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**PART-TIME WORKERS AND THE
EMPLOYMENT CONTRACTS ACT 1991:
WOMEN BARGAINING A BETTER DEAL**

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Part-time workers and the Employment Contracts Act

ABSTRACT CONTENTS

I Introduction

During the last few decades there has been a dramatic increase in the incidence of women entering the paid workforce. Women's increased participation rate, however, has not been accompanied by an improved status in the labour market. Instead, the female labour force has retained its role as a source of cheap, unskilled and readily replaceable labour. This is particularly so for members of the part-time labour force, the majority of whom are women.

These last few decades have also seen the implementation of widespread market-oriented, deregulatory policies and legislation. In New Zealand, the Employment Contracts Act 1991 was premised on the idea that the labour market will operate more efficiently if left largely to its own devices. It therefore undermined New Zealand's unionist tradition, and upheld the concept of direct employee/employer negotiations.

In this paper I hope to determine whether the unitarist regime of the Employment Contracts Act 1991 operates to the advantage of part-time women workers. Arguably, part-time women workers are among the most vulnerable of groups operating within the workforce. I find it difficult, therefore, to accept the idea that they are able to directly negotiate with their employer terms and conditions of employment that meet their own interests.

The emphasis throughout this paper is on whether the bargaining provisions of the Act have affected part-time women workers, and if so, how. I have drawn assumptions from research that examines the Act's effect on the workforce in general, and on women workers in particular. I have also looked into the stories recounted by women in the only New Zealand study into part-time women workers, and have interviewed 14 women to hear for myself the impact of the Act on their lives.

VIII Conclusion

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 21 200 words.

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I INTRODUCTION

Many a married woman seeks work. She does so when the children grow up and leave the house. She does it, not solely to earn money, helpful as it is; but to fill her time with useful occupation, rather than sit idly at home waiting for her husband to return.

The devil tempts those who have nothing to do.¹

In the latter half of the twentieth century, labour markets located in the Western world have undergone a dramatic increase in female participation. Women of all ages are challenging the traditional roles allocated them, and are making their presence felt in the workplace, an historically male preserve.²

The transition has not been an easy one. In particular, the increased female workforce participation rate has not coincided with an increased male presence in the domestic sphere, the historic female preserve. This has adversely affected women in several ways. Firstly, women may experience conflict when combining paid work with a family role. Secondly, they have had less access to industries and occupations far removed from the usual domestic nature of their labour. Finally, and of paramount importance to this paper, women frequently undertake only part-time employment in order to participate effectively within both the market and family spheres. Indeed, it is women's increased participation in the part-time labour force that is primarily responsible for their overall increase in the labour market.

The latter part of the twentieth century has also seen the emergence of a "New Right", market-driven political philosophy. In New Zealand, the New Right agenda is apparent in the bargaining provisions of the Employment Contracts Act 1991 (hereafter "the Act"). This Act undermines the history of labour relations in New Zealand. Prior to the Act, New Zealand's labour law was founded on the assumption that an employer and employee have unequal bargaining status. This inequality was equalised with the assistance of collective action and union negotiated awards. However, underlying the Act is the assumption that if

¹ *Langston v AUEW* (1974) 1 All ER 980, 987 per Lord Denning.

² See Frances E Olsen "The Family and the Market: A Study of Ideology and Legal Reform" (1983) 96 Harvard LR 1497.

an employer and employee are freed from outside interference their common interest will be realised and will result in terms and conditions that are mutually advantageous.

In this paper I have drawn together these two phenomena - (1) the female part-time labour force, and (2) the provisions and underlying philosophy of the bargaining provisions of the Employment Contracts Act 1991 - in an attempt to discover whether the rhetoric of "mutually advantageous employer/employee negotiated employment contracts" is in fact the reality. In doing so, I have looked into women's role in the labour market in general, and in the part-time labour force in particular. The Employment Contracts Act 1991 has been examined, as well as the New Right and "flexibility" debate that influenced its bargaining provisions. Finally, I interviewed 14 women who worked part-time in order to discover whether their bargaining experiences accord with the assumptions underlying the Act.

II WOMEN AND THE LABOUR MARKET

A Women's Work: Relegated to the Secondary Sector

The last four decades have seen women entering the workforce in unprecedented numbers, both in New Zealand³ and internationally. During the 1980s in New Zealand, women's employment rose 15 per cent, and over the first half of that decade women accounted for approximately three quarters of the rise in employment.⁴ When compared to other Western countries, New Zealand's female workforce participation rate is at an intermediate level.⁵

This increased participation rate has not been accompanied by an improvement in the quality of work which women are undertaking.⁶ In fact, women's work⁷ bears all the hallmarks of

³ See *All About Women in New Zealand* (Department of Statistics, Wellington, 1993) 81 to 86 - over the 1980s women's employment rose 15%, while men's decreased 8%.

⁴ See above n 3, 86.

⁵ Above n 3, 85.

⁶ The last few years have seen a steady increase in the percentage of women in high status, high income jobs, and in women's participation in male-dominated professions, see above n 3, 108.

⁷ Throughout this paper, the term "work" refers to women's unpaid work in the workforce. This is not intended in any way to suggest that women's work is not "work", see Marilyn Waring *Counting for Nothing: What Men Value and What Women Are Worth* (Allen & Unwin/Port Nicholson Press,

the "secondary sector" of the labour market. Firstly, the pay is low. In February 1993 in New Zealand women's total average weekly earnings, including overtime, were 74 per cent of men's. This is similar to the disparity that existed a decade earlier, and only a nine per cent improvement on the figures for 1974,⁸ despite the enactment of the Equal Pay Act in 1972. Gender wage gaps such as this are found throughout the world,⁹ and have been described as "a fundamental, continuous, and predictable feature"¹⁰ of any economy. Official figures such as these also tend to understate women's social position because a great many adults have no income, and are placed in a position of economic dependence on others. Many of these adults are women.¹¹

Another hallmark of the secondary sector of the labour market is the insecurity of women's work. The low-skilled, easily-replaceable nature of women's work bears testimony to this. So, too, do the statistics on unemployment and "joblessness".¹²

Secondary sector employment is also characterised by an absence of promotion. Although in recent years the number of women in well paid, high status jobs has steadily increased,¹³ the gender wage gap bears testimony to the general nature of women's work. The shortage of women in managerial positions further exacerbates the marginalisation of women's labour.

Finally, the lack of mobility experienced by women in the workforce is typical of secondary sector employment. In the New Zealand Census of 1991 women were over-represented in four occupational groups - clerical, service and sales, professional (many of whom were

Wellington, 1988).

⁸ Above n 3, 112.

⁹ For instance, in the United States of America in 1991 women earned 64 cents to every dollar earned by a man, see Mary Ann Mason "Equal Rights Fail American Mothers: The Limitations of an Equal Rights Strategy in Family Law and the Workplace" (1991) 5 *International J of Law and the Family* 211, 212.

¹⁰ Barbara Roberts "Trends in the Production and Enforcement of Female 'Dependence'" (1990) 4 *Canadian J of Women and the Law* 217, 221.

¹¹ Females predominate amongst those people not in the New Zealand labour force, see *Labour Market 1993* (Department of Statistics, Wellington, 1993) 80; government income support payments, such as welfare benefits, make up a significant proportion of women's income, see above n 3, 115.

¹² See above n 3, 98 - 99. Although men are slightly more likely to be officially unemployed than women, it is arguable that a better description of the social impact of the decreasing availability of jobs is the measure of "joblessness". Women are more likely than men to be classified as jobless.

¹³ See above n 6.

teachers or nurses), and technical. Together these groups accounted for approximately 70 per cent of women's participation in the full-time and part-time workforce.¹⁴ These groups also attract the lower end of the pay scale. For instance, when researching employment equity in New Zealand prior to the 1990 legislation Prue Hyman discovered that of the 19 lowest paid industrial groups, 14 were female-dominated.¹⁵

B Work/Family Conflict

The manifest disparity between the incidence of women's workforce participation and women's disadvantaged status within the workforce compared to their male counterparts may be attributed to the dichotomised nature of society.¹⁶ Fundamental notions of gender roles pervade institutions, disciplines, individuals - indeed, our collective consciousness. These notions encompass a world divided between men and women, workers and parents, the marketplace and the home, the public and the private spheres. Each of these dichotomies are apparent in the fact that the workplace rarely supports the family; for instance the "normal" working day is too inflexible to cope with the demands of a family. Also, many jobs are barely sufficient to support a family, and those jobs that are the most plentiful are the least paying. Of greatest concern is the concept of the "ideal worker" - typically a full-time male worker who is the sole breadwinner for a wife who is home caring for the children - which by definition excludes, or at least disadvantages, those who do not conform.¹⁷ The concept of the ideal worker is apparent in the allocation of time within many jobs; for instance, a Monday to Friday job that commences at nine o'clock in the morning and finishes at five o'clock at night does not cater for a person wishing to combine parenthood with a working life. The ideal worker is also apparent in the fact that New Zealand's labour law ignores the experiences of women with the exception of sex discrimination law, equal pay legislation and

¹⁴ Above n 3, 114.

¹⁵ Linda Hill "Back to the Future" in *Broadsheet: Twenty Years* (New Women's Press, Auckland, 1992) 177, 177.

¹⁶ See above n 2.

¹⁷ See Brian Bercusson *Working Time in Britain: Towards a European Model, Part II: Collective Bargaining in Europe and the United Kingdom* (Institute of Employment Rights, London, 1994) 36, for an outline of the "family-friendly" policies contained in the European Union's 1993 Green Paper on future social policy options.

maternity provisions.¹⁸

Because women have historically been relegated to the private familial sphere, they are most likely to encounter conflict when they attempt to combine paid work with domestic duties, or even to eschew the latter for the former.¹⁹ Work/family conflict arises in a number of ways. Firstly, there is insufficient time for an individual to work a "normal" working week and care for a family.²⁰ Secondly, the early stages of work and family are often incompatible, given that when women are in their child-bearing years it is probable that they will also be in that stage of their career where they are required to work lengthy hours of service in order to gain greater experience and promotional opportunities. Finally, work/family conflict arises from "deep psychological stress tied to views of appropriate roles".²¹ In particular, the conflict originates from social stereotypes of the ideal roles for men and women, for parent and worker. Each is constructed as exclusive and gendered, with men being assigned the worker role, women the parental role. This is evident in the results of international studies into women's work, which show that the presence of children is not an obstacle *per se* to improving women's labour market position. Although women's role in relation to childcare and paid labour is adversely affected by material conditions that discourage paid labour, the ideology that women have the major responsibility for childcare and the home also adversely affects their position in the workforce.²²

Work/family conflict is experienced and viewed as individual failure, rather than as a societal problem. This is due to the fact that the dichotomies that cause this conflict are pervasive and universalised, and challenging them involves challenging the foundations of society. It

¹⁸ See Regina Graycar and Jenny Morgan *The Hidden Gender of Law* (The Federation Press, Annandale, 1990) 85.

¹⁹ Nancy E Dowd points out in "Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace" (1989) 24 *Harvard Civil Rights Civil Liberties LR* 79, 79, that men are harmed by work/family conflict, and that race and class are also relevant. However, women are at the centre of work/family conflict.

