1911.

NEW ZEALAND.

LABOUR BILLS COMMITTEE

(REPORT OF THE) ON THE

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL.

TOGETHER WITH MINUTES OF EVIDENCE.

(MR. ARNOLD, CHAIRMAN.)

Report brought up on Tuesday, the 17th October, 1911, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

FRIDAY, THE 4TH DAY OF AUGUST, 1911.

Ordered, "That a Committee be appointed, consisting of ten members, to whom shall be referred Bills more particularly referring to labour; three to be a quorum: the Committee to consist of Mr. Arnold, Mr. Bollard, Mr. Ell, Mr. Fraser, Mr. Glover, Mr. Hardy, Mr. Luke, Mr. McLaren, Mr. Poole, and the mover."—(Hon. Mr. MILLAR.)

TUESDAY, THE 22ND DAY OF AUGUST, 1911.

Ordered, "That the Industrial Conciliation and Arbitration Amendment Bill be referred to the Labour Bills Committee."—(Hon. Mr. MILLAR.)

REPORT.

THE Labour Bills Committee, to whom was referred the above-mentioned Bill, have the honour to report that they have carefully considered the same, and have taken considerable evidence thereon, and beg to recommend that it be allowed to proceed with the amendments as shown on the copy annexed hereto.

J. F. ARNOLD,
Chairman.

17th October, 1911.

MINUTES OF EVIDENCE.

WEDNESDAY, 13TH SEPTEMBER, 1911.

G. F. REYLING examined. (No. 1.)

1. *The Chairman.*] What are you?—Secretary of the Wellington Trades and Labour Council and president of the Painters' Federation.

2. You also represent the Trades and Labour Councils of the Dominion, do you not?—Well, we have had no official authority to do so, although we received a letter asking us if we were going to give evidence, and we wrote back to tell them we were, and they left the matter in our hands.

3. Have the members of your council considered the Bill?—Yes.

4. And you know their views?—Yes.

5. The Committee has decided, as we did in the case of the Workers' Compensation Amendment Bill, to restrict the evidence as far as may be to the four corners of this Bill?—Yes, I understand that. With regard to clause 2 of the Bill, which deals with the cancellation of registration of a union and the formation of another union not affecting an award, the council approves of that clause as it appears in the Amendment Bill. Clause 3: "Where an industrial agreement has been duly completed by the parties thereto, and no objection has been made to the agreement by any of the parties affected thereby within one month of the signing of the agreement, the Court shall, upon the application of any of the parties to the agreement, declare the same to be an award, unless in the opinion of the Court such agreement is by reason of its provisions against the public good." The council considered that the words in the clause from "thereto" in the 19th line down to the word "agreement" in the 21st line should be deleted; and also that all words after the word "award" in the 22nd line shall be struck out and the following words inserted: "Where an industrial agreement has been duly completed by the parties the Court shall declare the same to be an award."

6. Will you explain the reason?—We consider that when all the parties are agreed that it should be made an award, it should not be allowed to stand over for a month; and also that the Court should not have the power when the parties do agree to an award or agreement to refuse to make it an award. Clause 4: The council approves of that with the deletion of the words "any one of those," in the 30th line, and substituting the word "the." I do not know that it makes a lot of difference, but that is my instruction from the council. In subsection (2) of clause 4, the council approves of that, and also subsection (3). Clause 5, "Provision for Dominion award." The council approves of that. In subclause (3) of section 6 we would like the words "industrial agreement" struck out and the word "award" substituted. That would make the clause read, "If within the time aforesaid no notice of disagreement has been filed the Clerk shall as soon as possible thereafter give notice in the prescribed form to the parties of the fact, and a recommendation shall, as from seven days after the date of that notice, operate and be enforceable in the same manner as an award duly executed and filed by the parties; and the Clerk shall indorse the recommendation accordingly. We want that, Mr. Chairman, because the award has a greater scope and power than an industrial agreement. We agree with the clauses down to subsection (*e*) of clause 11. This clause, the council think, should be left as it is in the Act. It means a lot of work where there is a federation. Subsection (*e*) in the amending Bill reads, "As to section 107, subsection (2): by inserting before the words 'in manner following' the words 'of the union or of each of the unions concerned'; by omitting from paragraph (*a*) the words 'in the case of an industrial union'; by omitting the word 'and' after the word 'minutes' in the same paragraph; and by omitting paragraph (*b*)." Clause 107 of the principal Act, paragraph (*a*) of subsection (2), provides that after the words "in manner following" the reference shall be approved by the union or each of the unions concerned.

7. Will you explain the difference? You ask for the present wording?—We take it by the way this reads that it means that the whole of the members of the union have to be consulted. A ballot has to be taken by the whole of the union before a case can be referred to the Court. As it stands at present the governing bodies can do it.

8. It can be an executive sitting in one town?—Yes. Of course, we quite understand they would not do it without an expression of opinion from all the unions. I do not think it ever would be done, but it entails a certain amount of expense on the federation, and there is also the great likelihood of the whole thing becoming invalid because in the country towns they are not so well up in the laws, and there might be some flaw in taking the ballot that would make the whole thing invalid. We consider that that subsection and also subsection (*b*) of the same clause should remain as it is at present in the Act. The other clauses are only machinery clauses, and we approve of them. With regard to paragraph (*b*), subsection (2) of clause 11, we consider that a very good provision giving three clear days' notice instead of one day in regard to the appointing of assessors. I think that is practically all I desire to draw attention to. The Bill, we consider, is in the right direction.

9. *Mr. Fraser.*] You have no objection to clause 3?—No, we approve of that. There has been some trouble with the Waterside Workers' Union, and this clause, we believe, has been put in to meet that.

10. This is a provision where the registration of a union is cancelled for the purpose of issuing a fresh certificate, or of a union being registered under a fresh name?—Yes.

11. What is the effect of a union voluntarily cancelling its registration under the Act?—They go out.

12. Does it affect the award?—Not until the award expires.

13. So long as the award does not expire they are liable to it?—Yes. Mr. Justice Sim told one of the unions here that they could cancel their registration and would not be liable.

14. I want to know whether they would be liable to the award?—I do not know. Mr. Justice Sim said he thought that.

15. *Mr. Luke.*] In reference to the Dominion award, I think you said you are thoroughly in agreement with that?—Yes, we consider that is a thing that is needed.

