbitration system was not a threat to its very existence in the 1890s. Not only were employers divided in their attitudes towards it, they were also poorly organized and politically isolated. Unlike the Trades and Labour Councils, the employers' associations did not maintain a national organization or hold regular national meetings through the 1890s.[76] In Auckland the provincial employers' association was described as 'very shadowy' by Beatrice Webb on her 1898 visit, and it had to be organized afresh in 1901.[77] Employers, the Webbs concluded after talking to some in Christchurch and Dunedin, were 'without much force of resistance to adverse legislation'. They were 'inclined to take what comes and make the best of it'.[78] Even had they been united, organized, and determined either to abolish or drastically amend the Arbitration Act, the employers would still have needed allies to make much political headway, and at this stage they could rely on no large body of public opinion or influential pressure group to join with in any crusade against arbitration, or even some unpalatable aspect of it such as the Court's power to award preference.

The first logical place for the employers to have looked for support in any battle with organized labour would have been among the farming population, for the farmers were themselves businessmen and often employers of labour. But as yet farmers were apparently not much interested in the arbitration system. There were signs, as early as 1900, that rural opinion might become quite inflamed should the doings of the Arbitration Court come to bear directly on agriculture. Certainly the Liberal government, with one political base in the trades halls and another in the countryside was nervous about the possibility. In 1900 Judge Edwards ruled that the Arbitration Court had no jurisdiction in cases involving grocers' assistants and tramways employees, on the grounds that they were not involved in industry, a ruling in which the next President of the Court, Judge Martin, concurred.[79] The government responded with a section in its bill to amend and consolidate the Arbitration Act which redefined the term 'worker' to mean 'any person of any age or either sex employed by any employer to do any skilled or unskilled

75 Section 3, Sub-sections 2 and 3, of the original Industrial Conciliation and Arbitration Amendment Bill, 1898, dealt with the preference issue. The critical sections in the Legislative Council's version of the bill were numbers 2 and 4. For the parliamentary debate see NZPD, CV (1898), 378-80, 669, 675, 825-27, 840, 843-46.

76 Canterbury Employers' Association, *Yearbook*, 1911, p.14; William Scott, *The Industrial Conciliation and Arbitration Act: its Past, Present and Future*, Wellington, 1907, p.4.

77 Webb, *Visit to New Zealand*, p.10; *New Zealand Herald*, 11 July 1901.

78 Webb, *Visit to New Zealand*, p.53.

79 *Awards*, Vol. 1, 275-81; *New Zealand Herald*, 26, 29 May 1900; AJHR, (1900), H-11, ii.

manual or clerical work for hire or reward in any industry'.[80] This raised the question immediately of whether farm workers came under the jurisdiction of the Act. They surely did; the language of the amendment seems quite unambiguous, but as Richard Shannon has written 'the structure of the Liberal party . . . absolutely precluded frankness on the part of its leaders', and though Shannon was writing about Sir Joseph Ward, his remark applies equally well to Seddon.[81] 'I have no doubt,' said Seddon as he explained the purpose of the measure to the House, 'that . . . I shall be told there will be danger to the pastoralist industry by the passing of this Act. There is no ground for that fear. There would be no union whatever. . . .'[82] This bald and totally unsubstantiated assurance did not satisfy all the rural members. Mr Flatman, representing Geraldine, expressed concern about the possibility of agitators working among the agricultural labourers, and J.W. Thompson of Clutha was also worried about the farmers' position, pointing out that the Arbitration Act had already had a much greater impact than had originally been expected. When Mr Hornsby of Wairarapa actually applauded the idea that the Court's awards might cover shepherds and drovers, among others, he drew down upon himself a torrent of abuse from country members, and Massey, intending ridicule rather than prophecy, suggested that the jurisdiction of the Act should be extended not just to agricultural labourers but to the 'country settler himself'; he should be guaranteed returns on his mutton etc. Eventually the Chairman of the Labour Bills Committee, John A. Millar, the former union and strike leader from Dunedin, entered the debate and successfully put the country members off this dangerous scent. Farm labour, he said, consisted largely of family or seasonal workers, and it was extremely unlikely that an agricultural labourers' union would ever be formed.[83] The moment passed and for a few more years the farmers' political representatives took no more than sporadic interest in the workings of the Arbitration Act. Thus the trade unions' enthusiastic support for compulsory arbitration was not offset by united or determined opposition from either rural or urban employers.

The system drew further sustenance from the simple fact that it appeared to be working smoothly. There were no significant strikes in New Zealand until 1906, the colony was enjoying prosperity, and because the system appeared to be successful, it had begun to generate a great deal of interest internationally. Sidney and Beatrice Webb and Henry Demarest Lloyd were among the first of a flow of eminent visitors to New Zealand who commented favourably on compulsory arbitration.