²⁰ By "caring for a family" I mean caring for dependants. This may be children; it may also be the elderly, the sick or the disabled.

²¹ Above n 19, 90.

²² M Thea Sinclair "Women, Work and Skill: Economic Theories and Feminist Perspectives" in Nanneke Redclift and M Thea Sinclair (eds) *Working Women: International Perspectives on Labour and Gender Ideology* (Routledge, London, 1991) 1, 18.

is not surprising, therefore, that traditional explanations of women's inferior workforce status have not addressed the obvious cause - gender.²³ This argument can be taken a step further under the persuasive authority of Catharine MacKinnon, who proposes that "gender is first a political hierarchy of power".²⁴ Power lies at the heart of this issue.

Women's disadvantaged position in the workforce has been explained in a number of ways by economists. For instance, the orthodox "human capital" theory relates wage levels to the levels of human capital individuals have. Women are thought to have less human capital than men for several reasons - on average they have less education and training than men; they are thought to be less skilled and productive than men because of the years they spend out of the workforce raising children; and employers justify training and promoting men rather than women because men's employment will be more continuous than women's.²⁵ An alternative theory posed by radical economists emphasizes that individuals' socialisation prior to entering the workforce, via the education process and the community, conditions them for their future roles in the paid workforce.²⁶ However, it is only political economic theories that acknowledge that markets distribute income according to relative power.²⁷ This potentially encompasses a feminist analysis of the gendered division of labour. In particular, it allows consideration of the system of social reproduction that M Thea Sinclair believes is absent from current economic explanations of the labour market.²⁸

In order to understand the ways in which the labour market is gendered, it is necessary to take into account the system of social reproduction, including the division of labour in the family, reciprocal relationships in the wider kin group or community, assumptions concerning sexuality, fertility, procreation, and nurturance, and the control over property

²³ Nancy E Dowd explains in above n 19, 111, that the structure of the workplace is not solely a consequence of gender - "it also reflects assumptions and hierarchies of race and class, the economic and organisational consequences of a post-industrialist advanced capitalist system; and fundamental concepts of the individual, family and community, and their inter-relationship with respect to children".

²⁴ Ellen Du Bois, Mary Dunlop et al "Feminist Discourse, Moral Values and the Law - A Conversation" (1985) 34 Buffalo LR 11, 22.

²⁵ Above n 22, 5.

²⁶ Above n 22, 9.

²⁷ Prue Hyman "The Use of Economic Orthodoxy to Justify Inequality: A Feminist Critique" in Rosemary Du Plessis (ed) *Feminist Voices: Women's Studies Texts for Aotearoa/New Zealand* (Oxford University Press, Auckland, 1992) 252, 253.

²⁸ Above n 22, 2.

and income allocation. Also of importance is the construction of subjective identity through the media, the state, and the education system, offering women images of the value of the home, motherhood, and paid work which, like the system of social reproduction, vary between class and race.

A restructuring of the workplace, on an international level,²⁹ is necessary to resolve the conflict between work and family. If gender roles in the workplace are to be questioned, then inevitably they must also be questioned in the family. Otherwise there will only be "partial, limited and ineffective change".³⁰ Although this may jeopardise those aspects of the public/private dichotomy that benefit society,³¹ it is necessary that the broader public/private dichotomy be attacked if the gendered hierarchy of society is to cease to exist.

Difficult as it is to imagine a non-gendered vision of work and family, it is nonetheless possible to contemplate the ideals that this vision will and will not encompass. Nancy E Dowd's advice to those attempting to resolve the problem of work/family conflict is relevant in this respect, that they must "accept contradiction, paradox, pluralism, and difference as descriptive and inevitable, and use them to get beyond them".³²

III THE EMPLOYMENT CONTRACTS ACT 1991

A Dispensing with a Pluralist Tradition

In 1991, amidst great controversy³³ and little debate,³⁴ the Employment Contracts Act 1991

²⁹ See Theresa A Amato "Symposium: Women at Work, Rights at Risk - Toward the Empowerment of Working Women: The Ninth Annual Symposium of the Allard K Lowenstein International Human Rights Law Project" (1992) 17 *The Yale J of International Law* 139.

³⁰ Above n 19, 133.

³¹ See Nancy E Dowd "Work and Family: Restructuring the Workplace" (1990) 32 *Arizona LR* 431, 494.

³² Above n 31, 475.

³³ Clear division existed between the Government and major employer groups on the one hand (for instance, the Business Roundtable) and the trade union movement on the other, resulting in widespread industrial stoppages, protest marches in all major cities, and public relations campaigns leading up to the enactment of the Act.

³⁴ See Gordon Anderson "The Employment Contracts Act 1991: An Employer's Charter?" (1991) 16 *NZ J of Industrial Relations* 127, 129 for an outline of the process by which the Act was passed. Anderson concludes that "[g]iven the importance of the legislation and the substantial and important changes that

was enacted. The government believed that the Act was fundamental to achieving sustainable growth in productivity, sustainable economic growth and improved standards of living.³⁵ The Act was founded on the notion of freedom of individual choice. This accounts for the radical changes that occurred to the bargaining regime, which stresses the primacy of freedom of choice of individual workers in their relationships with their employers. It also accounts for the great deal of dissatisfaction that the Act has generated. Given that the Act has been dubbed "the most anti-union legislation in the world"³⁶ it is unsurprising that a significant amount of this criticism comes from those who support collective organisation.

The Employment Contracts Act heralded the most significant change to New Zealand's labour laws since the passing of the Industrial Conciliation and Arbitration Act 1894 first introduced a system of compulsory arbitration. Prior to the Employment Contracts Act, New Zealand's labour law was premised on the pluralist understanding that an inequality of bargaining power existed between employer and employee.³⁷ This inequality has traditionally been dealt with in two ways. Firstly, minimum employment standards are legislated, preventing employment contracts from containing "unreasonable" terms and conditions.³⁸ Secondly, bargaining power is equalised by promoting the collective organisation of workers, thereby seeking to mitigate the vulnerability of individual workers. Both of these methods have been utilized in varying degrees throughout the history of the development of labour law in New Zealand. In particular, collective organisation in New Zealand for many decades prior to the

were introduced by the select committee, one can only be amazed by the legislative procedures and must seriously question the commitment to participative democracy by the government and other supporters of the Bill".

³⁵ Hon W F Birch, Minister of Labour *Second Reading Speech Notes* Employment Contracts Bill, 23 April 1991, 2.

³⁶ "Unionism Finds New Ways in Fight to Survive" *The Evening Post* Wellington, New Zealand, 8 September 1993, 8.

³⁷ Margaret Mulgan observes in "Women at Work: Ensuring Equity in the Employment Relationship: The Case for a Minimum Code" (1993) 18 NZ J of Industrial Relations 9, 10, that the employment relationship at common law was derived not only from contract law, but also from the law of domestic master and servant.

³⁸ New Zealand's protective employment legislation, unlike that of the United Kingdom and many countries in Western Europe, does not (with the exception of the Parental Leave and Employment Protection Act 1987) differentiate between part-time and full-time employees. However, that is not to say that it adequately protects workers, especially those workers in the secondary sector - see above n 37. It has been suggested that one of the ways in which our current minimum code could be improved would be by protecting against excessive casualisation of the labourforce, see Peter Brosnan and David Rea "An Adequate Minimum Code: A Basis for Freedom, Justice and Efficiency in the Labour Market" (1991) 16 NZ J of Industrial Relations 143, 156.

Employment Contracts Act took the form of occupational unions and national awards with blanket coverage which established minimum wages and conditions of employment.

Under the bargaining regime of the Act, the collective organisation of workers merely assumes a peripheral role. It is the individual worker that is located at the centre of labour law. In effect, labour law's pluralist foundations are replaced by a unitarist philosophy. Rather than accepting that conflict is inherent in the employer/employee relationship, unitarism views such conflict as an indication that something has gone wrong, be it "incompatible personalities, poor communications, incomprehension of the inherent community of interest between the parties, or the work of outside agitators".³⁹

The bargaining provisions of the Act were influenced by the "New Right", a school of thought headed by Professor Richard Epstein of the University of Chicago. In the early 1980s Epstein recommended that labour law abandon its statutory framework and embrace a common law regime, relying on tort and contract law.⁴⁰ He believed that freedom of contract advances individual autonomy and promotes the efficient operation of labour markets.⁴¹ Not only did Epstein regard the importance of freedom of contract as an end in itself, it being an aspect of individual liberty,⁴² but he also believed that it typically works to the mutual advantage of both parties.⁴³ Epstein criticised the "modern" emphasis on employer abuse,⁴⁴ preferring to view individuals as their own capable and informed agents in the labour market.⁴⁵ Notwithstanding this emphasis on the advantageous nature of a contract to both of its participants, Epstein conceded that the contract between an employer and employee is strictly a private act, and may be made on whatever terms the parties to the

³⁹ Ian McAndrew "The Structure of Bargaining Under the Employment Contracts Act" (1992) 17 NZ J of Industrial Relations 259, 260.

⁴⁰ Richard A Epstein "A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation" (1983) 92 Yale LJ 1357, 1357.

⁴¹ Richard A Epstein "In Defense of the Contract at Will" (1984) 51 Uni of Chicago LR 947, 951.

⁴² Above n 41, 953.

⁴³ Richard A Epstein "Common Law, Labor Law, and Reality: A Rejoinder to Professors Getman and Kohler" (1983) 92 Yale LJ 1435, 1437.

⁴⁴ Above n 41, 957.

⁴⁵ Above n 41, 954.

exchange see fit.⁴⁶

Epstein's philosophy soon gained credence among certain groups involved in the labour process. In New Zealand, Penelope Brook, an employee of the Employers' Federation, wrote *Freedom at Work: The Case for Reforming Labour Law in New Zealand*.⁴⁷ Like Epstein, Brook challenged the pluralist notion of inequality of bargaining power between employer and employee, and was querulous about the role of collective organisation. Brook's attitude to labour relations is summarised in the following statement: "In employment relationships, the crucial freedom is the freedom of workers and employers to contract with one another, by whatever means and towards whatever outcomes they consider to be of mutual benefit".⁴⁸

The fact that New Right philosophy influenced the bargaining provisions of the Act does not indicate widespread support for its ideas. For instance, Karl Klare opined that "[c]ontractualism makes justice a function of the relative, that is the *disparate*, bargaining power of the parties".⁴⁹ Given that part-time women workers are among the most disempowered of groups operating within the labour market, Klare's point is critical. Similarly, Jane Kelsey's critique of the New Right suggests that, by dismissing the issue of power, New Right philosophy is fundamentally flawed. Kelsey alludes to the popular (mis)conception that employees will have an upper hand when the economy improves because there will be a labour shortage and employers will have to entice workers with better conditions of employment. In a similar vein, it has been contended that inequality of bargaining power in the employer/employee relationship is insignificant because employers compete against each other to attract workers, and must therefore match the competitive wage. Kelsey points out that these arguments depend on the assumption that unemployment in New Zealand is not now systemic and structural, and that inflationary times of full employment will return.⁵⁰ She also suggests that under the present liberal regime an economic recovery

⁴⁶ Above n 40, 1366.

