An 'unholy alliance'

THE 1968 NIL WAGE ORDER

IN JUNE 1968 the Court of Arbitration rejected an application from the Federation of Labour (FOL) for a general wage increase and issued a nil wage order. The outraged response by trade unions threatened industrial chaos. Within a month the FOL and the New Zealand Employers' Federation (NZEF) had combined forces to make a joint application to the Court for a 5% general wage order. Although the application was opposed by the judge of the Court he was outvoted by the workers' and employers' representatives and the general wage order was duly issued. The joint application was denounced by the then Minister of Finance, Robert Muldoon, as an 'unholy alliance'.[1]

The nil wage order and the 'unholy alliance' were watershed events in industrial relations in New Zealand. They were the culmination of a series of developments over the previous decade that had gradually undermined trade union, employer and government confidence in the arbitration system. They unleashed a period of industrial conflict at levels beyond anything previously known in New Zealand, other than in the historic confrontation in 1951. They signalled the beginning of a move away from the arbitration system to a different system of regulating industrial relations. The search for an alternative regulatory regime was long and difficult. The Employment Contracts Act 1991 was a long-term consequence of the processes set in motion by the events surrounding the nil wage order.

The arbitration system was a critical institution in the development of New Zealand. It shaped the articulation of class, occupational and gender interests at the workplace and in the wider society and economy. It governed collective organization by workers and the countervailing response by employers. It defined where the economic interests of competing groups lay, limited the industrial strategies open to them to advance their interests, and regulated the distribution of income among them. Above all, it built and modified over time a particular pattern of industrial relations in which the relationship between unions and employers was not direct, but was mediated through the Arbitration Court and conducted in the courtroom rather than at the workplace, or, even more improbably, on the picket line.

The unions that grew under this system were largely its compliant creatures; although some periodically rebelled against it, the majority were grateful for the protection it offered them. The majority of unions relied on its guarantee of

1 *Auckland Star*, 5 July 1968.

membership and coverage rights through the combination of union registration and compulsory membership. They settled their awards largely in conciliation but in the shadow of the Court with both parties knowing full well what would be decided if it went to arbitration, and they depended on the legislative provision for the blanket coverage of awards over all employers within its jurisdiction and on state enforcement of awards. Traditionally, wage bargaining was highly centralized and occurred within registered awards and agreements settled within the conciliation and arbitration process. Direct bargaining between unions and employers outside the arbitration system was confined to particular unions or particular labour-market circumstances.

In the decade prior to the nil wage order, the actions of both unions and employers had begun to undermine this structure. Labour scarcity, changes in the pace and direction of industrialization, new managerial strategies, and the declining fortunes of occupational groups previously favoured under the system, especially the loss by craft unions of traditional skill margins, gave rise to pressures for change.[2] Increasingly, unions and employers in the major metropolitan areas and on the new, large industrial sites began to negotiate directly with each other outside the confines of the official arbitration system. A second tier of bargaining arose at an enterprise, site or regional level. Employers, bidding for labour and paying the price of industrial peace, were attracted by the flexibility offered by their own enterprise agreements. For their part, unions found they could do considerably better for their members through these agreements, which could then be used to pull up other groups of members still covered by awards under the Arbitration Court. The speed and magnitude of these changes began to place enormous pressure upon unions and employers, who struggled to cope with the new issues and problems that now beset what had once been their relatively ordered and predictable relationship.

The unwillingness or inability of the Court to respond effectively to these pressures for change gradually brought its future into question. Doubts arose about future support for the system from trade unions, employers and the government. Unions were angry at the Court's refusal to bring award rates of pay into line with those negotiated in enterprise agreements. Employers were frustrated at the apparent inability of the arbitration system to continue to guarantee industrial stability. The government was resentful that growing tensions within the system were increasingly dragging it reluctantly into the world of industrial conflict.

These tensions came to a head spectacularly in the winter of 1968. This article analyses the growing disenchantment with the arbitration system during the 1960s. It traces the events leading up to the nil wage order and examines why the FOL and NZEF joined forces in the historically unprecedented 'unholy alliance'. Finally, the article offers some assessment of the consequences of the nil order and the 'unholy alliance'.

2 The changes in the bargaining system leading up to the nil wage order are explored in detail in Pat Walsh, 'The Rejection of Corporatism: Trade Unions, Employers and the State, 1960-1977', PhD thesis, University of Minnesota, 1984.

Following World War II, General Wage Orders (GWOs) were made under the authority of regulations issued under the Economic Stabilisation Act 1948. Section 3 of the Act stated that 'the general purpose of this Act is to promote the economic stability of New Zealand'.[3] Section 11(3) of the Act empowered specified authorities, including the Arbitration Court, to make orders for the purpose of the Act. The Economic Stabilisation Regulations 1953 authorized the Court to make GWOs and required it to take into account a range of factors, including retail price changes, overall economic conditions, changes in productivity, relative movements in the income shares of different sections of the community and other considerations it deemed relevant. Despite this range of criteria, most people viewed GWOs as compensation for rises in the cost of living. From a reading of previous GWO decisions there can be no doubt that this had always been the most important consideration in the Court's decisions. GWOs had been rare before 1940, but during the 1950s and 1960s they were issued about every two years. The regular adjustment of wages by GWOs further shifted the focus of the wage-fixing system away from its earlier concentration upon awards and agreements.