16. *Mr. Fraser.*] In clause 4 you are striking out the word "those" and putting in the word "the"?—It was moved in the council, but I think it is only a matter of making it definite for one of the Commissioners. It says "the Commissioner in those districts." I do not know that it matters much.

17. Is it not broadening the thing? Under the clause it would be confined to the two or more industrial districts specifically in question. By taking out the word "the" you might include two or more?—For myself, I cannot see that it makes any difference, but I am just carrying out the instructions of the council.

18. *The Chairman.*] My attention has just been called to the fact that the idea of the clause is that the one Commissioner should see the whole thing through, although it might affect another district besides that he represents. If at the present time there is a dispute in the Wellington District and Auckland it is practically the same thing—it would come under two Commissioners. The Department did not think it was right?—That may be so.

THOMAS SMITH examined. (No. 2.)

1. *The Chairman.*] What are you?—Secretary of the Wellington Wharf Labourers' Union.

2. Are you a member of the Wellington Trades and Labour Council?—An officer of the Trades Council.

3. And of the executive?—Yes. We have definite instructions, but as Mr. Reyling has given to the Committee the result of these instructions I do not know that I can add anything to what he has said. He has given the purport of those instructions, and I have no authority to add to anything Mr. Reyling has stated.

WILLIAM PRYOR, Secretary of the New Zealand Employers' Federation, examined. (No. 3.)

1. *The Chairman.*] You heard the statement made by the last witness, and will keep within the four corners of the Bill?—Yes. There are just one or two small points we would like the Committee to consider that are not dealt with in the Bill. First of all, I should like to say that we assume that the primary objects of the Bill are—first, to make provision for the conversion of industrial agreements into awards; second, to make provision to secure Dominion awards; and, third, that notice of disagreement with the Conciliation Council should be given within a certain time. I might say that my federation approves of provision being made for these purposes. I am sorry to say, however, that we cannot agree with the clauses put forward in the Bill. Taking clause 2, we approve of the clause: it is simply a machinery clause in a case where a union desires to alter its designation, so that it will not suffer any disability by doing so: it will keep its award in operation during the time of transition notwithstanding that the name of the union has been altered. Now, with regard to clause 3, we object to it as it is framed. We desire that simple machinery should be provided whereby an industrial agreement can be made into an award, if that can be done without prejudicing the interests of those who are not parties to the award. The clause proposes that where an industrial agreement has been entered into, and no objection has been made by any of the parties affected thereby within one month of signing the agreement, the Court shall have power to declare the same to be an award if, in the opinion of the Court, the provision is not against the public good. We object to an industrial agreement being made into an award until the other employers in the district have had an opportunity of stating their views with regard to the agreement which is being entered into. I can give you a case—I will not mention the town or place, but will give you the facts that have come under my own notice and which are absolutely correct. A dispute had arisen between a certain union and certain employers in one of our towns, and an agreement was arrived at with nine or ten out of twelve employers who were engaged in that particular business in the town. The union came along, filed a dispute, and demanded that the other three employers should be bound by the agreement. I happened to be in the town when this position arose, and here was the state of things, Mr. Chairman: the nine or ten business people who had agreed to the provision set forward by the union were those who scarcely employed any hands at all, and the stiffer they could make the provisions of that agreement the harder they were hitting up against those employers who were employing the larger amount of labour, and the better for themselves. Now, under this clause it is quite conceivable that those people could come to the Court and the three employers know nothing about the agreement that had been entered into, and the agreement be made into an award. Application would be made for these three employers, who practically employed all the labour in the town, that they should be added as parties, and their interests absolutely prejudiced. When the amendment of 1908 was going through we discussed this aspect of the matter with this Committee, and there was inserted the condition that an agreement should not be made binding unless it was proved that the parties thereto employed a majority of the workers in that industry in the district. Section 67 of the Industrial Conciliation and Arbitration Amendment Act says, "Whenever it is proved to the Court that an industrial agreement (whether made before or after the commencement of this Act) is binding on employers who employ a majority of the workers in the industry to which it relates in the industrial districts in which it was made, the Court may, if it think fit, on the application of any party to that agreement or of any person bound thereby, make an order extending the operation of that agreement to all employers who are or who at any time after the making

of the said order become engaged in the said industry in the said district, and all such employers shall thereupon be deemed to be parties to the said agreement, and shall be bound thereby so long as it remains in force." You see the difference. Then the Court has power under the Act, as at present, to extend that award to other employers. You see where we are, and we submit that there must be that safeguarding provision always in connection with the conversion of industrial agreements into awards. Unless you have that provision, those employing labour might conceivably be ruined, and that was the reason why the proviso regarding the employment of the majority of the workers was put into clause 67.

2. The Bill eliminates that provision?—Yes. The Trades Council ask that the words from the word "thereby" in line 19 to the word "agreement" in line 21 be deleted, and that all the words after "award" in line 23 be deleted. The result of the proposals of the Trades and Labour Council would be to make it compulsory on the Court to make an industrial agreement that might be entered into into an award. Now, I understand that complaint is made that the Arbitration Court refuses, practically without reason, to make industrial agreements into awards, and that is the justification claimed for this clause.

3. Does the Arbitration Court reopen the whole question?—Yes, frequently. The effect of the Trades Council proposal would be that the Court would be absolutely compelled to make an award even although overwhelming proof was given in evidence that it was against the public good, and even though the Court should exceed its jurisdiction, and that award could be attacked because the Court had exceeded its jurisdiction. Now, the Arbitration Act has not hitherto compelled the Court to do either one or other of these things; and our New Zealand Arbitration Court, as distinguished from the Australian Courts, has never been attacked for exceeding its jurisdiction, and I think you can add fairly that the reason it has never been attacked is because it has never exceeded its jurisdiction. It is essential that the Court should have power, if in the opinion of the Court it would be against the public good, to refuse to make an agreement into an award binding on other parties. I have just had advice from the South that an industrial agreement has been sent back to the parties for alteration, and the reason for the Court sending it back is that the preference clause is calculated to make a close corporation of the unions. The union, if it liked, could charge £5, £10, £15, or £20 for admission instead of the ordinary 5s. Surely it is essential in a case like that, and in many other cases that could be mentioned, that the Court should have this power. Now, what we suggest in connection with clause 3 is that section 67 of the Amendment Act should be amended by providing, besides the necessity regarding the majority of workers, that the Court on application shall make the agreement into an award, unless in the opinion of the Court such agreement is against the public good, or the making of the award is beyond the jurisdiction of the Court, and that only after inquiry that those who may be fairly expected to be affected by the award have had due notice. With regard to sections 4 and 5 of the Bill, I have to say that we desire simplification in the procedure for securing Dominion awards; but I am sorry to say that, instead of making the procedure more simple, the provisions of the Bill will make it more cumbersome and less effective and more expensive than is the case under present conditions.