⁴⁷ Penelope Brook *Freedom at Work: The Case for Reforming Labour Law in New Zealand* (Oxford University Press, Auckland, 1990).

⁴⁸ Above n 47, 162.

⁴⁹ Karl E Klare "Critical Theory and Labor Relations Law" in D Kairys (ed) *The Politics of Law: A Progressive Critique* (Pantheon Books, New York, 1982) 65, 72 (author's emphasis).

⁵⁰ Jane Kelsey *Rolling Back the State: Privatisation of Power in Aotearoa/New Zealand* (Bridget Williams Books, Wellington, 1993) 210.

will probably demand a continued pool of unemployed to keep labour costs internationally competitive anyway.

The fundamental idea underlying many of the critiques of New Right philosophy is that, by ignoring or marginalising the significance of power in the employment relationship, it implicitly condones the continuation of current power inequalities. This is succinctly conveyed by Professors Getman and Kohler when they say:⁵¹

The duty to bargain affords employees the opportunity to participate in the framing and administration of the terms and rules that govern the worker-employer relationship... It is this - the sharing of power - that underlies much of the resistance to the idea of collective bargaining.

The Employment Contracts Act 1991 was also a response to the international debate on "flexibility", which sought to meet the changing needs of the economy and labour market, and to address unemployment.⁵² Under the Act, New Zealand has taken a largely deregulatory stance in an attempt to achieve greater flexibility. In comparison, although the labour relations systems of Western Europe also implemented deregulatory and flexibilisation policies, the role of collective bargaining has become more not less important with the need to introduce greater flexibility into the contractual arrangements and working time governing employment relationships.⁵³ In this respect, the labour relations systems of Western Europe have acknowledged that flexibility includes not only the needs of the employer, but also the needs of the employee. New Zealand, on the other hand, has addressed the issue of flexibility solely from a managerial perspective. Lost in the rhetoric of "flexibility of contract" is any acknowledgment that flexibility is already obtained from women by their participation in the part-time labour force. Veronica Beechey and Tessa Perkins point out that the current flexibility debate is entirely "masculine", given that it does not query the extent to which

⁵¹ Julius G Getman and Thomas C Kohler "The Common Law, Labor Law, and Reality: A Response to Professor Epstein" (1983) 92 Yale LJ 1415, 1432.

⁵² Suzanne Hammond and Raymond Harbridge suggest that "flexibility" has become a synonym for "unfettered managerial prerogative", see "The Impact of the Employment Contracts Act on Women at Work" (1993) 18 NZ J of Industrial Relations 15, 28.

⁵³ Simon Deakin "The Floor of Rights in European Labour Law" (1990) 15 NZ J of Industrial Relations 219, 219.

flexibility is related to gender, and that it does not acknowledge that women are already (and probably always have been) a very flexible form of labour force.⁵⁴

B Bargaining under a Unitarist Framework

The bargaining regime in Part II of the Employment Contracts Act is premised on the understanding that both the employer and employee will benefit if they co-operate. Consequently, it contains few protections against employers abusing their dominant position.

Under the Act, trade unions no longer occupy an important position in New Zealand's labour law. Under Section 10, workers who are negotiating an employment contract may appoint third party representation, or may represent themselves. While unions previously had the monopoly on bargaining, they are not even expressly referred to in the Act. Instead, they are treated as one of a number of choices of employee representatives available to individual workers, and are encompassed within the term "employees organisation".⁵⁵ Unions are further disadvantaged by the absence of provisions regulating their registration and internal affairs. They are now regulated by the provisions of the Incorporated Societies Act 1908, which has adversely affected their financial governance⁵⁶ and has removed democratic controls that existed under the previous system. Furthermore, the provision defining collective employment contracts is an unsuitable vehicle for collective negotiations, due to its focus on the employer and employee, thus treating the third party representative as a secondary party to the negotiations.

Although the Employment Contracts Act focuses on the choice of individual workers, the right to bargain collectively is not presumed, and is available only by the agreement of the employer. Employers may prefer individual to collective contracts because of the divisive effect this has on a workforce, and the greater control it gives the employer over the future conditions governing the employment relationship. The transaction costs involved in

⁵⁴ Veronica Beechey and Tessa Perkins *A Matter of Hours: Women, Part-time Work and the Labour Market* (Polity Press, Oxford, 1987) 177.

⁵⁵ See the interpretation provision, s2.

⁵⁶ See above n 36, 8.

replacing collective with individual contracts may be prohibitive, though this can be overcome with a standard form contract. The workers ability to challenge the employer in this respect is limited under the strike provisions of the Act,⁵⁷ which are potentially ineffective, particularly for workers in smaller and isolated workplaces. It is significant, given that many women work in small isolated workplaces, that multi-employer strikes are prohibited, which means that multi-employer employment contracts are only likely if they suit employers.

Under the Act employers are required to recognise the authority of their employees' bargaining agents.⁵⁸ They are not, however, required to remain neutral during negotiations, and are entitled to circumvent the appointment by insisting on dealing with the employee direct.⁵⁹ This has been described as an "anomaly",⁶⁰ the fact that despite the great lengths taken by the Act to ensure that bargaining agents are properly authorised and accountable to their constituents, there is no guarantee that the other party will in fact negotiate with the duly authorised agent.

Groups or individuals who seek to represent employees' interests are given access to the workplace, but this is totally at the discretion of the employer.⁶¹ Access is also granted for an employee's representative to discuss negotiations relating to an employment contract,⁶² but this is restricted to access during lunch breaks and other breaks during the day.⁶³ Because of the anti-union climate created by the Employment Contracts Act, there is evidence that secret membership of unions is increasingly common, that confidential meetings between unions and their members are being held away from the worksite, and that unions are giving employees contract advice without the employer knowing.⁶⁴

⁵⁷ See Part V of the Act.

⁵⁸ Section 12.

⁵⁹ *Adams and Ors v Alliance Textiles Ltd and Ors* (1992) 4 NZELC 95.

⁶⁰ Pat Walsh "Bargaining Options under the Employment Contracts Act" (1991) 16 NZ J of Industrial Relations 167, 171.

⁶¹ Section 13.

⁶² Section 14.

⁶³ *Skellerup Industrial Ltd v New Zealand Rubber and Tobacco Workers' Union* (1992) 1 ERNZ 477.

⁶⁴ Irena Brorens and Celia Grace "The Employment Contracts Act - Ways to Protect Ourselves" *Women's Law Conference Papers* (Wellington, 1993) 37, 41.

Section 57 of the Act, which allows "harsh and oppressive" contracts to be set aside or compensated for, is unlikely to assist employees. In fact, it has been suggested that it is more likely to be of use to employers.⁶⁵ Likewise, although the Act contains provisions for personal grievance procedures, it is probable that employees will consent to unilateral changes to their employment contracts rather than face dismissal and a potentially hazardous personal grievance action with the possibility of some monetary gain many months down the track.

These provisions, and the broader bargaining regime of which they are a part, have been the subject of widespread criticism. The basic principle that the criticism focuses on is the notion that an employer and employee share equal bargaining power. Jane Kelsey has pointed out that "[i]n hard economic times, with high unemployment, there can be no pretence of a level playing field".⁶⁶ Recent benefit cuts, and the stand-down period for the unemployment benefit, must also be taken into account. Ian McAndrew has summarised the Act's primary stated objective - the promotion of individual freedom⁶⁷ - in the following way:⁶⁸

To promote unfettered individual freedom in an employment relations context is nothing more than to promote the freedom of the relatively strong individual or organisation to force home an advantage over the relatively weaker party without fear of government intervention.

The competitive individualised bargaining of the Employment Contracts Act is taking place in New Zealand's current market structure, a structure characterised by inequality and persistent disadvantage. The power inequality in the employment relationship is most pronounced where the employee is in the secondary sector of the labour market. Consequently, those in the secondary sector will be the most disadvantaged.⁶⁹

Thus we shall see a labour market characterized by worsening inequality. There will be an increasing concentration of Maori, women, youth and Pacific Island workers in

⁶⁵ Above n 34, 139.

⁶⁶ Above n 50, 211.

⁶⁷ See the preamble of the Act.

⁶⁸ Above n 39, 261.

⁶⁹ Above n 38, 154.

marginalized, low paid and casualized occupations. The new legislation will intensify the culture of inefficiency, minimum training, discrimination and low pay in these disadvantaged segments.

In turn, this will generate wider social costs, in terms of greater state expenditure on social welfare and health.

Critics of the Employment Contracts Act's bargaining provisions have received the support of the International Labour Organisation (ILO), a body of the United Nations.⁷⁰ The New Zealand Council of Trade Unions, which views the Act as "a piece of barbarous anti-worker legislation",⁷¹ took an official complaint to the ILO soon after the Act was passed. The ILO upheld the complaint, that the Employment Contracts Act infringes Convention 87, which guarantees freedom of association, and Convention 98, which guarantees the right to organise and bargain collectively.⁷²

IV PART-TIME WORK: THE PREROGATIVE OF WOMEN?

A Women and Part-time Work: Again, Relegated to the Secondary Sector

Part-time work is a subject of increasing international importance, due to the increasing proportion of the workforce that works part-time, and to the fact that part-time work has been heralded as a solution to the "flexible" needs of the international labour market as it approaches the twentieth century. In New Zealand part-time work is increasing at a significantly greater rate than full-time.⁷³ Similar trends are apparent overseas.⁷⁴

⁷⁰ See "Shooting the Messenger: Change of Attitude Towards the ILO" *The Press* Christchurch, New Zealand, 18 April 1994, 13.

⁷¹ "Unions See Contracts Law as 'Barbarous'" *The New Zealand Herald* Auckland, New Zealand, 18 February 1993, 1:8.

⁷² Although New Zealand has not ratified either of these Conventions, adherence to the Conventions is a function of membership of the ILO, regardless of ratification. It is ironic that, because of the ILO's findings, New Zealand will not be able to ratify Convention 87, which it was in fact hoped that New Zealand would be able to do upon the passing of the Act.

⁷³ See above n 9, 21; see also the results of a study carried out by Craig Armitage and Richard Dunbar "Labour Market Adjustment Under the Employment Contracts Act" (1993) 18 NZ J of Industrial Relations 94, 108.