Labour and National governments had long been concerned over the adequacy of procedures to ensure that the Arbitration Court was presented with appropriate expert economic evidence to ensure its GWOs did in fact promote economic stability. Various strategies to achieve this had been canvassed from time to time.[4] Employers shared this concern. In the 1964 hearing, Peter Luxford, Director-General of the Employers' Federation, asked the Court to include in its decision a statement that the order promoted economic stability, commenting that 'such an important statement has been noticeably absent in earlier judgements'.[5] Employers were strongly opposed to the very existence of GWOs and throughout the 1960s pressed vigorously but vainly for their abolition. They argued that GWOs gave a sudden inflationary boost to the economy as a result of the simultaneous increase in all wages within the jurisdiction of the Arbitration Court, and the rapid transmission of this increase to the remainder of the private sector, by means of relativity linkages, and to the state sector through the system of ruling-rate surveys. Employers claimed that these effects were compounded by the pass-on of an amount equal to the GWO increase to actual rates of pay, despite the fact that the regulations required GWOs to be applied only to award rates. However, throughout the 1960s the National government heeded the advice of officials that these difficulties were largely of employers'

3 The Act may reasonably be described as an empowering one. In later years Robert Muldoon was quoted, perhaps apocryphally, as saying 'You can do anything you like so long as you hang your hat on the 1948 Act'. It was one of the recurring ironies of life in New Zealand during the 1970s, when regulations issued under the Act seemed to govern every aspect of the economy, that a popular television comedy was called 'At last, the 1948 Show!'

4 Much of the material for this paper is based on an analysis of the Department of Labour's files in the National Archives. Throughout, these are cited by their file number. The various options for ensuring that GWOs did contribute to economic stability are reviewed in Secretary of Labour to Acting Minister of Labour 'FOL request for amendment of Economic Stabilisation Regulations', 27 June 1968, Department of Labour, 6/13/1, Part 5.

5 *Evening Post,* 20 August 1964.

own making and turned a deaf ear to their protestations.[6]

In 1967 the National government was very concerned that a GWO would undo the impact of the deflationary measures it had introduced, including a devaluation, following a collapse in the terms of trade in 1966. Accordingly the Minister of Labour, Tom Shand, and the Secretary of Labour, Noel Woods, entered into discussions with Judge Blair of the Arbitration Court about whether there was a need to amend the Economic Stabilisation Regulations to ensure a GWO did not negate the steps taken by government.[7] Shand observed to Blair that if the Court felt it had sufficient discretion under the regulations and that exercising its discretion would not cause it embarrassment, the government would prefer not to amend the regulations. Blair responded, however, that it 'would ease the situation' if the regulations were amended.[8] Shand recommended to his colleagues that the government must 'grasp the nettle' and amend the regulations as suggested. An amendment would encounter strong political opposition but would also get support from 'our own people'.[9] However, more cautious counsel prevailed. Amending the GWO criteria in a deliberate attempt to protect the policy measures of 1967 would have been met with a storm of controversy and vigorous trade union resistance. The amendment was not made. Blair had indicated that he was not ill-disposed towards taking the government's measures into account in making a GWO and it seems that the government decided it would rely on Blair to act appropriately. Blair had certainly been left in no doubt as to what was expected of him, and, as a relatively new Arbitration Court judge, it may have been thought he was unlikely to resist the government's blandishments. The government may also have been prepared to take the gamble of waiting to see what Blair would do, in the hope that all would be well, but then if necessary, take the political consequences of further deflationary measures to counteract any inflationary impact of a general order. It would have been in keeping with the 'softly softly' approach of the Prime Minister, Keith Holyoake, not to incur political heat unless it was absolutely necessary. As it turned out, of course, the government's faith in Blair, if faith it was, was fully vindicated a year later.

By 1968 it was evident to trade unions active in second-tier bargaining that they did better through that than through the arbitration system. Unions saw the Arbitration Court as co-operating with employers to maintain unrealistic award rates, suppressing margins for skill, continuing to issue conservative GWOs and keeping alive the prospect of a return to the award minimum should unemployment increase.[10] Union scepticism towards the Court grew considerably during 1967. A confidential NZEF memorandum urged employers to oppose any increase in award negotiations and to refrain from their past practice of automatically adding award increases to actual rates of pay.[11] It soon became clear that

6 Interdepartmental Officials' Committee, *Report On General Wage Orders and other Wage-Fixing Procedures*, Wellington, 1966.

7 Minister of Labour to Judge of the Court of Arbitration, 13 March 1967, Department of Labour, 6/13/1, Part 5.

8 Judge of the Court of Arbitration to Minister of Labour, 16 March 1967, ibid.

9 Minister of Labour to Deputy Prime Minister and Minister of Justice, 29 March 1967, ibid.

10 Walsh, 'The Rejection of Corporatism', p.173.

11 *Evening Post*, 22 June 1967.

employers were determined to heed the NZEF memorandum, and that the Court would take no action to counter this. Some unions sought to circumvent the employers' firm line in conciliation by referring their award to the Court for arbitration. But the settlements made by the Court were even lower than those achieved in conciliation. In both the printers' and freezing workers' awards Blair declared that the 'ultimate arbiter' of wage increases must be the state of the economy.[12] In each award he granted a wage increase of only two cents an hour. Unions regarded this as derisory, and as confirmation of the Court's support for the employers' 'wage freeze'. It was clear also, as it had been in the case on margins for skill in 1965,[13] that the Court had settled the two awards on the basis of the economic stability criteria that governed GWOs, rather than according to its quite different statutory requirement to settle awards 'in equity and good conscience'.[14]