4. *Mr. Luke.*] You are not in favour of the principle?—Yes, and will make a suggestion before I finish. The scheme is that where there is an industrial association comprising industrial unions in more than one industrial district it may make application to a Conciliation Commissioner in order to get a Dominion award, that Commissioner to have power to exercise his jurisdiction over the districts in which it is proposed the award shall apply. Provision is made that each of the Clerks in the other districts shall be supplied with a copy of notifications, recommendations, and other documents; and it further provides that the Commissioner may at any time during the hearing of the dispute increase the number of assessors to be appointed to represent each side to six on each side. We may take it for granted that in practically every Dominion dispute there are to be six on each side. Now, under these provisions all that would be necessary for an industrial council to do would be to cite a few employers, say, in Wellington. The Commissioner would be compelled to set up the Council, and all that the other employers would know of it would be what might appear in the public Press, or what might be conveyed to them by those interested. Then, in connection with the hearing, it is quite conceivable that we could have three Dominion disputes being considered at one time by the three different Commissioners—three Courts of thirteen men each careering up and down the country at the country's expense; and our view of the thing is that we shall probably see a good many of these extended picnics. When the recommendations are made, all that is required by these provisions is that a single copy of the recommendations should be sent to the Clerk of Awards in each of the industrial districts in which it is proposed the award shall apply. The individual employers are not to be provided with these recommendations, and in many cases it is quite conceivable that they would not know at all what was going on. I assume that it is proposed to make the decision binding on all the employers in the industry affected in each of the industrial districts in connection with which these claims are made. We have to take section 5 in conjunction with section 4, which provides that the Court may, "on the application of any party to an award, extend the award so as to join and bind as parties thereto all trade-unions, industrial unions, industrial associations, and employers in New Zealand who are connected with or engaged in the same industry as that to which the award applies"; with the proviso that "the Court shall not act under this section unless it is satisfied that the conditions of employment or of trade are such as make it equitable to do so." I want to point out here that, after all this machinery has to be observed, and after an extended picnic of, say, four or six months, there is no provision made in the Bill to carry that dispute on to the Court, because the provisions of the Act applying to ordinary Conciliation Councils do not apply to these Conciliation Councils. Speaking as one who has had very considerable experience in connection with Arbitration Court work, and in dealing with conferences which may be called Dominion conferences, I am perfectly satisfied that the provisions as set forth here

will be found to be utterly impracticable, and will break down of their own weight in a very short time indeed. As I said at the outset, my federation wants provisions for Dominion awards, but these provisions must be simple, and as simple as possible. Our experience is this: that when you come to discuss Dominion awards, or awards covering more than one industrial district, you have an organization on each side. That is a state of things you frequently do not have in simply local disputes in regard to the towns or cities, or even one industrial district. That has been my experience. In every case in connection with Dominion awards before the reference is filed to the Conciliation Council there are always conferences of the parties—generally several conferences. That is before any action is taken under the Act at all. Take, for instance, the woollen-mills dispute, which has now been referred to the Court both in Christchurch and Wellington. It started in Christchurch, and before any reference was filed at all there were two conferences of the parties, when there was an amicable agreement arrived at that there should be a Dominion award. The arrangements, however, broke down somewhat, and the matter was then referred to the Conciliation Council. We practically confirmed before the Conciliation Council in Christchurch what had been agreed upon in the private conference, and before the Conciliation Council in Wellington we simply approved what had been done in Christchurch, and the matter has gone to the Arbitration Court. My point is this: that there is no necessity whatever for this cumbersome Conciliation Council machinery in connection with Dominion awards. Dominion awards are brought about by reason of the fact that there is organization on both sides, and that induces the conferences between the parties. If those conferences fail, then all the Conciliation Councils can do is to pass them on to the Arbitration Court. We had another conference just recently in Wellington extending over nearly three days in connection with a typographical dispute—a joint conference consisting of Dominion representatives of the Typographical Association and master printers, who met and discussed the thing for two days and part of the third day, and then they were not able to arrive at an agreement. Now both sides realize that the case has to go before the Arbitration Court, and, of course, according to the present law we have to file disputes in each of the centres, and finally to have the matter put on to the Court. Our suggestion is that Dominion industrial disputes should be referred direct to the Court. You may, if you desire it, make a proviso that there should be a conference of the parties—that either a conference should be held or refused. It will be found that in very few cases they will be refused by either side. But there must be definite legislation to provide that all persons whom it is proposed to make parties to the dispute shall be cited and be served with full copies of the claims. The suggestion of the federation is that the Bill should provide that industrial associations should file references direct to the Court, citing all parties in the districts to which the award is to apply, and give the Court power to make an award applying to one or more industrial districts, after hearing such evidence as it deems necessary at such centre or centres in the Dominion as the parties may agree upon, or in default of such agreement as the Court may direct. The practical result of our suggestion would be a conference of representatives of the parties in some centre of the Dominion, and failing a settlement there, there would be an agreement in nine cases out of ten to hear the case before the Court in one centre. In the woollen-mills dispute we have agreed that the dispute shall be heard at either Christchurch or Wellington, as the union desires. That is how it works out in practice even under the present law—and in the typographical dispute I expect within the next day or two to arrange with the typographical federation in a similar way: You see, in connection with these industrial disputes there are wide and varied interests—interests of different classes of employers, interests of one part of the Dominion differing from another—and unless you have a hearing in one centre, or at the outside two centres, you get your evidence spread over and do not get your case put before any tribunal in concrete form. In my opinion, it was the power that the Conciliation Board had in connection with the Canterbury farm labourers' dispute to travel up and down and in and out, and to take all sorts of evidence right through the Canterbury District, that caused so much trouble and expense. That Conciliation Board was engaged for months at that one dispute alone, and it cost a good many hundreds of pounds, and what was the result? The result was such a mixture, such a conglomeration of evidence for one side and the other, that neither the Board nor the Court could make head or tail of it. It cost hundreds of pounds for the typewriting alone. That is giving point to my argument: if that happened to a Conciliation Board in one district, how much more likely in a case like this, where it has as a field the whole of the Dominion to spread itself over. You are offering a premium for that sort of thing. And after all that is done, in ninety-nine cases out of a hundred it will go to the Arbitration Court and be heard in one centre, so that the evidence can be put forward in a precise and useful form by each side and be summed up by the Court. Speaking as one with very large experience of Arbitration Court work, I am convinced that any other system but the one suggested has no chance of permanency or success. Section 6 of the Bill deals with what the parties have to do in connection with the filing of a recommendation by the Conciliation Council. It provides, first, for one month's notice to be given of disagreement with the recommendations. We agree that one month's notice should be given. It is desirable that there should be a limit, and that the party objecting should give notice of its disagreement, but we cannot possibly agree with the provision in subsection (2), that "any party that has not within the time aforesaid signified his disagreement with the recommendation shall be deemed to have concurred in the same." It will be absolutely impossible in the great majority of cases—under present conditions, at any rate, and I take it that the Bill provides for present conditions to continue—for the employers in many disputes to ascertain what the recommendations are. In many of the disputes by far the greater proportion of those who are cited are hardly affected by the dispute at all, or any of the recommendations that might be made, because of the fact that they employ little or no labour. Now, the provision is that those who disagree should notify their disagreement, and in the event of their failing to do so it shall be taken that they concur in the same. Here I have the Wellington shearers' award. On this list