Although part-time work is a relatively nebulous concept, the ILO definition is "regular wage employment with hours of work substantially shorter than normal in the establishment concerned".⁷⁵ In New Zealand, the only statute that expressly refers to part-time work is the Parental Leave and Employment Protection Act 1987, which does not apply to employees who have been employed for less than 10 hours a week for at least a year. In a recent publication of the State Services Commission on part-time work, "permanent part-time work" was defined as "a reduced work-time arrangement of anything less than 37.5 hours per week".⁷⁶ Although part-time work in New Zealand used to involve considerably more than 10 hours per week, the amount of hours has recently decreased, and in 1991 60 per cent of part-time workers worked less than 20 hours per week.⁷⁷

Part-time work is predominantly undertaken by women. In fact, the recent increase in women's labour force participation is attributable to women's increased participation in the part-time labour force. For instance, over the 1980s in New Zealand, women accounted for 75 per cent of the rise in employment, with women's employment rising 15 per cent while men's decreased eight per cent.⁷⁸ This increase, however, was channelled into the part-time labour force, with women accounting for 36 per cent of full-time workers and 76 per cent of part-time workers in the workforce in 1991.⁷⁹ Between 1992 and 1993, while only one in ten employed males were part-time workers, more than one in three employed females were part-timers.⁸⁰ Again, similar statistics are found overseas. In the European Union, for example, in 1988 an average of 85.7 per cent of part-time workers were women.⁸¹

The recent international increase in part-time work has occurred despite the fact, or perhaps

⁷⁴ For instance, between 1983 and 1988 part-time work in the 10 member states of the European Economic Community increased by 28%, but full time employment by only 2.4%, see above n 53, 235 - 236.

⁷⁵ Joseph E Thurman and Gabriele Trah "Part-time Work in International Perspective" (1990) 129 *International Labour Review* 23, 23.

⁷⁶ *The Design and Management of Part-time Work Within the Public Service* (State Services Commission, Wellington, 1993) 3.

⁷⁷ Above n 3, 87.

⁷⁸ Above n 3, 86.

⁷⁹ Above n 3, 86.

⁸⁰ Above n 9, 19.

⁸¹ Above n 17, 26 - 27.

because of the fact, that it occupies a lowly position in the labour market. Part-time work has been described as a form of *underemployment*.⁸² This is due to the association of part-time work with marginal jobs, being those jobs in the secondary sector, and inequitable pay, being earnings that are not commensurable with a person's qualifications. Furthermore, although part-time work has been lauded for enabling part-time workers to maintain skills while reducing their labour hours, in practice part-time jobs are seldom skilled, and even if they are skilled the depreciation of the worker's skills is likely as on-the-job training is rare. Given that part-time workers receive less pay on a pro rata basis than their full-time counterparts,⁸³ their weekly income is constrained by fewer hours and a lower rate of pay.

The disadvantaged nature of part-time work has not deterred women from taking up part-time employment. A number of reasons have been put forward. The principle reason is that part-time work leaves women enough time to also care for children. Also, part-time work allows women to assume responsibility for the care of elderly⁸⁴ or sick dependents. Unpaid domestic work, such as cleaning, is less likely to be interfered with,⁸⁵ and women may also be able to participate in voluntary work in the community.⁸⁶ Part-time work also allows women to undertake re-training or tertiary education.⁸⁷ A final reason given for women's preponderance in the part-time labour force is that, although they may have commenced part-time work in order to balance other responsibilities, the benefits may end up outweighing the disadvantages, and what started as a transition becomes a satisfactory end in itself.

B The Correlation Between Part-time Work and Motherhood

The increase in part-time work that has occurred in recent years has been attributed to the

⁸² *The Integration of Women into the Economy* (OECD, Paris, 1985) 16.

⁸³ Above n 3, 113.

⁸⁴ With New Zealand's increasingly aged society, this reason may come to assume greater significance.

⁸⁵ See above n 3, 100, where it is pointed out that on average women spend more time than men on unpaid work, and that this difference between men and women is greatest if one of the parties is working part-time.

⁸⁶ Women's participation rate in voluntary work is higher than men's, especially amongst Maori women, see above n 3, 100.

⁸⁷ Women make up a majority of those who return to school as adults, and they also constitute a majority of mature students attending universities or colleges on a part-time basis, see above n 3, 76.

international demand for flexibility in the workforce. Atypical work, which includes part-time work, has been promoted with the aim of providing a route out of unemployment and into full-time work. However, that theory does not explain why it is predominantly women, and not men, who are taking up part-time positions. The only theory which adequately addresses the gendered nature of part-time work is that which exposes the underlying premise that women are naturally mothers and wives, for it is that assumption which explains why only women tend to assume a part-time role in the workforce.⁸⁸ Indeed, when part-time work first gained prominence in the labour market in the 1950s and 1960s it was heralded as an important means of enabling married women to participate in the labour market, allowing an "equilibrium between the duties of a wife and mother and economic necessity".⁸⁹ This theory is supported by the fact that, although flexibility has been used to explain the overall increase in part-time jobs, flexibility does not explain why so many of these part-time jobs have been created in the service sector.⁹⁰

Economic considerations do provide an insight, if limited, into certain facets of the part-time labour force. For example, women with wealthy husbands or partners are more likely to work part-time, and solo mothers are much less likely than partnered mothers to be in the part-time workforce.⁹¹ Race should also be taken into account. In New Zealand, Maori women are much less likely than Pakeha women to work part-time, and those Maori women who do work part-time earn a lower average wage than their Pakeha counterparts.⁹²

However, only by acknowledging the determinative role that gender has to play in the make-up of the part-time workforce is a broader view obtained. For instance, the assumption that women choose to work part-time rather than full-time is frequently incorrect. It is estimated

⁸⁸ Brian Wilkinson "Legal Protection of Part-time Workers: Some Irish Developments" (1992/1993) 14 *Comparative Labor LJ* 33, 38 recounts the discussion that took place in the Irish Parliament in 1967 on the issue of whether part-time workers, who were inevitably women, should be covered by a minimum code. One member pointed out: "From the employer's point of view it is unsatisfactory that this should be so. They come in under a loose system, recognising that they may have domestic problems and that if a child is ill or the husband insists on taking his wife to the pictures, the employer will accept a certain irregularity of attendance".

⁸⁹ Above n 54, 121.

⁹⁰ Above n 54, 177.

⁹¹ See above n 3, 87 and 89.

⁹² Above n 3, 113.

that in New Zealand during 1992, three out of every ten part-time workers wanted full-time work.⁹³ In 1993 the Service Workers Union surveyed its women members, and concluded that the results of the survey debunked the myth that women choose to work reduced hours to suit family responsibilities. Union spokeswoman Annie Newman pointed out "[t]his assumes that they are in a position to select and control the hours they work. Most of the women (60 %) said they would work extra hours if they were offered them."⁹⁴ Also, many women who are part-time employees are in practice working a full-time working week, holding down multiple part-time jobs.⁹⁵ Finally, although childcare is a significant factor in whether or not women work,⁹⁶ and if they do work, in how long their working hours will be,⁹⁷ women of all ages are more likely to work part-time than men. The fact that only 40 per cent of women who worked part-time in the European Union in 1988 had children suggests that the importance of childcare to women's participation in the part-time labour force has been misconceived.⁹⁸

C Improving the Status of Part-time Work, and Part-time Workers

The notion that part-time workers' main task is to care for children and the home defines part-time workers as somehow less crucial, less valuable to the labour market than their full-time counterparts. Veronica Beechey and Tessa Perkins describe the situation as such:⁹⁹

Because their main task is defined as a familial one, part-time women workers are defined as marginal workers. It certainly is not the case that all women workers, nor even all part-time workers, are marginal to the production processes in which they work. Nor is it the case that all women have interrupted work histories in order to care

⁹³ Above n 9, 22.

⁹⁴ Alex Bruce "The Employment Contracts Act - Good News for Women Workers, NOT!" (1993) 200 *Broadsheet* 26, 27.

⁹⁵ In 1993 16.8% of part-time women workers were multiple job holders, compared to 7.2% of part-time male workers, see above n 9, 73.

⁹⁶ See above n 9, 45, where it is pointed out that the greatest difference in male and female labour force participation rates occurs during women's "prime" childbearing ages, 25 to 34 years.

⁹⁷ Women's labour force participation rate is closely associated with the age of their youngest child, see above n 3, 89.

⁹⁸ Above n 17, 27.

⁹⁹ Above n 54, 148.

for their families, or that women have spells of part-time working. It is the case, however, that all women are defined as if there were a conflict between their paid work and their domestic responsibilities and all women working part-time are defined as marginal workers, no matter what they actually do.

Given the unfavourable nature of part-time work, and the unfavourable status of part-time workers, the disproportionate number of women represented among part-time workers has an important bearing upon the "inferior" status of women's employment in general.

The lower status of part-time workers, and adverse impact this has upon part-time workers in particular, and women in general, has received little attention from feminists. It has, however, recently received the attention of the European Union.¹⁰⁰ The reasons that part-time work has been considered a significant issue is because it is linked to flexibility issues in the workforce, and because it is often accompanied by socially-useful activity, such as voluntary work in the community and caring for dependents.¹⁰¹ Directives have been issued by the European Union ensuring parity of treatment for part-time workers with full-time workers.¹⁰² Directives have also been issued on working time, with the aim of redistributing working time and in doing so challenging the social construct of the "normal" working day.¹⁰³ The idea encapsulated in the working time Directives, of reducing working time, has been described by Beechey and Perkins as a "profoundly egalitarian policy".¹⁰⁴ It would allow for a more equitable distribution of work, a combination of paid work with domestic commitments, and the breakdown of the distinction between full-time and part-time work which is so overlaid with gender and the domestic division of labour. However, it must be kept in mind that the promotion of atypical jobs raises the danger that they will become associated with the segmentation of the labour market and reduced occupational mobility. For instance, the encouragement of part-time work could be used to entrench the low pay of

¹⁰⁰ The European Court has also recently taken a pro-active stance towards part-time employment by prohibiting indirect discrimination against part-time workers in *Bilka Kaufhaus GmbH v Weber Von Hartz* [1987] ICR 110 and *Rinner Kuhn v FWW Spezial-Gebaudereinigung GmbH & Co* [1989] IRLR 493.

¹⁰¹ See above n 17, 32.

¹⁰² Above n 88, 33.

¹⁰³ Above n 17, 33 - 34.

¹⁰⁴ Above n 54, 179.

women workers and their primary responsibility for children and domestic duties.¹⁰⁵

V COLLECTIVE BARGAINING: IN WOMEN'S BEST INTERESTS?

As Eleanor Marx pointed out in 1891, "Each time women organise, their situation improves".¹⁰⁶

The question arises as to whether or not pluralism's primacy of collective bargaining is advantageous to women in the workplace, and to part-time women workers in particular. Have unions traditionally promoted women's best interests? Are unions capable of effectively bargaining on women's behalf? Is collective bargaining even all that relevant to the experience of women in the labour force?

A Women Workers and Collective Action

Women's occupations tend not to be well organised. This is due to the fact that many women work in small, fragmented workplaces, and are often involved personally with their employer, which discourages successful workplace bargaining, either individually or collectively. Women also tend to work in occupations with little economic clout. Nursing and teaching are the two main female-dominated occupations which are potentially industrially strong. This is because they involve recognised skills, are concentrated in larger workplaces, and are strategically capable of making a forceful impact in the event of industrial action. However, both nurses and teachers have felt morally constrained from taking industrial action for fear of the impact that this will have on the dependents that they care for - children, the sick and

¹⁰⁵ For instance, in Sweden the market-family policy enshrined in its protective labour legislation entitles either or both parents to work part-time till their child is 8 years old. However, it is only women who tend to take this entitlement, see Nancy E Dowd "Envisioning Work and Family: A Critical Perspective on International Models" (1989) 26 Harvard J on Legislation 311.