In response to these awards the FOL made what the president of the Wellington Chamber of Commerce described as 'the reluctant application of Christmas '67', attributing it, quite correctly it seems, to intense pressure from affiliated unions.[15] On 12 December the FOL applied for a GWO of 7.6%.[16] This application was a long time coming. The FOL Executive and Tom Skinner in particular prevaricated for most of 1967 under growing pressure from many affiliates to make an application.[17] Instead the FOL tried to convince the government to replace the Consumer Price Index with a genuine cost of living index.[18] The government rejected this proposal twice during 1967.[19] The continued FOL prevarication angered some unions, but it was not until December that the application was made.[20] It is difficult to know quite what to make of this delay. It may have been Skinner's natural conservatism and a belief on his part that the government's measures had to be given time to work. He may also have been swayed by the fact that a GWO had never been issued less than two years after the previous one, or, more strategically, by an assessment that an application in 1967, so soon after the government's measures, would be viewed unfavourably as compromising them (of course this was the fate of the application once made).

12 *Awards, Agreements, Orders and Decisions under the Industrial Conciliation and Arbitration Act . . . (Awards),* 67 (1967), pp.2377, 2753.

13 *Awards,* 65 (1965), p.2188

14 FOL Executive Minutes, 27 November 1967.

15 *Dominion*, 13 December 1967.

16 FOL Executive Minutes, 12 December 1967. The Public Service Association, which always made a separate GWO claim from that of the FOL, eventually lodged a claim of 13%, taking the price impact of devaluation into account, *Dominion,* 14 March 1968.

17 FOL Council Minutes, 22 February 1967; FOL Executive Minutes, 12 September, 7, 27 November and 12 December 1967.

18 FOL Executive Minutes, 24 June 1967.

19 FOL Executive Minutes, 9 August 1967; *Evening Post*, 20 November 1967.

20 At the FOL Executive on 27 November, a letter was received from the Amalgamated Society of Railway Servants protesting at public statements from Skinner which it claimed were supportive of the government — 'in giving comfort to the Government, the FOL must surely shake the confidence of those people who expected much more from them'. FOL Executive Minutes, 27 November 1968.

He may also have thought it necessary to wait until the inflationary impact of devaluation and other measures could be assessed accurately.

The FOL presented its case in March 1968. Skinner submitted to the Court that:

> Our present economic difficulties are due to many years of political mismanagement of the economy in which export income was overspent and overseas borrowing took the place of conservation of export income. The wage and salary earners had no part in the formation of this policy and cannot be held responsible for it or its consequences. . . . It is our contention that those who gained most from these conditions of illusory prosperity should be the ones to pay a proportionately high share of the cost of rehabilitation of the economy. We cannot agree that the wage and salary earners should pay, as they are doing, the greater part of this cost or even that they should accept an equal part of the burden when they received less than an equal share of the fruit of the boom.[21]

In its decision the Court weighed the declining standard of living of wage and salary earners against what it believed to be the need for continued economic restraint in line with the government's deflationary policies. It concluded that the economic situation made it necessary to give less weight to cost-of-living factors than in previous GWOs, and more weight to the broader requirement that GWOs should promote economic stability. Blair wrote:

> It has been established that since the last general wage order there has been an upward movement in retail costs and that the wage increases of workers have not kept pace. . . . Mr Skinner has established that there has been a relative increase in the cost of living. He has shown also that the burden of absorbing these extra costs will fall more heavily on the lower-paid workers. It has also been shown that devaluation will cause a further increase in living costs. The Court is very conscious that the weight of these extra costs is most felt by the lower-paid income groups and that to them there will be an element of hardship if an order is refused. Nevertheless, in the particular circumstances now existing the court should not look narrowly at the evidence but on a broad basis having regard to the other criteria and in particular to 'the economic conditions affecting finance, trade and industry in New Zealand. . . .' The point that the Court is trying to make is that it is a time for caution. We have had some economic earthquakes. Having experienced serious balance of payments problems, the adverse trend in terms of trade, and the devaluation decision with all the repercussions flowing from these events, the country is now struggling to diversify, to increase its exports, and reshape its economic structure. Upon the success of that struggle depends the security of incomes and employment . . . . *The Court feels that in the present economic conditions a general order should not be made* [emphasis added]. So far from promoting the economic stability of the country, such an order would be inclined to have the opposite effect.[22]

Unions were outraged by the nil order. Skinner described the decision as a 'wage freeze' that could only have been made on political grounds: 'we'll just have to get tough with the employers to make sure we get what the Court should have

21 *Evening Post*, 12 March 1968.
22 *Awards*, 68 (1968), p.1281.

given us through individual awards'.[23] Union outrage was all the more intense because the Court had conceded the thrust of the FOL's submissions that wage and salary earners would suffer hardship if an order was refused. The Court's decision was justifiable in terms of the general purpose of the Economic Stabilisation Act — the promotion of economic stability. However, these subtleties were not generally understood. To the unions, it appeared that the Court had betrayed its responsibilities and violated the traditions of the GWO system in its desire to meet the wishes of employers and the government. Unions had become increasingly dissatisfied with the conservative GWOs issued by the Court, and they had had no great expectations of this one. But a nil order was a shock. Coming as it did upon the other events of the 1960s, it undermined what faith they still had in the Court and the arbitration system.