there are the names of 2,284 employers. I venture to say—and I know something about that which I am speaking of—not one-fourth of those employers are seriously affected by the award; and yet it is asked that we should agree to the award that the 75 per cent. of employers who are seriously affected, and who will not take the trouble to send in notice of disagreement, shall be deemed to concur in the recommendation. You see how impossible it is. Why, there are hundreds of employers in this list that we could not get at. And so you will see that this proposal is impracticable. It is unfair, and it would be a cruel thing to impose that condition. Then, let me explain to you how a dispute like this is conducted. I represented the employers both before the Conciliation Board and Arbitration Court in connection with the Wellington shearers' dispute and the other district disputes. This is one of the disputes in which a Dominion award has been secured, and it finally boiled itself down to this: that evidence was called in Wellington from all over the Dominion, and the Arbitration Court made its award on the Wellington award. There were a number of conferences. If our suggestion is adopted, the conferences between the parties would be open, and in a great many of them the Conciliation Commissioner would be asked to take the chair. But, despite the fact that there are over two thousand employers, the whole of the proceedings were carried through by a committee of about ten gentlemen and myself. These were appointed by the different farmers' organizations throughout the district. They had the particulars, and were able to put the case and claims after that. We submit this: that if notice of disagreement is given by any one whomsoever within one month, the case should go right on to the Arbitration Court; any other provision than that is impracticable. I have shown you an extreme case—I admit that—but take the labourers' award: there is a great number of employers attached to it, a considerable portion of them not employing any considerable number of labourers. What we suggest, then, is that subsection (2) of clause 6 should be deleted. Then you would have the provision that a month's notice must be given, and subsection (3) would then provide that if within the time no notice had been filed the recommendation should begin to operate. There is just the difficulty about its beginning to operate as an industrial agreement. As a federation we are opposed to industrial agreements, and personally I will undertake to ride through any industrial agreement that is on the award books. These agreements are only in operation so long as they are against the employers.

5. Are they of no good to the unions?—Only to this extent, when the employers honourably observe them. I have gone through most of the agreements and will undertake to ride through any one of them. You may put it that it will operate as an industrial agreement, but the machinery of the Act will prevent that coming into force. It would not do to say that an industrial agreement would operate in the same manner as an award, because you must have the oversight of the Court to see that none of the provisions should be against the public good. I do not know that there is any harm in having it as it is, because we could always have it sent on to the Court. Although we think there is a weakness there, we are prepared to accept clause 6 if subsection (2) is put out. Subsection (4) of clause 6 says, "If any party to the dispute duly signifies his disagreement to the recommendation, the dispute shall be referred by the Clerk to the Court for settlement, and thereupon the dispute shall be before the Court." We ask that the words after the word "Court" in the second line should be deleted, and for this reason: Supposing the recommendation of the Conciliation Council goes in and there is notification of disagreement. In accordance with the Act the Court hears the dispute and is satisfied that the recommendations require alteration and desires to alter them. Under the clause as printed the Court has no power to alter these recommendations; its only power is to incorporate the terms of the recommendations in an award. I judge that this suggestion is in the interests of the workers quite as much as in the interests of the employers. As far as my experience goes, I have not had a section of employers that has objected to the recommendations of the Conciliation Council, but I have had two unions that have objected to them, and if this clause had been in force—in each case they got an alteration—all that the unions could have got would have been the recommendations they were objecting to. Subsection (5) appears to us to be absolutely unnecessary, and, being unnecessary, we think it should not be in the Bill. Section 81 of the consolidated Act makes all necessary provision to give the Court power to throw anything out; it says, "The Court shall in all matters before it have full and exclusive jurisdiction to determine the same in such manner in all respects as in equity and good conscience it thinks fit." We think subsection (5) should not be in, because when you have a similar provision in that way there is always the danger of a turn in a sentence or a twist in a word causing one clause to clash with the other. I do not mean that we are complaining of that subsection, because there is nothing to object to; but we say that, as there is ample provision for that in section 81 of the consolidated Act, there is no necessity for it, and it should not go in. Section 8 of the Bill provides for the right of appeal from the Magistrate to the Arbitration Court. Now, this is a matter that requires close investigation by the Committee. The experience of not only employers, but I am sure also of the Labour Department officials, is that Magistrates' decisions in connection with breach-of-award cases are so varied, and at times so much against precedents laid down by the Arbitration Court and established by custom and practice, that it is a cruel shame that there should be any bar put upon appeal to the Arbitration Court—the only body that has a real practical working knowledge of these awards and industrial agreements. We have all along objected to these breach-of-award cases being taken by the Magistrates. We pointed out in the first instance, when it was proposed at first that we would have a Magistrate, say in Auckland, dismissing a case for an offence that another Magistrate in another centre might convict for and impose a fine of £5, £8, or £10, we would have Magistrates in one centre fining lightly for a serious offence and another in a different centre fining heavily for a similar offence. We do not as an employers' association want to shield those employers who endeavour to get the better of their workers and fellow-employers; we do not want to get them out of the consequences of their own acts when there is a bad breach; but where, as we have seen, a serious case of breach of award is met with a nominal fine of 5s., and at the same time in another centre a trivial breach met with