¹⁰⁶ Carol O'Donnell and Philippa Hall *Getting Equal: Labour Market Regulation and Women's Work* (Allen & Unwin, Sydney, 1988) 21, quoted in C Rogerat "Socialist Feminism - Not Quiet Feminism" *European Forum of Socialist Feminists* (1986) 1, 9.

the elderly.¹⁰⁷

Although unions have historically represented women workers, and workers in female-dominated occupations, it must be acknowledged that this history has included much that is discriminatory and sexist. For instance, Joanne Conaghan suggests that the international campaign by unions in support of equal pay was primarily motivated by a concern that men's jobs needed protection against undercutting by cheaper female labour.¹⁰⁸ A further disadvantage of union representation is that unions merely offer uniform solutions to general problems. For instance, by setting wage relativities between occupations on the basis of historical precedent, awards negotiated by unions in New Zealand have tended to institutionalise inequalities in pay between work done by men and women.

On the other hand, unions have also played a key role in the improvement of women's working conditions. For instance, some of the unions which represented female-dominated occupations were involved in the pay equity discussions that culminated in the Employment Equity Act 1990. Also, the industrial award system which operated prior to the Employment Contracts Act enabled unions to empower women workers by realising their shared interests in industrial awards. This was a particularly appropriate strategy for the female workforce, given that nearly three quarters of the New Zealand female workforce is employed in eight occupations.¹⁰⁹ The movement away from site-bargaining that the Act has instigated is likely to further dilute women's voices in the workplace.¹¹⁰ It may also increase New Zealand's gender pay gap, given that the fact New Zealand's gender pay gap is smaller than in most other industrialised countries has been attributed to the minimum rates found in union

¹⁰⁷ In August 1994 the first ever primary teachers' strike was held throughout New Zealand.

¹⁰⁸ Joanne Conaghan "The Invisibility of Women in Labour Law: Gender-neutrality in Model-building" (1986) 14 *International J of the Sociology of Law* 377, 384.

¹⁰⁹ Above n 15, 178 - clerical, book-keeping, typing, sales, teaching, medical, service work and clothing serving.

¹¹⁰ See Gillian Whitehouse "Legislation and Labour Market Gender Inequality: An Analysis of OECD Countries" (1992) 6 *Work, Employment and Society* 65, in which the author studies the approaches of OECD countries from 1974 to 1986 to gender inequality. She concludes that legislation covering equal pay, sex discrimination and EEO is potentially emancipatory. However, the most effective strategy for countering gender inequality in the workforce is the "collective model", which involves legislative mechanisms combined with union organisation.

negotiated awards.¹¹¹

Unions have a critical role to play in the furthering of women's interests in the workplace. They "provide an institutional context within which workers formulate and articulate their needs and aspirations, aggregate their voices, and combat the arbitrary and unilateral dictates of management".¹¹² However, if they are to continue their role of aggregating and voicing the concerns of women in the workforce, they must adopt union practices that encourage female participation and advance women's position in the workforce.¹¹³ Given the high proportion of women in the part-time workforce, and the low rate of unionisation among part-time workers,¹¹⁴ it is critical that unions target the part-time workforce. It is also critical that unions challenge the work/family dichotomy, as it operates in the public labour market and in the private domestic sphere. Although in practice this may not be easily or quickly achieved, there is nothing inherent in the nature of unionism that prohibits this from happening.¹¹⁵

B The Importance of Bargaining Under the Act

Just how important bargaining actually is under the Employment Contracts Act is open to debate. Mr Graeme Ogilvie, the director of Employment Services in Wellington, has observed that in the context of applying for new jobs, the idea that parties negotiate is, to a large extent, a myth.¹¹⁶ Instead, successful applicants are likely to be required to accept the terms and conditions offered to them when applying for the job. This makes sense, given that applicants have very little, if any, bargaining power if they are just one among many other applicants. Irena Brorens and Celia Grace substantiate this point by saying that, for new workers, unless the job is governed by a collectively negotiated employment contract, the job

¹¹¹ Above n 15, 178.

¹¹² Above n 49, 74.

¹¹³ See Marion Crain "Feminism, Labor, and Power" (1992) 65 Sth Cal LR 1819, and Marion Crain "Images of Power in Labor Law: A Feminist Deconstruction" (1992) 33 Boston College LR 481.

¹¹⁴ Although no New Zealand figures exist to substantiate this claim, in Australia unionisation is lower among part-time employees, see above n 106, 37.

¹¹⁵ Above n 110, 69.

¹¹⁶ "Advice Sought on Contracts" *The Evening Post* Wellington, New Zealand, 13 July 1993, 8, 9.

interview is in fact the contract negotiation process.¹¹⁷

Brorens and Grace also point out that one of the few benefits of the Act is that it has provided more opportunity for individual workers to be actively involved in the negotiation process, and that this in turn has contributed to an increased awareness amongst workers of their contract, and of what is in it.¹¹⁸ In order for this involvement to be productive of results that reflect and further the individual worker's interests, it is arguable that the guidance and support of fellow workers and people representing workers' interests when negotiating contracts is even more vital under the new regime.

It is also arguable that this guidance and support is critical if the worker is female. This is because bargaining in the workforce tends to be undertaken within "masculinist" parameters, of which women may be unaware or may be unable to effectively participate in themselves. By "masculinist" I am referring to the language that is used, the adversarial nature of the bargaining process itself, and the concept of the ideal worker that underlies labour law, that worker being a full-time, male breadwinner. These all amount to structural impediments against women successfully bargaining their own cause. Furthermore, women workers may themselves be constrained from representing their own best interests. Janet Sayers gives a number of reasons why this is so.¹¹⁹ As well as acknowledging structural impediments such as low rates of pay and low levels of organisation, Sayer notes two psychological impediments suffered by women in the bargaining process. Firstly, given the patriarchal and capitalistic nature of our society, women are socialised into thinking that the work they do is worth less than the work men do, and they therefore generally expect to receive less money for doing similar work. Secondly, while the Employment Contracts Act implicitly condones self-interested behaviour, women tend to put the interests of others before their own, thus limiting the choices they make.¹²⁰ The notion of "choice" in this respect needs clarifying.

¹¹⁷ Above n 64, 39.

¹¹⁸ Above n 64, 39.

¹¹⁹ See Janet Sayers "Women, the Employment Contracts Act and Bargaining: A Discussion Paper" (1991) 16 NZ J of Industrial Relations 159, 163.

¹²⁰ Women's tendency to display an ethic of care is explored in Carol Gilligan's book *In A Different Voice: Psychological Theory and Women's Development* (Harvard University Press, Cambridge, 1982). Wanda Wieggers says that although Gilligan's theories present a number of problems, nonetheless "they reveal an emphasis on responsibility and care in a relational context that differs dramatically from a focus on

As Raymond Harbridge and Suzanne Hammond point out:¹²¹

If one's choices are constrained, then freedom is limited. Working women's choices are restricted by a gender segmented labour market. Free market ideals of freedom, mobility and flexibility are fictional for those women workers who are channelled into low paid, dead end occupations.

Robin West further explores the idea of choice, and its gender implications. She emphasises that preferences are heavily influenced by, if not the product of, extant social structures. These social structures may be antithetical to our interests, as may be the preferences to which they give rise. West points out:¹²²

[P]references may indeed be a function of the individual or majority's assessment of self-interest, but a poor proxy of true interest, if the assessment itself is the product of a powerful ideology, which itself originates in the interests of a class, race and gender that has anything but individual or social true interest at heart.

She concludes:¹²³

If I am downtrodden, my contractual preferences may reflect that state: I may prefer commodities, services, or wages that justify that subordination, thereby reducing my uncomfortable cognitive dissonance with that status. If I am oppressed, my political preferences may reflect, promote, and further my state of oppression. In such a case, my preferences have been shaped by that state of oppression, rather than by a vision of myself that I could conceivably and profitably become.

VI How Women Are Faring Under The Act

A Research Into the General, and Female, Workforce

discrete 'private' choices by autonomous actors", see Wanda Wieggers "Economic Analysis of Law and 'Private Ordering': A Feminist Critique" (1992) *Uni of Toronto LJ* 170, 205.

¹²¹ Above n 52, 121.

¹²² Robin West "Taking Preferences Seriously" (1990) 64 *Tulane LR* 659, 671.

¹²³ Above n 122, 671.

Due to the absence of comprehensive public records on collective bargaining under the Employment Contracts Act, it is difficult to ascertain the effect of the Act on the workforce. This absence may be used as evidence of the Act's success by its supporters. Conversely, in practice it is likely to adversely impact upon the development of a fairer labour market. For instance, without comprehensive wage records it will be more difficult to measure the respective wages of male and female workers, which will hinder Equal Pay legislation.

Nonetheless, there are three sources of information about women workers under the current regime. The first is employment contracts lodged with the Department of Labour. Just how representative these contracts are is questionable given that (1) the lodging of the contracts depends on the discretion of the employer, (2) the only applicable contracts are those with 20 or more employees, whereas the average New Zealand worksite employs 6.6 workers,¹²⁴ and (3) the contracts merely inform as to their substance, and not the process that led to their creation. The second source of information is anecdote. Thirdly, several New Zealand studies carried out by a variety of interest groups have looked into the position of women under the Employment Contracts Act. Before outlining the results of these studies, it is necessary to examine the various studies that have looked into the impact of the Employment Contracts Act on the workforce in general.

In 1993, just two years after the Act came into force, collective bargaining coverage had declined 45 per cent. There was a corresponding decline in union membership, from 610 000 to 350 000.¹²⁵ This decline did not affect the relatively equal distribution of union membership between male and female members of the workforce.¹²⁶ While union negotiated awards were rendered virtually obsolete, collective employment contracts had tripled. However, the total number of employees covered by awards and collective contracts had decreased by 21 per cent, while the number of employees on individual contracts had increased by 22 per cent.¹²⁷

¹²⁴ Above n 64, 39.

¹²⁵ Raymond Harbridge "New Zealand's Collective Employment Contracts: Update November 1992" (1993) 18 NZ J of Industrial Relations 113, 117.

¹²⁶ Above n 9, 133.

¹²⁷ Above n 9, 22.

It is not known what bargaining occurs for members of the workforce that lose collective bargaining coverage. Indeed, it is not even known if these workers have any written employment contract at all. However, in a small-scale study published by Craig Armitage and Richard Dunbar in 1993, of the 640 employees studied, very few under individual employment contracts had any third party representation. Furthermore, for 29 per cent of the workers under individual contracts no bargaining took place, either because negotiation was not offered, negotiation was not needed, or because the employee felt threatened by the employer.¹²⁸ Interestingly, both the employees and employers in this study believed that employers were under a stronger bargaining position than previously. In another study undertaken by Ian McAndrew a year after the Act came into force, it was discovered that the Act had "simply tailored labour relations arrangements in accord with pre-existing union strengths and weaknesses, regardless of the productivity needs of the enterprise".¹²⁹ In particular, union membership strength and workforce size were important predictors of whether an organisation had collective or individual contracts. Union membership strength and workforce size were in turn linked to the level of concessions made by employees. As McAndrew explains:¹³⁰

To suggest that the Employment Contracts Act has facilitated an era of widespread employee concessions in recessed economic circumstances in New Zealand risks only understating the facts... The adoption rate of concessions was very impressive indeed. If an employer proposed a concession, it was very likely to be adopted in the transition to new contracts. Nonetheless, employers negotiating collective contracts were significantly less likely to have adopted concessions proposed than employers negotiating individual contracts.