The trade union response to the nil order operated at two levels: an industrial response initiated and carried out by local Trades Councils and individual unions, and a political response conducted by the FOL executive and particularly by Skinner. The intensity of the industrial response appeared to take the FOL no less than the government by surprise. The FOL was flooded with urgently-stated calls for the executive to organize a nationally co-ordinated campaign in response to the Court's decision.[24] The situation very quickly deteriorated to crisis with widespread industrial action in support of the original 7.6% application.[25] More than 4000 people demonstrated at the opening of Parliament.[26] The government was reported to have prepared emergency regulations to cope with the crisis, to be invoked if needed, and to be considering the use of the armed forces should essential services be disrupted.[27]

The FOL did not give its full support to the industrial response to the nil order. Tom Skinner deflected the calls for the FOL to co-ordinate a national industrial campaign. By calling a special FOL conference for 4 July, more than two weeks after the nil order, he secured some breathing space in which to pursue a political strategy, which was his preferred solution to the crisis. The FOL, and Skinner in particular, judged that many of New Zealand's unions were too weak to prosper in the long-term in a system of unregulated collective bargaining and union organization. They were also concerned that in the short term many of the weaker unions would be unable to secure a wage increase in place of the GWO by means of direct action.

Accordingly, the FOL moved to blunt the aggression of many of its affiliates and to reassert the role of the Court by arranging for a second GWO application. However, the Court could not be expected to reach a different decision on a second application unless the criteria in the regulations that governed GWOs were amended. Thus, in the period between the nil order and the special FOL

23 *Evening Post*, 18 June 1968. This was in fact the last thing Skinner intended unions to do, as subsequent events clearly showed. The newspapers of 18-19 June contain numerous comments on the nil order from critics and supporters.

24 FOL Executive Minutes, 25 June 1968.

25 *Waikato Times*, 11 July 1968; *Auckland Star*, 12 July 1968.

26 *Christchurch Star*, 26 June 1968.

27 *Otago Daily Times*, 12 July 1968; *Auckland Star*, 13 July 1968.

conference on 4 July, Skinner's energies were directed towards persuading the government and the NZEF to agree to amendments to the Economic Stabilisation Regulations, which would give a second application some prospect of success. Skinner did not oppose industrial action (although he did nothing to encourage or co-ordinate it), for its existence and the threat of its increasing even further were central to his political strategy. He sought, on the one hand, to convince employers and the government to find a way out within the existing GWO system, while on the other hand he used the threat of industrial chaos and the imminent breakdown of not just the GWO system but the arbitration system itself to give weight to this political strategy.

The NZEF came slowly to share this view. It was in no doubt that industrial chaos loomed, and although it urged employers to resist the wage claims being made, it knew this resistance could not long be sustained.[28] Only four days after the nil order, the chairman of UEB Industries, one of New Zealand's largest companies, had described the Court's decision as 'unfortunate' and 'unrealistic' and had granted his employees a 5% cost-of-living bonus.[29] Another large group, Cornish Industries, also promptly announced a 5% wage increase for its employees.[30] Peter Luxford, Director General of the Employers' Federation, was told by about 20 major Auckland companies that they were unable and unwilling to resist union pressure for a substantial wage increase.[31]

Tom Shand favoured amendments to the regulations to permit a second successful application and, as he saw it, preserve the arbitration system. Within a week of the nil order, Noel Woods had written to Shand, who was overseas, noting that employers were generally prepared for an increase of at least 3% and suggested that the Court had taken insufficient account of 'non-judicial factors' in reaching its decision.[32] This was a bit rich in view of the pressure this same pair, Woods and Shand, had placed Blair under a year earlier, when they had discussed with him how a general order counteracting the government's economic measures could be avoided. It could be argued that Blair had indeed taken too much account of non-judicial issues, namely the economic considerations so explicitly drawn to his attention by the Minister and Secretary of Labour in 1967.

The FOL asked the government for a response to its proposed amendments to the regulations before the 4 July special conference. They argued that the regulations needed to specify precisely the role of the Court so that an 'inexperienced' judge would not think it was his job to put the whole economy right. The most important aspect of the FOL proposal was to shift the primary consideration in the issuing of general orders away from the maintenance of economic stability. The FOL's proposed wording was:

In making a general order, the Court shall give particular attention to the cost of living,

28 NZEF circular to affiliates, 28 June 1968, Department of Labour, 6/13/1, Part 5.

29 *Christchurch Press,* 22 June 1968.

30 *New Zealand Herald,* 24 June 1968.

31 Interview, 13 May 1983.

32 Secretary of Labour to Minister of Labour, 26 June 1968, Department of Labour, 6/13/1, Part 1.

the maintenance of workers' living standards at a level which protects their relative position in the community and the preservation of industrial harmony. Changes in the cost of living shall be measured by the rise or fall in retail prices as indicated by any index published by the Government Statistician during the period stated in the application.[33]

The final point was felt strongly by unions. Although the FOL's 1968 application had covered only the period between the 1966 GWO and the date on which the original application had been lodged (12 December 1967), the Court, as it was entitled to do by the regulations, had taken account of events since then in reaching its decision.