a fine of £5 or £10, you will see our reason for objecting to Magistrates' decisions. But, realizing that we are compelled to go before the Magistrates in connection with these matters, we say, Give us a free right of appeal to the Arbitration Court beyond the Magistrate. We do not approve or agree that a Magistrate should take these cases, but evidently we have to submit, and while making our protest we say that we should have a free right of appeal to the Arbitration Court in all these cases. Many a case is a small thing in itself, but it may have, and such have had, far-reaching effects. To-day, in almost any case of importance, you can turn up the Magistrate's decision and get a different decision from the Court, mainly through the peculiar ideas and proclivities of the Magistrates.

6. *Mr. Glover.*] You can do the same with the Judges!—But the Judges are trained in the particular business in which they are engaged, and the Magistrates are not trained in connection with Arbitration awards. They do not like the work themselves, and naturally, if they are not taking an interest in them, their decisions are not so carefully thought out as they otherwise would be. But, whatever the cause and reason, there is the position, and I am perfectly satisfied that what we say would be backed by the experience of the departmental officials, and I believe, in some of the cases, by the representatives of the unions. This clause 8 of the Bill provides that where the amount of the claim is not less than £10 there shall be the right of appeal to the Arbitration Court against the Magistrate; but the amount of the claim has to be £10. What is to hinder the appellant in any action, be it an employer citing a union or an employee citing an employer, or be it the Labour Department prosecuting an employer or a union official prosecuting an employer, feeling that he has a good chance with the Magistrate, saying, "We will not claim £10 for fear of an appeal, so we will claim £5"? In such a case we have not the right of appeal. Is that a fair position to put us in? In very many cases the amount of the claim or the amount of the fine is not of very great importance—it is the decision that is the trouble; and we want, where we are satisfied that the decision is wrong, to be able to go to the Arbitration Court and ask that Court to say which is right and which is wrong. Then we shall get Arbitration Court precedents, and in that way we shall be able to bring the Magistrates into line as we cannot do at the present time. If we cannot get a free right of appeal, we do ask that the amount of the claim that we shall have the right of appeal against be reduced to £5—that is, that the word "ten" shall be altered to "five." Then, in line 25 it has been pointed out to us that there is just the fear that the Arbitration Court may not have the right to hear a case unless there is a provision put in to deal with the question of claims exceeding £50. There is some limitation in regard to it, but we ask that the matter should be looked into. It is suggested that after the words "Magistrate's Court" there should be some provision regarding claims exceeding £50. We want the Crown Law Office to look into it and see if that is right. Clause 9, I might say, has caused just a little amusement among our people. It says, "No award of the Court shall contain any provision that is inconsistent with any statute which makes special provision for any of the matters before the Court." We say that this clause is quite unnecessary, because if the Court made any provision inconsistent with any statute that provision would be *ultra vires*—and probably the whole award. Earlier I said that the New Zealand Arbitration Court had never been attacked for exceeding its jurisdiction, but if it went outside the law it would exceed its jurisdiction and could be attacked if it made provisions inconsistent with any statute, and those provisions would be *ultra vires*, and, as I say, we are pretty sure the whole of the award would fall to the ground. You therefore see how unnecessary is the clause, and we always object to unnecessary provisions being put in. With regard to section 10, I would point out to the Committee that that might, conceivably, be quite impracticable. I have information from Auckland to the effect that, although it is five months since the Court sat there, there has been a request sent by a number of workers' unions asking that the Court should not sit there on its present circuit.

7. *The Chairman.*] Why?—They are evidently not ready, in some way, to go on with their cases. Then, again, the Court may be engaged on some very important case. For instance, when the Blackball strike took place the Court and the country saw the necessity of its going right over to Blackball to fix the thing up. They were, fortunately, able to sit there. But suppose the time for the quarterly sitting had gone by, it would have been impracticable, say, in Christchurch, to take up the cases. Not so long ago the Court had to pass over its sittings in one of these places because there was no business to go on with. Then I ask, how it is proposed to compel compliance with this clause if the Arbitration Court makes a breach of the Act? Can any fine be imposed? We think the clause is impracticable, that it is not desirable, and that the matter must be left to the good sense of the Court itself. We approve of clause 11—at least, there is nothing in it that we take exception to, because many of the things in it do not affect us. But Mr. Reyling stated that the Trades and Labour Council objected to paragraph (*e*) of clause 11, which proposes, first, to amend section 107, subsection (2), of the Consolidated Act, which provides, "An industrial dispute shall not be referred for settlement to a Board by an industrial union or association, nor shall any application be made to the Court by any such union or association for the enforcement of any industrial agreement or award or order of the Court, unless and until the proposed reference or application has been approved by the members in manner following, that is to say—(*a*) In the case of an industrial union, by resolution passed at a special meeting of the union and confirmed by subsequent ballot of the members, a majority of the votes recorded being in favour thereof, the result of such ballot to be recorded on the minutes; and (*b*) In the case of an industrial association, by resolution passed at a special meeting of the members of the governing body of the association, and confirmed at special meetings of a majority of the unions represented by the association." We take it that the intention of that part of subsection (2) of section 107 which says that the reference of application must be approved by the members before these other things are done means that all must be approved by all the members. It will read now, "unless and until the proposed reference or application has been approved by

the members of the union, or of each of the unions concerned, in manner following." Surely, when the Act said a reference or an application should be approved by the members, it meant all the members of the unions.

8. *Mr. McLaren.*] In the ordinary way of business?—Surely you can take it that way, but that has been dodged. It seems to me that in any disputes the minds of the members of the unions should be got at, and our friends of the Trades Council object to that being done. We say it is absolutely essential. So far as I can gather, the other alterations are consequential.