Where the combination of workforce size and union membership strength is insufficient to result in a collective employment contract, collective negotiations are only likely if they suit the employer. This is vividly illustrated by a comparison of the contract negotiations carried out by private sector clerical workers, public sector and school cleaners, and nurses during

¹²⁸ Above n 73, 109.

¹²⁹ Above n 39, 279.

¹³⁰ Above n 39, 266.

the years just after the passing of the Employment Contracts Act. Linda Hill and Rosemary Du Plessis researched over two years the key unions responsible for organising these three predominantly female occupations.¹³¹ They arrived at the conclusion that women's experience under the Act is shaped by factors other than their own situation or the Act itself. Instead, the negotiation process and the type of contract ultimately arrived at depend on the interests of employers in both industrial relations and other areas of management strategy. For example, the unions for private sector clerical workers and the unions for cleaners in the public sector and schools represent workers lacking in industrial strength. They are low paid, tend to work in scattered worksites, and there is a ready supply of people to do the jobs. However, very different contracts have been negotiated by those unions since the Employment Contracts Act. Firstly, the main clerical union, the New Zealand Clerical Worker's Union, which had regional coverage from Wanganui to Dunedin, was dissolved soon after the Act came into force. Although a number of factors were responsible for its dissolution, one significant factor was the financial consequences of rapid membership losses. It is likely that some of the estimated 300 000 workers in New Zealand previously covered by awards who are now not covered by collective contracts are clerical workers on small scattered worksites.¹³² Given that only employment contracts with 20 or more employees will be registered with the Department of Labour, there is little available information on the working conditions of these women.

In comparison, both school cleaners and public sector cleaners have negotiated multi-employer contracts since the Employment Contracts Act. Although unions organising cleaners encounter similar difficulties to unions organising clerical workers, such as the dispersion of members over many worksites, the two main groups of cleaners are concentrated for the purposes of negotiation by their employers. School cleaners have historically had the State as employer, while commercial cleaners are dominated by several multi-national contracting companies. It was with these employers that the Cleaners and Caretakers Union, despite sustaining a 20 per cent loss of membership, was able to negotiate multi-employer contracts. The union was able to achieve its desired outcome because this outcome coincided with the

¹³¹ Linda Hill and Rosemary Du Plessis "Tracing the Similarities, Identifying the Differences: Women and the Employment Contracts Act" (1993) 18 NZ J of Industrial Relations 31.

¹³² Above n 131, 36.

interests of the employers. In particular, the multi-national contracting companies wished to stabilise the industry by regulating labour costs, cleaning standards and profit margins; and in schools the issue of contracts for cleaners became linked to broader issues about the management functions of school boards. Thus a comparison of the experiences of clerical workers and cleaners reveals how different the impact of the Employment Contracts Act can be on two sets of workers, both of whom lack in industrial strength.¹³³

[It suggests] that the Act does not inevitably mean dependence on individual contracts and deunionisation for predominantly female workers on scattered worksites. However, it also highlights the way workers in this situation are more reliant than others on some form of multi-employer negotiations if they are to negotiate collectively in meaningful ways. Whether this is an option for them now depends on the interests of their employer.

In contrast to clerical workers and cleaners, the nursing profession is considered to occupy the primary labour market, is not fragmented across worksites and is industrially strong. Nurses in New Zealand used to be predominantly under one employer, the State, but the recent restructuring of public health care has brought nurses under various regional Central Health Authorities. It is the combination of this deregulation with the Employment Contracts Act that destined the Nurses Union to fail in its quest for one national document underpinning nationally consistent standards of care.¹³⁴ Although the Act did not preclude a national multi-employer contract, the Minister of State Services and Labour did not wish for there to be a national multi-employer contract, and thought that progress would be made with greater flexibility of working hours and the removal of penal rates. Hill and Du Plessis point out that, again, women's experience under the Act was not related to their own interests or to the demands of the Act itself. Instead, nurses' contractual arrangements were shaped by "politicians' attempts to cope with the fiscal deficit and the efforts of Area Health Boards to meet tighter budgets".¹³⁵

Before examining the results of various other studies into women's experiences under the

¹³³ Above n 131, 38.

¹³⁴ Above n 131, 39.

¹³⁵ Above n 131, 39.

Employment Contracts Act, it is important to bear in mind that the Act will have a different effect on women depending on where within the workforce they are situated. Janet Sayers categorises women workers into three groups.¹³⁶ Firstly, there are elite women workers who are well educated with flexible work skills and either no family commitments or enough resources to minimise the impact of family responsibilities on their working lives. Secondly, there are the bulk of women workers, who work full-time and mainly occupy the clerical and service sectors. Finally, there are women in the "informal" economy, including part-time workers, voluntary workers, homemakers, women on benefits and the unemployed. Women's vulnerability in the workplace is least in the first group, is exacerbated in the second, and peaks in the third.

In 1993 Suzanne Hammond and Raymond Harbridge published the results of a study into the contractual working arrangements of 187 000 workers, almost half of whom were women.¹³⁷ These workers were all covered by collective contracts, and the contracts were analysed on the basis of whether they were "mainly men", "mainly women" or "mixed". Hammond and Harbridge concluded that women were more likely to have better sick and annual leave entitlements than men, but that women's ability to attract the overtime and penal rates of their male counterparts had been severely restricted.¹³⁸ Similar results were arrived at in a survey by the Service Workers Union of its women members to find out how they were faring under the Employment Contracts Act.¹³⁹ Most of the workers had been on the same rate of pay for two years, while ten per cent had had their basic rate of pay cut. One third had received an increase in their hourly rate, but their actual pay packet was no bigger due to changes in hours and allowances. Furthermore, 30 per cent reported a pay packet decrease due to cuts in allowances, overtime pay and weekend rates.

Anecdotal accounts of women's experiences under the Act, and data collected from contracts lodged with the Department of Labour, confirm the results of these studies. The Act has led to enterprise rather than industrial bargaining, agreements are emerging with "flexible" pay

¹³⁶ Above n 119, 159.

¹³⁷ See above n 52.

¹³⁸ Above n 52, 27 - 28.

¹³⁹ See above n 94.

rates and work hours, and unions no longer have a monopoly on bargaining. As Suzanne Beri points out, these trends are being established at considerable cost to the majority of the female workforce.¹⁴⁰ The female workforce is becoming increasingly casualised, and is facing substantial actual and future losses of income. Women are sustaining these losses because their bargaining power, already frail, has been further weakened by a number of factors, including the Government's economic, social welfare and labour market policies, and enterprise bargaining. Furthermore, the collapse of enterprise bargaining has occurred most significantly in those areas of the workforce that most need it, namely in the service, retail and clerical sectors, which are the areas already largely casualised, poorly paid, low skilled, and predominantly female.

Thus it appears that the impact of the Employment Contracts Act on women in the workforce is far from beneficent. Indeed, Beri suggests that the experience of lesser bargaining power under the Act is adversely affecting women's general fight for equality in the labour market.¹⁴¹ In the context of the workforce in general, the Act again is not working in labour's favour. As for the Minister of Labour's comment, Bill Birch, that critics of the Act are scaremongering without any real evidence to back their claims, the old adage "there are none so blind as those who do not wish to see" is apt.

B Davidson and Bray's "Focus Groups"

In September of this year, Carl Davidson and Marianne Bray, from the Institute for Social Research and Development, released *Women and Part-time Work in New Zealand*.¹⁴² In the book Davidson and Bray examine national and international research into the increased phenomenon of part-time work. They also draw upon the findings of "focus groups"

¹⁴⁰ Suzanne Beri "The Impact of the Employment Contracts Act on Women" (1992) 2 Mazengarb's Industrial Law Bulletin 14, 14.

¹⁴¹ Above n 140, 14 - for instance, Beri points out that since the Employment Contracts Act, not only has the Employment Equity Act been repealed, but progress in respect of pay equity and equal employment opportunities, and even public debate on these issues, has come to a standstill. However, see the comments of Labour's spokesperson for women's affairs, "Why Our Women Need Help" *Sunday Star-Times* Auckland, New Zealand, 2 October 1994, C5.

¹⁴² Carl Davidson and Marianne Bray *Women and Part-time Work in New Zealand* (New Zealand Institute for Social Research and Development, Christchurch, 1994).

conducted in Rotorua, Wellington and Christchurch, which consisted of 38 women part-time workers voicing opinions and concerns they had about their employment.

Before outlining some of the issues raised by the focus groups, it is important to acknowledge two of the observations made by Davidson and Bray. The first is that women in the focus groups gave one of two reasons for working part-time. Either they made the *conscious choice* to work part-time because it fitted in with family and lifestyle commitments, or they had *no choice*, either because they could not find full-time work or because their other commitments did not allow them to work full-time.¹⁴³ This concept of choice seriously impacted upon the level of satisfaction that they derived from working part-time. The second point raised by Davidson and Bray that is relevant when considering the comments made in the focus groups is that the experiences of women working part-time in the primary and secondary sectors of the labour market differed dramatically.¹⁴⁴ The authors summarise the nature of this difference:¹⁴⁵

It is not surprising that women in the focus groups working in professional positions tended to have higher paying jobs, more choices and autonomy, a knowledge of their employment conditions, and the skills to ensure they received the conditions to which they were entitled. Conversely, the women working in lower skilled and lower paid jobs... reported reductions in wage rates, hours of work, few promotion or career opportunities, low job security, the threat of redundancies, and a limited feeling of control and direction in their lives.

The focus groups came up with a diverse range of difficulties encountered by women part-time workers. The following is a brief summary of some of these.¹⁴⁶ Many of the women were displeased with the hours they worked, were paid for, and received. They also believed that the amount of money they received did not reflect the amount or value of that work. Intensification of working hours had contributed to increased pressure for part-timers to

¹⁴³ Above n 142, 45.

¹⁴⁴ See Sayers comment on the different groups that women in the workforce come within, above n 136.

¹⁴⁵ Above n 142, 92.