In assessing the FOL's proposals, Department of Labour officials examined the role of GWOs in the promotion of economic stability. They observed that 'The sole agency of the Economic Stabilisation Act today is the Court of Arbitration. Moreover the sole implement of the Act in promoting the economic stability of New Zealand is the general wage order. This is preposterous'.[34] Officials observed also that any action by the Court promoting economic stability through GWOs applied only to wage and salary earners bound by awards and registered agreements and not to any other sources of income. They suggested that the government might want to consider new legislation to resolve these difficulties. But in terms of the specific FOL proposals, officials opposed the new primary consideration for GWOs, especially the requirement that the Court should give particular attention to the preservation of industrial peace, which would require the Court to take into account any threats of strike action.

Officials could not see any reason, however, for not agreeing to the FOL's second proposal that the Court should be permitted to consider only evidence relevant to events within the period covered by the GWO application. Noel Woods then advised the government that Skinner had stated to him that he would be 'satisfied' if he could tell his special conference on 4 July that the government had agreed to this, since it would allow a second application to proceed 'without the disadvantage suffered by the federation in the last one'. The remaining proposals could then be discussed 'in the normal way'. Woods concluded, parenthetically: 'I think this information from Mr Skinner should be treated as confidential meantime'.[35] It does not appear that Skinner had any authority to depart in this way from the FOL's proposals of the previous day, and Woods' final comment indicates concern over this. But Skinner was desperately anxious to have something concrete to deliver to the FOL executive meeting on the evening of 3 July to ensure it recommended a second application to the special conference. He believed that this change would convince delegates that a second application would be successful. A decision to opt for a second application would undercut the industrial campaign and, Skinner hoped, save the arbitration system.

Shand arrived back in the country on 30 June. Publicly he exuded optimism,

33 Secretary of Labour to Acting Minister of Labour, 'FOL request for amendment of the Economic Stabilisation Regulations 1953', 27 June 1968, Department of Labour, 6/13/1, Part 5.

34 ibid.

35 ibid.

commenting cheerfully that 'from the point of view of progress in any society there must always be ferment going on. If people are not questioning the basis of society, then that society is liable to stagnate.'[36] He would have been heartened by the prospects of progress in New Zealand in July 1968. On 2 July, following Cabinet discussion, Shand wrote to Skinner, informing him Cabinet could not agree to the FOL's proposals.[37] On 3 July Shand wrote again, reporting that although Luxford had agreed to the cost of living being made the primary criterion, he had opposed all other changes, including limiting the Court to events prior to the hearing. Shand also advised Skinner that his new proposal had been discussed at a special government caucus, which decided almost unanimously that it could not assess such a technical proposal at such short notice (that is, before the special conference).[38]

Despite this, Skinner recommended a second application. In the absence of any convincing reason why it would be successful, he could not carry his executive. At the executive meeting on the eve of the special conference, he was outvoted 4-3.[39] The next day, the conference unanimously endorsed the executive's recommendation that unions use 'all available channels' to obtain at least a 5% wage increase from their employers.[40]

On 7 July, following the FOL conference, Shand invited the FOL and the NZEF to an urgent meeting the next day to reach agreement on a course of action that would 'stop the threatened breakdown of the industrial relations system'.[41] On the day of the meeting Noel Woods sketched a bleak picture for his minister. He advised that with FOL support for local strike action now assured, unless a second and successful GWO application could be made to the Court, New Zealand would face an industrial confrontation on a scale never previously experienced. Woods alluded to the comparisons being made with 1951. He argued that the situation was 'totally different and in my view, much more difficult' than in 1951, when the Waterfront Industry Commission, a government agency, was the employer, and there was therefore no chance of an employer cave-in. The watersiders had not been supported by the FOL and had only a particular group of unions as allies. On this occasion, the union movement was united. In contrast, 'the larger employers' organisations have no possibility of commanding unity by their members on the present issue . . . . It is clear that

36 *Dominion*, 1 July 1968.

37 Minister of Labour to President of the FOL, 2 July 1968, Department of Labour, 6/13/1, Part 5. Shand also wrote to Blair seeking his views on the proposed changes to the regulations. Blair sensibly declined to comment on the grounds that it was a political matter. He noted that he was already being accused of taking part in politics and did not want to be charged with intruding further. He observed that there were sound practical reasons for maintaining the constitutional convention that legislative and judicial functions should be kept apart and therefore he should not comment on existing regulations. Judge of the Court of Arbitration to Minister of Labour, 2 July 1968, Department of Labour, 6/13/1, Part 5. Such judicial rectitude had been noticeably lacking a year earlier when Shand asked him to comment on possible changes to the regulations, but the political climate was much calmer then.

38 ibid.

39 *Auckland Star*, 5 July 1968.