80 See Industrial Conciliation and Arbitration Act, 1900. Section 2.

81 Richard T. Shannon, 'The Decline and Fall of the Liberal Government: a Study in an Aspect of New Zealand Political Development, 1908-1914', M.A. thesis, Auckland University College, 1953, p.147.

82 NZPD, CXIII (1900), 249.

83 ibid., 261-71.

Judge Backhouse's 1901 Report was, for the most part, positive. The arbitration system was becoming, for some at least, an object of colonial pride, an example of New Zealand leading the world.

In these circumstances, the Liberal government was not likely to turn its back on compulsory arbitration. Though the ministry had been relieved to have Reeves, with his reputation as a radical, shipped off to London as Agent General in 1896, it was happy to bask in any glory that might come from his legislation. The Arbitration Act had turned out to be a boon for the trade unions which were, by and large, in the government camp. The country members were suspicious but not much concerned as long as the unions left agricultural labour alone. The Act gave the colony much publicity, mostly favourable, abroad. Above all the voters could be told that the Act had brought industrial peace to New Zealand and it was not a claim that the opposition could readily refute.

There were, of course problems and complaints, even in these early years, many of them focusing on the Conciliation Boards. Employers were the major critics, but not the only ones. There were instances of unionists complaining about the performance of the Boards and suggesting that disputes might better be taken directly to the Court.[84] There were charges that members of the Boards were deliberately wasting time in order to earn fees they were paid for each day the Board sat.[85] The Prime Minister himself complained publicly in 1901 about the way the Boards were functioning. Some people, he charged were 'riding the Act to death'.[86]

Defenders of the Boards replied that most of the complaints about excessive delays, disorderly incidents and general incompetence were levelled at just a single Board, the one in Wellington. Some suggested that the difficulties in Wellington reflected simply the personal inadequacies of the Board members there. Mr Crewe, who was chairman of that unhappy body in 1901, admitted that one dispute had been before the Board for twenty-seven days but claimed that this was an especially difficult case, and that he had to deal with some particularly obstructive employers and more than his share of complicated cases.[87]

There was, however, a more fundamental objection to the way in which the Boards were functioning, and not just the Wellington one. To those familiar with the British experience a conciliation board was thought of as a forum for direct negotiation between the parties and by 1900 it was clear that very little direct negotiation went on before the New Zealand Boards. The functions of the Boards, it was felt by many observers, were insufficiently different from those of the Court to justify

84 Trades and Labour Councils, *Conference Report*, 1898; ibid., 1902, p.11.

85 Trades and Labour Councils, *Conference Report*, 1898, p.12; Tregear to Reeves, 13 April 1897, Letters from Men of Mark; NZPD, CXIX (1907), 702.

86 *New Zealand Times*, 6 August 1901.

87 Backhouse, *Report*, pp.11-12; M. Challayne, quoted in *Otago Daily Times*, 2 March 1907; NZPD, CXIX (1901), 702-3, 705, 709; AJLC (1901), No. 4, 31-39.

a two-tier system. As one Legislative Councillor put it, 'they are merely inferior Courts with less powers . . ., less knowledge and experience, and therefore with less chance of doing any good. . . .they are tribunals empowered to give judgement, often with inferior means of weighing evidence, with irregular and tedious procedure, and sometimes under the guidance of inexperienced judges.'[88]

Various attempts were made to defend the Boards against the charge that they merely duplicated the work which was later done more efficiently by the Court. It was said that they cleared the ground for the Court by disposing of some disputes altogether and by, 'sifting out the evidence', thus reducing the case to its essentials. Though the Prime Minister and Judge Cooper, who became the fourth President of the Arbitration Court in 1901, both lent their authority to such arguments they were put in somewhat vague language and were not remarkably convincing.[89] The Boards took no written record of their proceedings so any 'sifting out' which occurred was of a purely informal nature, and the majority of disputes did go on to the Court for a second very full airing.

A number of reforms were suggested, most of them involving the introduction of expert assessors into the Boards' proceedings. It was argued, mainly by employers but sometimes by unionists, that a great deal of time and effort would be saved if critical issues could be hammered out initially by men who were specialists in the trade or occupation concerned, and who therefore would be able to come to grips quickly with the knotty technical questions that were often raised.[90] The original Arbitration Act had allowed for this possibility by providing for the establishment of Special Conciliation Boards in which the members would be chosen by the parties involved in the dispute, presumably men with special knowledge of the trade (Section 41), and the amending act of 1900 elaborated this provision (Section 50). The Special Boards, however, had never been resorted to, and in 1901 the government attempted to meet the criticisms that were being levelled at the District Boards by including a provision in the amending act which allowed either party to call for the establishment of a Special Board (Section 6).