¹⁴⁶ For more detail, see above n 142, 78 - 89.

achieved similar amounts of work to full-timers.¹⁴⁷ The women were aware of a "hierarchy" between themselves and full-time staff, and that full-time staff often resented them. This was despite the fact that, compared to full-time staff, they felt they received inequitable workloads and differences in entitlements.¹⁴⁸ Although management was less likely to resent part-time staff, management was reported to treat part-time staff differently from full-time staff. In particular, management exploited part-timers' goodwill, and intimidation was common. Although most of the women in the focus groups had been given the opportunity to undertake professional training and development, this frequently occurred in their own time and they were required to pay for it themselves.¹⁴⁹ Less than one quarter of the women believed that their job would lead to promotion,¹⁵⁰ and only those with jobs in the primary sector felt that they had the opportunity to participate in workplace decision making.¹⁵¹ Feelings of job security were low, though this depended on job status and tenure.¹⁵² Because women with employment contracts did not necessarily feel secure in their job, some participants in the focus groups suggested that contracts were only good for strongly unionised jobs.¹⁵³ As Davidson and Bray point out, however, unions were seen as a viable strategy for countering the feeling that many part-time women workers had that they were without a voice.¹⁵⁴ Davidson and Bray sum up women's experiences in the part-time workforce by saying:

While responses differed between sectors, the women thought that they received different pay rates; low levels of compensation for the hours worked; less variety and choice in their work; fewer and shorter breaks; less time off; less perks; less notice of work; more time monitoring; greater pressure and less opportunities for promotion, training and input. As a result, many of the women felt undervalued and insecure.

Women in the focus groups believed that a number of factors were responsible for their

¹⁴⁷ Above n 142, 78.

¹⁴⁸ Above n 142, 79.

¹⁴⁹ Above n 142, 83.

¹⁵⁰ Above n 142, 84.

¹⁵¹ Above n 142, 85.

¹⁵² Above n 143, 85.

¹⁵³ Above n 142, 86.

¹⁵⁴ Above n 142, 89.

inequitable employment terms and conditions. For instance, the deregulation of shop trading hours in 1990 was seen as fundamental to the casualisation of the retail sector. Recent changes in the education sector that have adversely impacted on part-time workers were attributed to bulk funding and deregulation of zoning arrangements. However, when discussing what had impacted negatively on their employment conditions and working lives in recent years, the focus groups continually returned to the introduction of the Employment Contracts Act. For instance, in the retail sector, when shop trading hours were deregulated, the union negotiated 11 protections for working conditions of part-time staff, such as the requirement that working nights, weekends and public holidays be voluntary. However, with the passing of the Act these protections were soon removed, leaving part-time workers, especially those not unionised, open to the demands of unscrupulous employers.¹⁵⁵ Part-time workers in the hotel industry also suffered as a result of the Act, losing overtime pay that had traditionally been available to compensate for notoriously low pay.¹⁵⁶ In the health sector, the increasing casualisation of nurses was attributed to the emphasis on competitiveness brought about by the Act.¹⁵⁷ Although for some part-time workers in the primary sector the Act was viewed as advantageous because it allowed them to actively participate in the negotiation of their employment contracts, the majority of women viewed the Act as disadvantageous.¹⁵⁸

Over all sectors, the Employment Contracts Act (1991) was mentioned by women as impacting on their employment conditions and working lives. The loss of penal rates, increased redundancies, increased difficulty for older women to find employment, the use of probationary periods and the move to individual contracts were all problems cited by women as resulting from the Employment Contracts Act (1991).

Part-time workers were seen as having little opportunity to negotiate their employment contracts. Many of the women in the focus groups had experienced problems negotiating their contracts, including some of the women who belonged to unions.¹⁵⁹ Nonetheless, it

¹⁵⁵ Above n 142, 54.

¹⁵⁶ Above n 142, 57.

¹⁵⁷ Above n 142, 59.

¹⁵⁸ Above n 142, 68.

¹⁵⁹ Above n 142, 65.

was suggested that the situation for women not tied to a union was likely to be far worse because they were less likely to know, or to find out, what they were entitled to. Unions were seen as the only way of counteracting part-time workers' diminished bargaining status. Women from all sectors in the focus groups indicated that union support was essential in today's employment climate.¹⁶⁰

VII RESULTS OF INTERVIEWS I CONDUCTED

A An Overview of Feminist Methodology

1 Traditional versus feminist research

Research has traditionally emulated the values and norms of the wider culture within which it evolved. In Western societies, values such as objectivity, detachment, hierarchy and "science" have taken precedence over any individualised concerns of the researcher or the researched. Similarly, research is considered "improper" if it utilises methods that are subjective, or that involve personal interaction between the researcher and the researched. It is readily apparent that this traditional research paradigm conforms to the wider gender paradigm underlying modern Western civilisation. While men are thought to have superior analytical and objective capabilities, women are characterised as sensitive, intuitive, incapable of objectivity and emotional detachment.¹⁶¹ Thus the hierarchy between researcher and researched can also be seen as the hierarchy between male and female, and as a rationalisation of inequality.

Feminists have challenged this traditional paradigm of research.¹⁶² Ann Oakley describes it as "morally indefensible", and also points out that generally the best results are achieved if a personal, non-hierarchical relationship exists between the researcher and researched. She

¹⁶⁰ Above n 142, 69.

¹⁶¹ Ann Oakley "Interviewing Women: A Contradiction in Terms" in H Roberts (ed) *Doing Feminist Research* (Routledge & Kegan Paul, London, 1981) 30, 38.

¹⁶² Liz Stanley recognises that the issue of "essentialism" must be addressed when discussing a "feminist standpoint", see Liz Stanley (ed) *Feminist Praxis: Research, Theory and Epistemology in Feminist Sociology* (Routledge, London, 1990) 39.

believes that a feminist methodology of social science requires:¹⁶³

that the mythology of 'hygienic' research with its accompanying mystification of the researcher and the researched as objective instruments of data production be replaced by the recognition that personal involvement is more than dangerous bias - it is the condition under which people come to know each other and to admit others into their lives.

By legitimating personal involvement between researcher and researched, feminist methodology challenges the notion of objectivity by refusing to polarise it with subjectivity. Likewise, it refuses to see experience as unscientific.

Feminist methodology is critically concerned with gender. Indeed, Patti Lather believes that feminist researchers must "put the social construction of gender at the centre of one's inquiry".¹⁶⁴ This is of particular significance not only with regard to the subject matter of the research, but also with regard to the complex question of power that arises between researcher and researched. While orthodox research processes permit an exploitative attitude to those being researched as a source of data, feminist research strives to avoid perpetuating the exploitation of women. In this respect, ethical questions are heightened within a feminist research paradigm.¹⁶⁵

Underlying the creation of a specifically feminist approach to research is the acknowledgment that all research is political. As Patti Lather points out, "[r]esearch approaches inherently reflect our beliefs about the world we live in and want to live in".¹⁶⁶ Feminist research must, therefore, acknowledge its political foundation without allowing these ideas to predetermine results. "The search is for theory which grows out of context-embedded data, not in a way that automatically rejects a priori theory, but in a way that keeps preconceptions

¹⁶³ Above n 161, 58.

¹⁶⁴ Patti Lather *Getting Smart: Feminist Research and Pedagogy Within the Postmodern* (Routledge, New York, 1991) 71.

¹⁶⁵ See S Reinharz *Feminist Methods in Social Research* (Oxford University Press, New York, 1992) 18.

¹⁶⁶ Above n 164, 51.

from distorting the logic of evidence."¹⁶⁷

2 Feminist interviewing

Interviewing is an important facet of feminist research for two reasons. Firstly, it is an instrument of data collection. Secondly, it is a conversation, and as such entails the revelation of much more than merely empirical information. In particular, it allows those being interviewed the freedom to voice for themselves how they feel and what they think.¹⁶⁸

[I]nterviewing offers researchers access to people's ideas, thoughts, and memories in their own words rather than in the words of the researcher. This asset is particularly important for the study of women because in this way learning from women is an antidote to centuries of ignoring women's ideas altogether or having men speak for women.

Ann Oakley emphasises how critical the interviewer's role is in this process. She points out that the interviewer makes possible "the articulated and recorded commentary of women on the very personal business of being female in a patriarchal capitalist society".¹⁶⁹ Rather than viewing the interviewer as the researcher's instrument for data collection, Oakley recommends that the role of interviewer be reformulated so that data is collected *for* those whose lives are being researched.

Feminist interviewing techniques seek to remove hierarchy from the relationship between interviewer and interviewee. This is an admirable goal in itself. It also heightens the likelihood of more thorough results, and the likelihood that the research process itself will have a liberatory effect on those being researched. In order for this to happen, the interview must be conducted in a reciprocal, interactive manner. This may involve multiple, in-depth interviews which enable the parties to form a close bond, and to deeply probe research issues. It may also involve the sharing of transcripts, and enabling the interviewee to give feedback.

¹⁶⁷ Above n 164, 62.

¹⁶⁸ Above n 71, 19.

¹⁶⁹ Above n 161, 48.

Two techniques associated with feminist methodology that contribute to reciprocity are self-disclosure and reflexivity.

Unlike traditional interviewing approaches, a feminist approach to interviewing encourages self-disclosure on the part of the interviewer. This is because, by disclosing information about herself, an interviewer may initiate self-disclosure on the part of the interviewee. Not only are interviews premised on the understanding that the interviewee will reveal aspects of herself to the interviewer, but as S Reinharz points out, self-disclosure leads to "true dialogue" between the interviewer and interviewee, allowing the interviewee to become a "co-researcher".¹⁷⁰ This may also result more readily in rapport between interviewer and interviewee.

Reciprocity in interview situations is also achieved if interviewees are given the opportunity to negotiate the meaning of their responses, and to question beliefs that may be responsible for those responses. Feminist research aims to empower research participants by helping them understand and change their situations.¹⁷¹ This is sometimes referred to as reflexivity, and inevitably involves the issue of false consciousness. Patti Lather describes false consciousness in the following way: "False consciousness is the denial of how our common sense ways of looking at the world are permeated with meanings that sustain our disempowerment".¹⁷² The feminist method of "consciousness raising" attempts to free people to engage in critiques of their own ideas and beliefs. Consciousness raising encourages story-telling, and involves women in the faithful recording of their experiences. Lather links consciousness raising to the broader search for emancipatory research processes.¹⁷³

There is a dialectic between people's self-understandings and efforts to create an enabling context to question taken-for-granted beliefs and the authority culture has over us. There, in the nexus of that dialectic, lies the opportunity to create reciprocal, dialogic research designs which both lead to self-reflection and provide a forum in which to test the usefulness, the resonance, of conceptual and theoretical formulations.

¹⁷⁰ Above n 165, 33.

¹⁷¹ Above n 164, 57.

¹⁷² Above n 164, 59.

¹⁷³ Above n 164, 61.

Thus, feminist interviewing can contain all, or a combination, of these techniques. Reinharz recognises this by saying "[c]learly there is no single feminist perspective on researcher-interviewee relations and self-disclosure. Rather there is an openness to numerous possible meanings of these phenomenon".¹⁷⁴

3 Interview techniques used in this research

This research paper is primarily based upon research obtained from secondary sources - from books, journal articles, and newspapers. Much of what was said in these sources indicated that part-time women workers were not able to bargain effectively under the Employment Contracts Act. However, I felt that it was necessary to speak to some women myself in order to ensure that this was indeed the case. Thus, 14 women were interviewed, between July and October 1994, in an effort to obtain first-hand accounts of their bargaining experiences under the new regime.