40 FOL Special Conference Minutes, 4 July 1968.

41 Minister of Labour to NZEF and FOL, 7 July 1968, Department of Labour, 6/13/1, Part 5.

if the present confrontation is allowed to take its course on any "let's fight it out" line of thought, employers will collapse one by one until there is a general cave-in.' Woods dismissed the possibility of enforcing penalties as 'quite impractical', and observed that the alternative of deregistration would only achieve the 'final demolition' of the arbitration system.[42]

Before the meeting on 8 July, Shand said that a failure on the part of the FOL and NZEF to agree would 'not merely destroy the procedures which have served us in the past. We will be faced with a vacuum, with the lack of an accepted rule of law likely to lead to industrial chaos.'[43] Skinner remained anxious that a second application should be made. In an unusually candid discussion in his autobiography, Skinner made it clear that he had no commitment to the unanimous decision of the special conference. He dismissed it as giving unions 'the safety valve of positive action . . . Meanwhile I had to find a more solidly based answer . . . . While they vented their anger I had to contain mine and think.'[44] A clearer statement of Skinner's contempt for the majority, in this case unanimous view of the FOL's affiliates could not be made. Skinner did have some concerns about his approach. In his book he conceded that 'if we were to go back to the Court I had to avoid my membership calling for a further special conference'.[45]

At their meeting, Shand, Skinner and Luxford agreed that the regulations should be amended to make changes in retail prices the primary criterion for the Court to consider in a GWO application, with other criteria unchanged. Skinner said he would make a second application 'at once' if the government agreed.[46] However, to Shand's dismay, Cabinet rejected the proposal from the two federations to amend the Economic Stabilisation Regulations.[47] The political balance was tilted heavily against Shand's recommendation. In announcing the decision, Holyoake emphasized that the government felt that it could not be seen to be giving way to threats of strikes. As he put it, 'no lawabiding person would support the view that an amendment should be made because of strikes and threatened strikes, or that the rules should be altered because one decision of the Court was unpalatable to one side'.[48] The proposal had been bitterly opposed by a Federated Farmers' delegation to the government, and their views had been vigorously advanced within caucus by MPs from farming electorates.[49] In addition, small employers had been unhappy with the concessions already made by several large companies and did not welcome the prospect of a GWO. These two groups had always formed the heart of the National party's electoral coalition, and their views weighed heavily with the government. The decisive

42 Secretary of Labour to Minister of Labour, 'Assessment of the industrial relations position following the FOL conference', 8 July 1968, ibid.

43 *Dominion*, 9 July 1968.

44 T. Skinner, *Man to Man*, Christchurch, 1980, p.108. Skinner's discussion of the nil order is extraordinary. Although he describes it as one of the biggest tests of his presidency, he allocates it only four pages, compared with 25 pages on his international travels.

45 ibid.

46 *Dominion*, 9 July 1968.

47 Cabinet CM 68/25A/1, 10 July 1968, Department of Labour, 3/3/2147.

48 *Evening Post*, 11 July 1968.

49 *Auckland Star*, 9 July 1968; *Christchurch Star*, 11 July 1968.

factor within Cabinet itself was the anxiety expressed by Treasury and the Minister of Finance, Robert Muldoon, supported by the deputy Prime Minister, John Marshall (with Holyoake absent at his sister's funeral), about the impact of any GWO upon the government's deflationary measures of 1967 and 1968. These factors carried more weight with the government than did the pessimistic forecasts of industrial chaos from the Department of Labour, and left Shand isolated in Cabinet and almost alone in his belief that circumstances had made a tripartite agreement imperative.[50] Many of Shand's Cabinet and caucus colleagues interpreted his pragmatism as weakness.

From that point, the NZEF accepted that if any solution were to be found within the existing GWO system, it would have to be negotiated between the two federations. The initiative came from the Auckland division of the NZEF, which proposed that the two federations meet to reach agreement on a national basis for any wage increase.[51] The two federations formed what Muldoon subsequently described bitterly as their 'unholy alliance'.[52] They agreed on a joint GWO application to the Court and the FOL agreed to ask its affiliates to scale down their industrial action pending the new application.[53] Predictably, the decision was not popular with some unions — particularly those labouring under the delusion that the FOL would seek to implement the quite different decision of the FOL special conference. Frank Barnard, the president of the Auckland Freezing Workers' Union, commented, 'I think it stinks. Mr Skinner might at least have had the decency to call another national conference to discuss the question. But no, he decides he's going back to the Court.'[54]

The GWO application was based on 'updated statistics', dealing with economic developments since the end of the previous GWO hearing two months earlier. Judge Blair was quite unconvinced, but the employer and worker representatives on the Court were, predictably enough, in harmony for once. In a majority decision, Blair dissenting, the Court issued a 5% GWO.[55] Skinner said he was 'satisfied'; Luxford described it as 'generous'.[56]

Since the nil wage order in March 1968 the key issue which had preoccupied the FOL, the NZEF and the government was that of settling on an approach which would deliver a wage increase to most workers while at the same time preserving the Arbitration Court's traditional wage-fixing role. During the following months three options were considered. The first was a second application to the Court under amended regulations. The second option was through direct bargaining with employers. The third option was the unholy alliance.