9. You do not suggest that there should be an absolutely unanimous decision in every case?—No, the vote of the employees does not mean a unanimous decision, it means the decision of the majority. There are only a couple of matters on which I should like to go outside the four corners of the Bill. The first is in connection with the warehousemen's dispute, where we find ourselves in a very difficult position. Shortly put, we ask first that provision should be made to provide for publication in the public Press of application for the registration of unions, so that notice of protest against registration may be given if necessary. I feel perfectly satisfied that if that had been the law in connection with the warehousemen's union a different condition would prevail, and which I believe would have been in the interests of all the parties concerned. It is not in the interests of that union that there should be this strife and turmoil in connection with their application; and I believe in that case such good evidence would have been put before the Registrar that the scope of the union, while it would have been restricted, would have made for strength in itself. It is desirable also, from the point of view of the employers, that they should know what unions it is proposed to connect with their industries. Secondly, we ask that provision should be made to give the right to definite sections of workers to register notwithstanding that they are provided for in another and more comprehensive union. In this connection I am advised—I do not know personally how true it is, but Mr. Grenfell, the secretary of the employers' association is my informant—that inquiry was made to ascertain if the salesmen and those who compose the storemen and packers in the warehouses could register notwithstanding the registration of the general union. They were informed that they could not register. Well, it may be desirable in a case such as the present that they should be allowed to register. In any case, the Registrar has discretion.

10. *Mr Luke.*] Is that apart from the clerical side?—Well, although there has been all this trouble, I have taken little or no interest in it. It is quite conceivable that with the clerical staff and salesmen, and distinctly warehouse people as against storemen and packers, there will not be any community of interest. In a case like that we think that there should be machinery by which the Registrar might register those sections of workers separately. The only other thing I want now to mention, and that briefly, to the Committee is this: that laymen should be allowed to appear in the Magistrate's Court. We ask that permission should be made to permit the secretaries of recognized employers' organizations to appear in the Magistrate's Court. The astonishing thing is that we are permitted to appear in the superior Court but not in the lower Court. The peculiar point of unfairness is that the industrial unions can appear by their secretaries, but the secretary of recognized employers' associations, which cannot register under the Industrial Conciliation and Arbitration Act cannot appear. Our employers' associations cannot register, but there are some of us recognized as employers' servants and know the conditions of the awards in the same way as the secretaries of workers' unions. We are recognized officials of the employers, the same as the officials of the workers' unions, and we think that it is only fair that we should have the same privilege.

11. As to clause 3, what means do you suggest to get these people to take any action or to be made parties to an industrial agreement, because under the Act they are included?—I suggest that you provide that unless it is proved the employers who are parties to an industrial agreement employ a majority of workers in the district, there should be an arrangement by which we should be able to go on to the Arbitration Court, and then the other employers could be brought in by citation before the Court and there get an opportunity of defending themselves.

12. You admit at the present time that there is a difficulty in getting some of these people to take any action at all?—There is not so much when they are actually cited, because then they will take action. Our trouble is this, that in the example I gave you nine or ten employers who might be employing little or no labour to speak of, when an industrial agreement is entered into there is no means of those who do not employ labour knowing anything about it. Under Mr. Reyling's suggestion they could go into Court while those who were seriously affected would know nothing about it.

13. What steps do you take to get them interested and able to say Yes or No to an industrial agreement?—The only way is by filing a reference attaching them to the award.

14. Is it not your experience that it all devolves upon a few active employers to deal with the question as against others who may be employing more men?—Yes, frequently.

15. What do you suggest to make these people active in the matter?—Well, you understand that clause 67 of the Act is not ours. It was agreed to as a sort of compromise. We say that it should be amended a little so as to give power for the parties to have the agreement made into an award, if all who are engaged in the industry in the particular district or part of the district affected are cited.

16. If it were proved that the people represented a majority of the workers in any agreement, would you be willing that the agreement should be filed and go to the Court?—Only if the Court has power to ascertain that the parties who should be cited are cited.

17. An industrial agreement might be entered into for the purpose of going to the Court to make it a Dominion award: that is conceivable, is it not?—Quite.

18. We had a case the other day in Dunedin in connection with the boiler-workers, and my experience in the iron trade is that the fighting involved has been with two or three firms. The firms in Hawke's Bay, West Coast, and Taranaki, take very little interest in a case and leave the

parties in the centre to deal with it. We find just as much difficulty in dealing with the matter, and would like to know what steps you propose to alter that state of things? Our suggestion is that in turning an indutrial agreement into an award every employer should first be served with a copy of the demands. That would remove a good deal of the apathy on the part of the employers. When you entered into that agreement in Dunedin the probability is that only those in the centres knew anything about it.

19. What do you suggest in areas that have no organization to meet the difficulty? Would you suggest any initiation from the Department? These outside people are bound to be parties to a Dominion award and yet they have no organization?—Under a Dominion award by the provision we propose they would be brought in. It is only necessary that industrial associations shall be in existence, and an industrial association can consist of two unions——

20. They can only be brought in after being cited by some specific means?—Yes.

21. If they did not comply with that citation would they be brought in?—Yes, as long as they got notice.

22. You say there is no appeal from the decision of a Magistrate?—Yes, we have under certain conditions, but which in certain cases are blocked in the Bill. What we want is the free right of appeal.

23. You want it more as a matter of principle than as a matter of amount?—Yes, the matter of pounds, shillings, and pence does not enter into it at all.

24. *Mr. Fraser.*] In one part of your evidence you laid stress upon the necessity of notifying every one concerned in regard to a disagreement?—Yes.

25. What I want to know is this: under clause 6, assuming it to be passed into law, to whom does the clerk send notice—to the associations?—No, it says that the Clerk shall send notice only to Clerks of Awards in the other districts affected. We say the individuals should have notice.

26. Who are the parties, the asociations or individuals?—Individuals. There is a provision in the Act at present, and that is being done by publication in the local Press. It is deemed to be sufficient by the Department of Labour, but we say that every party should get a copy. I showed that in connection with the shearers' dispute there were two thousand employers. If there had been any publication, all that we should have had would have been a *résumé* of the award in the local papers—nowhere else—and unfortunately the newspapers seem to have the faculty of leaving out the most important points. They do not understand the conditions, and we say the present custom is utterly inadequate and should be altered, especially if this thing is going through. We want notice sent to each of the parties and the association.