This proposal came under heavy fire from trade unionists before the Labour Bills Committee of the House and from labour men in parliament, even though some unionists had supported the demand for adding a dose of 'expertise' to the conciliation proceedings. The problem was that appointing experts to discuss the issues involved in a dispute was inseparable from having direct negotiations between the parties involved, and in 1901 most union men who spoke on this issue were adamant that

88 NZPD, CXIX (1901), 734; AJLC (1901), No. 4, 9-10, 27.

89 For Judge Cooper's comment, see newspaper clipping, 88. NZPD, CXIX (1901), 734; AJLC (1901), No. 4, 9-10, 27. Paul MSS., Hocken Library, University of Otago. *New Zealand Times*, 28 September 1901; AJLC (1901), No. 4, 27.

90 John MacGregor, 'Compulsory Arbitration at Work', *National Review*, XXXIV (October 1899), 278; AJHR (1900), 1-10, 5, 28-29; AJLC (1901), No. 4, 26.

they wanted no part of direct negotiations. The reasons they gave for this were most revealing of the strength and nature of New Zealand trade unions at this time. Workmen were afraid to become involved in direct negotiations with employers for fear that they would be subsequently discriminated against at their work-places or would even lose their jobs. They preferred to have a professional union secretary take their case for them to the Conciliation Board, and although the men who put forward these arguments were usually themselves professional union secretaries with vested interests in retaining the roles they had established under the arbitration system as it existed, it is also true that no other body of workingmen came forward to contradict the professional secretaries on this issue.[91]

The government did not abandon its plan to allow either party the right to take a dispute to a Special Board in 1901, but this innovation lost whatever importance it might have had when Willis succeeded in adding to the same bill his amendment allowing either party to go directly to the Court. Faced with a choice of going before a regular District Conciliation Board and calling for the establishment of a Special Board, employers might have been tempted to experiment with the latter, had they not also been offered the simpler and safer route of going directly to the Court. This was the path they preferred to tread after 1901, and as a result, the Conciliation Boards languished, and in some areas virtually disappeared.[92] The 'Willis blot' did not settle the question of what was the most appropriate institutional arrangement for the arbitration system; the resolution of this problem did not come till 1908 when Conciliation Councils were established. It did, however, remove the part of the system which had aroused the most intense antagonism. Consequently the system itself was less vulnerable to attack from employers and their political friends, who had been in the 1890s, its major critics.

Of course not every critic of the arbitration system confined himself to assaults on the Conciliation Boards. John MacGregor, for example, a Dunedin lawyer whom the Liberals had appointed to the Legislative Council in 1891, but who had later succumbed to what an unfriendly newspaper described as 'the fossilising tendencies of the Conservative Chamber', wrote a series of blistering attacks on the arbitration system for the *Otago Daily Times* beginning in the late 1890s. MacGregor made much of the fact that the arbitration system had evolved in ways entirely different from anything predicted by Reeves, that it had led to the general regulation of wages by the state, and he cast doubt on whether it had really contributed to industrial peace. But though MacGregor's attacks on the system were based on an analysis, a good deal more

91 NZPD, CXVI (1901), 349; AJLC (1901), No. 4, 14, 25.

92 According to a report to Otago Employers' Association in October 1907, the Otago Board had 'not sat for more than five or six days during the past five years. . . .' *Otago Daily Times*, 12 October 1907.

insightful than those of say Henry Demarest Lloyd, or Reeves himself in *State Experiments,* they carried little real political weight.[93] As long as there were no strikes, as long as industry was not manifestly being driven to the wall by the Arbitration Court, the fact that the arbitration system was not what Reeves had intended was immaterial politically.

The arbitration system continued to evolve after 1901 in response to new pressures, but by that date some of its enduring features were already apparent. A new variety of trade unionism had appeared in New Zealand which owed its very existence to the Arbitration Act and which depended on the coercive power of the state to achieve its ends. The Arbitration Court was established as a tribunal charged not only with resolving conflicts but with fixing minimum wages, maximum hours and conditions of employment in ever-growing areas of the private sector. None of this could have happened without Reeves's Act and in this sense Reeves's experiment was a success, but it was the kind of success achieved by the hunter who went out seeking wild boar and came back proudly bearing a stag.

JAMES HOLT

University of Auckland

93 Some of MacGregor's writings were published in pamphlet form under the title, *Industrial Arbitration in New Zealand : Is It a Success*?, Dunedin, 1901. The unfriendly newspaper was the *New Zealand Times,* 21 September 1899.