Skinner believed that only the first option — a further application under amended regulations — could save the arbitration system. His strategy was to use industrial pressure as a lever to get the regulations amended. This strategy

50 *Christchurch Star*, 13 July 1968.
51 *Auckland Star*, 12 July 1968.
52 ibid., 5 November 1968.
53 *Dominion*, 17 July 1968.
54 ibid.
55 *Awards*, 68 (1968), p.1334.
56 *Otago Daily Times*, 6 August 1968.

could not succeed given the nature of the National party's electoral coalition. The National party had been formed in 1936 as a coalition of urban and rural property owners. Industrial relations, or more precisely anti-unionism, became important in the unification of urban and rural capital in one political party and in overcoming divisions over economic policy. Farmers and employers had been bruised by the growth of industrial disruption during the 1960s and on innumerable occasions had called on the National government, always vainly, to take a punitive approach to deal with it. By 1968 farmers in particular, but many urban employers also, could not stomach the notion that a brief burst of industrial disruption could be used to reverse a GWO of the Arbitration Court.

However, the messages Skinner received from Shand would have encouraged him to believe that the regulations could be amended. Shand's commitment to the arbitration system encouraged him to think that he could convince his colleagues to agree to the proposals from the FOL and the NZEF to amend the regulations. In response to those proposals, Shand wrote an *aide memoire* to marshal his thoughts following the FOL special conference. He set out the options: firstly, to advise employers to stand firm in the interests of economic recovery and respect for Court decisions, and secondly, to reject the joint recommendations of the NZEF and the FOL on the basis that the government was searching for other ways of restraining inflationary wage demands. The third option was to agree to the joint recommendation of the two federations that the regulations should be amended to make changes in retail prices the primary criterion for the Court in considering a GWO application.

If either of the first two options is chosen, wrote Shand, farmers and some other groups will be pleased and 'the National Party conference will probably be a howling success'. But, he warned, this will also run into criticism from the business community and from the media that 'we did not follow the course open to us which might have avoided serious disruption, contained price increases to a reasonable level and preserved the fundamental integrity of the Court of Arbitration'. Shand concluded:

> Another argument that will be raised against the Government and gain more credence as time passes, is that when the crisis came we failed to govern — we failed to take action when action was clearly demanded by both the circumstances and by the business community. This is not a pretty picture, nor one from which I can take any joy. If we follow the third course and accept the recommendation of the joint Federations, the newspapers will generally commend us in somewhat wishy-washy terms. Federated Farmers will hold protest meetings all over the country. The National Party conference will be a shambles, with violent criticism of the Government from farmer members and delegates representing districts where farmers are a dominant interest in the party. As time passes, and on the assumption that the Court makes only a modest order, at least less than 5 percent, an increasing number of people will see that the Government, in a period of crisis, remained in control of the situation .... The result of the first course is likely to leave the National Party as a united country party with only very limited city support. The result of the second course is more likely to be the retention of National Party strength in the cities and an increasing tendency to defect in country areas.[57]

57 Tom Shand File Note, 'The Choices', undated, Department of Labour, 6/13/1, Part 5.

This is a remarkable memorandum, summing up with extraordinary clarity the industrial-relations policy dilemma that always faced the National party as it sought to hold its rural and urban wings together, and, on this occasion, to balance the need to deliver a wage increase against the preservation of the Court's wage-fixing role. Shand believed that the responsibilities of governance demanded that National take the wider view. Skinner presumably listened to Shand. But Shand could not deliver his colleagues. Eyes fixed firmly on the next election, Holyoake chose inevitably to shore up National's farming support.

The second route to a wage increase was for the stronger unions to achieve it through direct bargaining with their employers and for it then to be handed on to the weaker unions through the arbitration system in the time-honoured way. The FOL special conference had unanimously supported this now traditional approach.

Opponents argued that the direct bargaining approach would have left large sections of the workforce without a wage increase. But this seems unlikely. The larger employers had signalled from the outset that they were prepared to concede and although some smaller firms and those in rural areas might have resisted, labour-market pressure would have exerted its influence within a short period. If that failed, those unions and workers could look to achieve an increase through arbitration. This sequence of the strong unions obtaining gains through directly bargaining with their employers, followed by the FOL using the Court to obtain the same gains for weaker unions, had been repeated endlessly in the past and there was no reason to think that the Court, even with an indignant Judge Blair presiding, would have consigned that group of workers to permanent disadvantage.

More importantly, Skinner and others, including Shand, believed the direct-bargaining approach in the political situation of 1968 would mean the end of the arbitration system. This explains why Skinner opposed it bitterly and worked openly to subvert it. He argued that the militant unions had not fully considered how the union movement overall would cope without the Court's protections, especially monopoly representation, unqualified preference, compulsory arbitration, and blanket coverage of awards. This latter point is almost certainly true, but it is not obvious that a direct bargaining approach would have in fact meant the end of the arbitration system. The formal features of the system could only be abolished by the government and neither National nor Labour had any intention of doing this in 1968. Fears for the future of arbitration rested more on the anticipation of the longer-term consequences of a decisive shift to direct bargaining. Skinner (and others) thought this would have industrial consequences unfavourable to weaker unions and might set in motion events which would lead in time to the system's abolition by whichever party was in government.

This thinking derived from an either/or view of arbitration and bargaining. The two had always existed together, however, and although direct bargaining might have posed a rather larger threat to arbitration in 1968, the resilience of the arbitration system and its structural underpinning suggests that a new mix of arbitration and bargaining could have emerged following the nil order. The

further development of enterprise, site and regional bargaining offered the potential for flexible bargaining structures while national awards could have continued to provide protection for the weak. This alternative would be explored again and again over the next two decades, but it is likely that the possibility of it being durably established was never stronger than in the wake of the nil order. Second-tier bargaining was well established by 1968. It had not suddenly emerged; rather it had grown steadily since the first composite agreements were negotiated in the early 1950s. Unions and employers were learning as they went along how to manage the relationship between awards and these new forms of bargaining. Certainly all the problems in this relationship had not been resolved, but the abolition of awards was not on anybody's agenda in 1968.