27. What do you mean by the party?—Each employer and the employees' union on the other side.

28. You do not suggest that the Clerk should have to send the notice to each member of the union—it is not practicable?—I say that if you are going to insist upon 2,824 people being cited it is only fair that you should give them notice so that they may disagree if they desire to. We suggest that any one notice of disagreement should be sufficient to send the case on to Court.

29. Should not also the question of citation be confined to representative bodies?—It could not be in the case of employers. Our representative bodies are the employers' associations. The condition under which we work necessitates our having just one representative body in the Wellington District. There are few industrial unions of the employers, and the employers' associations cannot register under the Act.

30. *Mr. Glover.*] I understood you to say that the Arbitration Court exceeded its jurisdiction?—No. What we want is that there should be nothing put into the Act to compel the Court to exceed its jurisdiction. The Trades and Labour Council's suggestion in section 3 is that the Court should be compelled to make an award whether the award is or is not, in the opinion of the Court, for the public good. I said that the Court had never exceeded its jurisdiction.

31. Has the Judge of the Arbitration Court ever made comments from the Bench with regard to people who had no right of reply?—I have always had the right of reply when I thought he made remarks he should not have made; but I do not want to discuss the Arbitration Court Bench.

32. You said something about Dominion disputes being held in one centre: do you think it would be advisable?—We are not suggesting that all the Dominion disputes should be held in one centre, but in such centre or centres as the parties may agree upon, or, in the event of no agreement, as the Court may direct. We think it is cheaper to bring the witnesses to one centre. In connection with the woollen-mills dispute, we have already arranged to have the matter decided in either Christchurch or Wellington; and in connection with the Typographical Association it will, I think, be by agreement of the parties in Wellington.

33. Would it not apply to people in Auckland coming down here?—It is a very simple thing for Auckland people to visit Wellington. It is all a matter of convenience.

34. You surprised me by stating that workers' representatives in Auckland have stated that the Court should not sit there although it is five months since it went to Auckland?—I said that was my advice from Auckland.

35. *Mr. McLaren.*] With regard to subclause (2) of clause 6 of the Bill, you recognize that it is to prevent parties who disagree sending their case on to the Court?—No; but you send them on to the Court without the parties being notified.

36. Does that not apply to the officials of the employers not notifying the employers?—No; the majority of those generally cited are not affected by the award. They are not employers of labour, and we have to carry that weight all the time.

37. You sketched the process by which a Dominion award would be arrived at from the stage of conference to the Arbitration Court proceedings: in that process are not the body of employers represented really by delegates or representatives?—Yes, the same as the unions are.

38. In this conference on both sides, do you not expect the parties concerned to be bound by whatever decision is arrived at?—If they arrive at an agreement, certainly. Of course, very often in big disputes you give way tentatively on one point while you discuss another point, and make agreement on these points dependent upon a full settlement being reached.

39. You expect the respective parties of employers and workers to be bound by their representatives in the agreement they arrive at?—Yes, I would not take part in a conference unless that was the understanding.

40. If that is so, should not the employers who neglect any notice be bound?—You have not got a full representation of the parties. You must not tangle me up with a conference of the parties with those who are compelled to go before a Court of law. They are two different things.

41. Take the case you particularly adduced—that of the shearers: you say that was dealt with by ten gentlemen with yourself?—Yes.

42. Did you not represent the interests of hundreds of employers whom you had never met or discussed the matter with—is that so?—Yes.

43. And you expected as a result of that conference that they would be bound by their representative?—Yes, not that they should be bound by the recommendations of the Conciliation Council. You know better than that. You are either purposely confusing the matter or doing it in ignorance of the state of affairs. I do not think you are speaking in ignorance.

44. You have said that you expected these employers, hundreds of whom you say were never consulted——?—I did not say "hundreds of whom were never consulted."

45. You expected the decisions of the representatives in agreement to be binding?—If you mean by that, any agreement that was arrived at by the representatives of the employers and the representatives of the unions in private conference, then Yes; but if you mean by that, any recommendations that the Conciliation Council might make, then No.

46. That is what I wished to arrive at. Why should not the recommendations of a Conciliation Council, where there are practical assessors representing the parties on each side, not be binding as the decision of representatives in conference?—Because you are compelled to appoint assessors to start with by the process of law, and you may not at that time be able to get the assessors you want. In the great majority of cases there are ten or a dozen different classes of businesses, and you have only three representatives, and therefore only representative of three businesses out of that ten or a dozen. I heard it said that in the warehousemen's case there are twenty-one sections.

47. There would be thirteen on each side representing each Conciliation Council: you referred to that as being a picnic?—Yes.

48. Would that number not be ample to make a recommendation a binding decision on all the parties?—Never will we agree to bind all the employers in an industry where it is a case of compulsion to appoint assessors.

49. You do not suggest that they are compelled to appoint any particular persons?—They will be compelled to appoint these assessors whether they desire to do so or not. The difference between a conference—an amicable arrangement between the parties—and the Conciliation Council is that when a conference is amicably arranged between the parties—those who go there are representatives of all the interests affected, and they go there with a definite power from their people to agree or not to agree, as the case may be. They know how far they may go. There is no compulsion. The people themselves are not being sent there at all, but are there in a representative way. In that case their decision should be binding as a matter of honour. But if you have a Council set up by process of law, whether you want to or not, and whether you think that is the best thing or not, you are compelled to appoint three or six people who do not represent you probably, and that they should be able to bind you through the recommendations is opposed to a British sense of fair play.

50. In what sense can they be said not to represent the bodies any more than the men appointed to a conference?—In a conference everything is done in a friendly way. You can either refuse that conference or accept it. If you accept it it is very different to attending a Conciliation Council where you are practically compelled to attend.

51. Under subclause (2) of clause 4 is it not contemplated that the dispute should be really dealt with in a district in which a dispute has arisen—"the districts to which the dispute relates shall be deemed for the purpose of the dispute to be one district." Does that not invalidate your suggestion of a roving commission?—You see there is a provision made for a Commissioner to visit the other districts. The proposed amendment to section 29, I think it is, puts your argument right out. Section 29 of the 1908 amendment restricts the Commissioner to his own district, while the proposed amendment in section 4, subsection (2), expressly removes that restriction and gives the Commissioner and the Council power to sit and take evidence in other districts. Subsection (3), it seems to me, is framed in order to give him the power to go outside of his district, so that the Bill is designed with the intention of giving these Councillors power to visit the different districts over which the award is to apply: and it is quite necessary.

52. It does not bind either Council or Court to travel?—I am only judging it from the point of view of human nature. Our experience is that where the opportunity is given of Government expenditure it is taken advantage of.

53. In the case of disputes this year, has there been a tendency to extravagance in that way?—There has not been the opportunity.

54. With reference to your suggestion about advertising notice of appeal for registration and the right of protest——?—Not appeal—notice of application.

55. Do you suggest that the law should be amended in this direction as affecting all industries?—It would have to be general if at all.

56. Would that not lead to nullification of another part of the Act which is directed against the multiplicity of unions and subdivisions of unions?—It might have that effect but for the fact that the Registrar has power to refuse registration if he deems fit.

57. Would it not have the tendency to multiply the unions in one industry?—No, I think not, if you mean an industry in its restricted sense. I think most of the employers engaged in our industries would welcome one union covering the whole of their hands in most cases. In many cases they are struggling under eight, ten, or twelve awards.

58. You suggest that the right be given to definite sections of workers to register notwithstanding the unions in that industry. Would not that mean the splitting-up of organization?—That might be necessary in some cases. We have in mind a union that has tackled a whole lot of industries and is putting them all under its wing—wool, frain, hardware, cycle agents, and others, and calling themselves the Wholesale Assistants' Union, and roping in all they can get hold of.

59. Your suggestion is that there should be an amendment of the law which would apply generally to this registration of sections?—Just to give the Registrar power to do so. Our point is that he is prevented, even where he deems it desirable, to register a union in such a connection as the Warehousemen's Union. What we wish is that power should be given to the Registrar, if he thinks fit, to register a sectional union.

60. You stated that your federation considered it a wise thing to aim at the settlement of disputes on a Dominion basis?—In certain cases that is so. We desire simple machinery. We can get Dominion awards now, but the process is cumbersome.

61. Would not that policy of dealing with industries as a whole be defeated by the registration of sectional unions?—I do not think so.

62. *The Chairman.*] With regard to subclause (2) of clause 6—"Any party that has not within the time aforesaid signified his disagreement with a recommendation shall be deemed to have concurred in the same"—is it not a fact that when the employer is cited before the Conciliation Council every employer is served with a notice, and he has the right to appear and state his views, and also ask to appoint assessors? Has the employer not a say in appointing the assessors on the Conciliation Council?—If there are a hundred employers and they each nominated a different assessor only three could be appointed, so that there would be ninety-seven of the employers who could not have a voice in the appointment. No employer has the right to appear who is not cited.

63. *Mr. McLaren.*] If there were a thousand in a union they could only appoint three assessors: why should not the employers meet and do the same?—We have not got the organization that you have. I am not saying that the assessors should be bound by the Conciliation Council's recommendation for the unions any more than for the employers. We think we should not be bound on either side, but have a free right to go to the Court.

64. *Mr. Luke.*] In the matter of the warehousemen's dispute, you said you considered there should be facility for sectional representation in the matter of industrial agreements: is that so?—Yes.

65. And yet you said in reference to other industries you thought there should be an award covering the whole of the sections in those industries. Do you differentiate between the mechanical and commercial sides of our life?—No. What I imagine would be a convenience to the engineers is that there should be one award covering all the branches in one shop, and in the soft-goods business there might be one award or agreement covering certain sections. It is quite conceivable that in one of the large warehouses some of the sections have no community of interest with the storemen—none at all—and in that case we say that the Registrar should have power to register, say, the clerk, separately from the sale-room hands, or the sale-room hands from the storemen and packers. The Registrar would have to be the judge, and there would have to be strong reasons put forward to split up the various sections.

APPENDIX.

Canterbury Trades and Labour Council, Trades Hall,
Christchurch, 14th September, 1911.

SIR,—

As it is impossible for us to send any one to give evidence before the Labour Bills Committee *re* the proposed amendments to the Conciliation and Arbitration Act, I am directed to place before you the following amendments we desire to see made:—

In the proposed amending Act: That section 4 (3) be amended by deleting "six persons" and inserting "one additional assessor for each additional industrial district." We are of opinion that when a Dominion dispute is being heard by the Council of Conciliation each industrial district interested should be represented on the Council.

We would also urge upon you that the following amendments should be made to the Act:—

"That any section of an award agreed to by the Conciliation Council shall not be altered by the Court of Arbitration, except so far as is necessary to correct legal technicalities or to prevent the nullification of other portions of an award."

"That where employers are filing counter-proposals to a union's demands the same shall be in the hands of the union not later than seven days previous to the date of the hearing of the application."

"That the following be added to section 100 of the principal Act: 'That Inspectors of Factories shall, on application being made by a union concerned in that industry, furnish a list of apprentices working in that industry to the said union within fourteen days after the application has been made.'"

Strike out subsections (11) and (12) of section 35 of the Industrial Conciliation and Arbitration Amendment, 1908, and insert the following:—

"(11.) No person shall be bound at any inquiry before the Council to give evidence with regard to trade secrets.

"(12.) If any person desires to give such evidence as is mentioned in the last preceding subsection he shall, if the Commissioner thinks fit, do so in the presence of the Commissioner alone, sitting without the assessors, and in such case the Commissioner shall not disclose to the assessors or to any other person the particulars of the evidence so given, but may inform the assessors whether or not in his opinion any claim or allegation made by the applicants or respondents in the inquiry is substantiated by the said evidence. All books relating to finance shall be produced before the assessors by either party."

That section 47 of the amending Act, 1908, be struck out and the following inserted: "When an industrial dispute has been referred to the Court the Court shall make an award covering wages and conditions of labour in connection with that industry."

That the following addition be made to section 93, subsection (2), of the original Act: "Any trade-union, industrial union, industrial association, or employer cited to appear before the Court of Arbitration to show cause why they should not be added as parties to any award shall, if they have any objections to lodge against the application made to so add them, file their objection in writing at least five days before the date fixed for the hearing of the application."

In section 107, subsection (2), strike out the words "for the enforcement of any industrial agreement or award or order of the Court," and add to paragraph (*a*) of the same section, "The management committee of an industrial union or association may instruct the secretary to apply in the prescribed form to the Court for enforcement of any industrial agreement or award or order of the Court."

Trusting these matters will receive your attention,

I have, &c.,

JAMES YOUNG,

Secretary, Canterbury Trades and Labour Council.

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