Unions were better equipped organizationally to cope with new bargaining arrangements by 1968 than they had been at the start of the decade. Then the shadow of 1951 hung over them; by 1968 growing experience of direct bargaining and new patterns of organization, mapped on to new bargaining structures, had altered union structures and their resources. For many unions, the development of enterprise and regional bargaining had led to the emergence or consolidation of representative structures at those levels. They were still not well nor by any means universally developed, but they were a striking contrast with what went before. Composite bargaining on the major sites had strengthened the unions involved in it. They had had to face large and often multi-national companies directly across the table. This required a different and more sophisticated negotiating stance and organizational development appropriate to that. Although composite bargaining was initially a source of division among unions, the experience it gave them in a combined approach and the reconciliation of inter-union differences was organizationally invaluable.

The union movement was also far more united in 1968 than it had been in 1960. This above all was Skinner's doing. He had inherited from his predecessor, F.P. Walsh, a union movement bitterly divided against itself. The extraordinary twists and turns of Walsh's last years in power, fought out in court rooms as much as in union halls, had led to several unions, including the Engineers and the North Island Electrical Workers, defecting from the FOL. Skinner saw it as his job to bring them back, and he was largely successful in this. The controversy over skill margins had stimulated the craft unions into an industrially more vigorous approach. Just one year after the nil order, the Electrical Workers' union, traditionally among the least militant of unions, would fight and win a six-week strike at New Zealand Steel, the outcome of which shaped wage bargaining for years to come. Had Skinner not successfully subverted the industrial response to the nil order, the union movement might have moved to a new system based on awards and decentralized bargaining and become more unified and better organized than it had been a decade earlier. Favourable labour-market circumstances would have made such an outcome likely.

Instead, following the 'unholy alliance', the energies of the FOL, the NZEF and the government were directed not at exploring the possibilities of creating new bargaining structures but at restoring the authority of the Arbitration Court and the predominance of the arbitration system over second-tier bargaining. The

co-operation between the two federations evident in the 'unholy alliance' was built upon and developed further. A period of genuine tripartite policy-making ensued in which the government joined with the two central organizations to reach a consensus on a new General Wage Orders Act in 1969 and in 1970 on amendments to the Industrial Conciliation and Arbitration Act. This brief flowering of tripartite consensus reached its apogee in the Industrial Relations Act of 1973, despite a change in government. These three measures were designed by the centre to restore control there and to snuff out the further elaboration of decentralized bargaining.[58] But by then the centre had run up against the limits of what it could do by way of systemic reform. The demise of the Court's wage-fixing role created a vacuum into which stepped local unions and employers. Between 1968 and early 1971, even as the centre tried vainly to control it, there ensued a remarkable period of second-tier bargaining driven by relativities. In 1971 the National government responded by imposing statutory wage controls. Wage controls or the threat of their re-introduction dominated wage-fixing for the next 13 years. The balance was tilted decisively against the development of any new bargaining system combining awards and second-tier bargaining.[59] The issue continued to bedevil successive governments but was not seriously addressed again until the Labour Relations Act of 1987.

The rejection of direct bargaining and the government's rejection of amendments to the regulations left only the third option — the 'unholy alliance'. Ironically, this was the worst option of the three from the perspective of the arbitration system's future. It was the impact of the 'unholy alliance' on top of the nil order that sealed the fate of the Arbitration Court as a wage-fixing institution.[60] The direct-bargaining approach could be justified as a traditional means of levering change out of a reluctant Court. It might have been possible to retrieve some wage-fixing role for the Court after the direct-bargaining approach had been tried, despite the convulsion caused by the nil order itself. The Court had managed this before, and it could be presented as compatible with historical precedent. But the 'unholy alliance' was unprecedented. The joining together of unions and employers to usurp the role of the Court demonstrated that so far as wage-fixing was concerned, the system was bankrupt and irrelevant. The Court would never again exercise its traditional wage-fixing role.

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58 Walsh, 'The Rejection of Corporatism', pp. 181-208 and 251-65.

59 J. Boston, *Incomes Policy in New Zealand*, Wellington, 1984.

60 This assessment, giving rather greater prominence to the 'unholy alliance' than the nil order in deciding the future wage-fixing role of the Court, differs from most accounts which tend to assign priority to the nil order itself. Roth and Boston both say that the the nil order 'shattered' union faith in the credibility of the Court and Roth goes on to assert that it marked the end of the Court as a wage-fixing body. See H. Roth, 'The Historical Framework' in J. Deeks et al., *Industrial Relations in New Zealand*, Wellington, 1976, p.48 and Boston, *Incomes Policy*, p.91. The argument of this paper is seemingly closer to that of Deeks, Parker and Ryan who see the nil order as 'undermining' the Court's credibility while the 'unholy alliance' 'shattered' it: J. Deeks, J. Parker and R. Ryan, *Labour and Employment Relations in New Zealand*, Auckland, 1994, p.56.