The part-time women workers that I spoke to covered a range of occupations, including a nurse, secretary, supermarket checkout operator, lawyer and creche worker. They came from a variety of industries, including the health and education sectors, and the telecommunications and entertainment industries. Eleven of the women were of European/Pakeha descent. Two were from the United Kingdom, and one was of Cook Island and Maori descent. Their ages spanned four decades, the oldest being 53 years, the youngest 17 years. In between, one woman was in her 20s, six were in their 30s, and five were in their 40s.

Apart from two women whom I knew personally, the women were all contacted through union representatives, who obtained permission to give their names and phone numbers to me. I then telephoned them, explained the nature of my research, and said that if they were willing I would like to interview them. A number of points were emphasised during these initial telephone conversations. Firstly, the women were told that it was totally up to them whether or not they wished to undertake and to proceed with the interviews. Secondly, the interview was outlined, in particular the fact that the questions were predominantly focused

¹⁷⁴ Above n 165, 34.

on the negotiation/discovery of their terms and conditions of employment. Finally, the women were assured of confidentiality. Neither them, nor their employer, would be identifiable in the results. For reasons of cost, I did not offer to forward them a copy of the final research paper. I did, however, point out that a copy would be stored at Victoria University's library if they ever wished to peruse the results of the research.

The way in which interviews were conducted varied. Four interviewees lived a distance from Wellington City, so we decided that it was more convenient for both of us if the interview was conducted over the phone. A time was arranged that suited the interviewee - three took place during the evening, one first thing in the morning. At the beginning of the interview I pointed out to the women that, because I could not tape the interview over the phone, there would be delays between questions allowing me to record as accurately as possible the answers to the questions. This did not seem to concern the women, and they were happy to recall the exact wording of their responses when asked.

The remaining interviews were face-to-face. Accuracy in the recording of responses was achieved by the use of a tape-recorder. The women were asked during the initial telephone conversation to recommend a location and time that would suit them. All but three interviews took place in office hours - the other three took place during the weekend. Those interviewees with their own office suggested that the interview take place there. The other interviews took place at a variety of locations, including at McDonalds, at a cafeteria, on the steps outside the workplace, and inside the interviewee's home.

At the beginning of all the interviews, I reminded the women that the interview was confidential, and that if they wished to stop the interview at any stage they could do so. However, I also felt that, in order to put them at ease, it was necessary to point out to them that the questions I would be asking were unlikely to probe deeply personal issues, and were unlikely to be difficult to answer. This reflected a concern some of the women expressed, that they had nothing of importance to tell me. In turn, I assured them that I was conducting the interviews in order to ascertain the experiences of a number of women when bargaining the terms and conditions of their job. Whatever they had to say was a real and worthwhile contribution.

Given the specific nature of the questions I asked,¹⁷⁵ these interviews did not consist of many of the techniques typically used in feminist research. For instance, self-disclosure on my part seldom occurred. The one occasion I recall that it did occur is when a telephonist was telling me she had not realized that abusive phone calls were part of the job, and I recalled that I had recently had a holiday job as a telephonist and knew only too well how upsetting and frustrating it is to be abused by irate callers. Also, the interview did not give interviewees much of an opportunity to expand onto other concerns they had with their employment,¹⁷⁶ or to query any of the responses given. Again, I would attribute this to the aim of the interviews, which was to obtain information on how a number of women had experienced bargaining for the terms and conditions of their employment. The interviews were carried out on a small scale, and were primarily concerned with gathering information.

A number of precautions were taken, however, to ensure that the interviewees did not feel manipulated or used. As has already been explained, interviewees were assured of confidentiality and were given the choice on whether or not to commence or continue with the interview. Interviewees were also given control over the interview process by being assured that their replies were being accurately recorded - either by tape recorder, or myself. Although none of the women felt the need to further question me on my research, I let them know that I was willing to answer any questions they may have had.

B The Interviews of Fourteen Women Working Part-time

1 Resume of interviewees

Rebecca works as a checkout operator at a large supermarket. She has had a variety of casual jobs - market research, telesales, catering, and bank tellering. She is 41 years old, married with children, and attained the equivalent of New Zealand's seventh form certificate in her home country of England.

¹⁷⁵ See Appendix A for a copy of the question sheet used for these interviews.

¹⁷⁶ However, I did complete the interviews by asking if there was anything they wished to tell me that I had not asked.

Pat is a lawyer working in the public service. She did a BA and several years of high school teaching, before travelling overseas to do an MA. She returned to University to study law after raising three children. Pat is married and is 46 years old.

Jane is 30 years old, and is working as a secretary in a University department while studying for a BA. She has had a number of casual secretarial jobs, and is a single parent to her three year old child.

Sarah has worked as a home help for a local hospital for eight years. Her employment history covers work in the Post Office, in a fish and chip shop, and a hostel kitchen. Sarah is 44 years old, and is married with one child.

Cindy is a 17 year old assistant at a local cinema complex. Her job has meant that she can pay to leave home and go flatting. It involves working at the box office, candy bar, on "floors" and cleaning. Cindy has worked for a year at the cinema, and her only other previous work experience was helping out at a hair salon while at high school.

Anna has worked for one year at a telebetting agency, and has previous telephone work experience. She owned her own retail business for four years, but that fell through. Anna is 32 years old, and married with four children.

Lucie is 36 years old, married without children. She has always worked in an office, and spends a lot of time at meetings and doing community work for the Jehovah's Witness church.

Heather trained as a primary school teacher, and after two years of teaching began employment with a union, where she has remained. She is 30 years old, married with one child.

Kirsten is married with three teenage children. She is a registered nurse, and has specialised in hospice nursing.

Emma has a diploma of teaching. She owned her own childcare centre for seven years, but

decided she needed a break so leased out the premises and undertook creche work. Emma is of Cook Island and Maori descent. She is 39 years old, married with two children.

Cordelia is 23 years old, and has a BA (Hons) in Art History. She works as a receptionist during weekends at an art gallery, and is studying for a MA.

Jo is 53 years old, and is married with two children. She has a BSc and post graduate qualification in patent attorneying. While Jo was away from the workforce raising a family, she completed three quarters of a law degree. For several years she worked from home as a legal publisher, and for five years she has worked in the patent attorney department of a large commercial law firm.

Hope has worked as a typist and secretary since leaving school. For five years she left the workforce to care for her family, and for the past five years she has worked as a typist at a primary school. Hope is 43 years old, married with two children.

Brigid has trained and worked as a primary school teacher. She is married with one child, and is 37 years old.

2 Why they work

A number of recurring reasons were given for why working was important for these women, the most common reason being money. As Sarah observed, "Necessity - I have to work to survive". Of the three women who did not attribute significance to the money earned, Hope later told me about her efforts to improve her hourly rate, which suggests that in fact the financial recompense was significant. The other two women, Pat and Jo, readily conceded that money was not behind their desire to work, and that if they did not enjoy their job they would not be doing it. Both of these women were married to men with high profile public service and business careers, and chose to work part-time because of family commitments and leisure activities.

Several of the interviewees who gave money as their prime motivation for working qualified

this by pointing out that even if they did not need the money they would work anyway. This leads on to the second main reason for working - personal fulfilment. Personal fulfilment was derived from a number of sources. The sheer fact of working was significant to most of the women. For instance, Cindy said that she would rather be working than sitting at home doing nothing. The type of work carried out was only referred to by two of the women - Brigid mentioned her love of teaching, and Kirsten mentioned her love of hospice nursing. Three of the women said that social contact was important, and several also spoke of the stimulation and interest that their job provided them with. Jo said "the ultimate pleasure is using my mind - it fulfils something in my life which I can't get through golf or bridge".

Of the three women who said that money was the only reason their job was important to them, both Jane and Cordelia simply looked upon their job as a means of supporting their tertiary education. Sarah gave as her reason the fact that her family would not survive on her husband's wage.

3 Why they work part-time

The reasons given for working part-time, rather than full-time, were numerous. A foremost concern was with family. Nine of the women worked part-time so that they could spend time with their children. Pat said "Being a mother to my children is still the most important thing that I do". Looking after the home was given as another reason, with two women pointing out that their husbands were too busy with their jobs to help out in the home. Study, leisure and community activities were each mentioned by several of the women. A few other reasons were given for working part-time. Rebecca felt that, with her children getting older, she did not want a full-time career as a supermarket checkout operator, so she decreased her supermarket hours and took on another part-time job as a bank teller. Brigid mentioned that she preferred part-time teaching because it was less likely she would suffer the stress of working in a rapidly changing education sector. Finally, Kirsten had no choice in working part-time because, due to the nature of hospice work, all of the nurses work part-time.

Two of the women, Sarah and Cindy, said that they would actually prefer to work full-time. Sarah, however, felt that her age was against her. Cindy had taken on her part-time job in

a rush because she was living with her grandmother, who had warned her that if she did not find employment she would have to return to school. Also, Cindy needed work so that she could pay to go flatting.

Several of the women who wished to work part-time nonetheless expressed a desire to work longer hours than currently worked.

4 How they got their job

Cindy, Heather, Emma and Brigid were successful applicants of a newspaper advertisement, and Jane applied for her job through Student Job Search. Lucie acquired her job through a temping agency, and Cordelia acquired hers after working voluntarily for her employer. Sarah heard about her job through an acquaintance, and then personally approached the employer. Rebecca, Anna and Kirsten also got their job by personally approaching their employers, though Kirsten had worked for her employer several years before. Pat, Jo and Hope were all personally approached about their jobs - Hope by the school principal whom she knew through church, Jo through legal contacts, and Pat by a former lecturer who was involved in filling the vacancy.

5 Those with more than one part-time job

A number of the women worked more than one part-time job. Rebecca worked 18 hours as a bank teller on top of her 27 hours as a supermarket checkout operator. Sarah worked as a liason worker for a local health society ten hours a week. Jane, who observed that her other part-time job was the care of her daughter, also noted that she shares the care of a disabled child on the occasional weekend. Kirsten regularly gets together with friends to make Christmas gifts, and Hope works approximately four hours a month as Board Secretary for a local school. Emma pointed out that, because at the moment she was in effect working fulltime, she did not have another part-time job. However, she was expecting her hours to soon be cut back, and would then resume relieving creche work.

6 Hours worked per week

About half of the women worked regular, unchanging hours. Rebecca 27, Jane 19, Linda 24, Heather 24, Hope 25, Cordelia 14, Brigid 17 and Pat 22 hours per week. The hours that the other half worked depended on the availability of work. As Sarah said, "I don't have any say because it's sort of like supply and demand". This, unsurprisingly, led to some problems. Kirsten spoke of recent unannounced changes to rosters that cut down hours and made planning ahead difficult. Anna pointed out that, although she is supposed to be told of her hours three days in advance, she often only knows whether it is a night or day shift, and is told the actual hours just the day before. Not all of the women, however, spoke of difficulties arising due to changing rosters. Cindy pointed out that her work roster changed every week, but because she gets along well with the supervisor who draws up the rosters she is given the work she needs. Emma was happy with the full working week that she had recently been offered, rather than the 16 hours she was officially employed to undertake.

None of the women said that they were required to work on short notice if they did not wish to. Anna spoke of a "non-availability" sheet that could be filled out. Rebecca mentioned that employees swap among themselves if they wish to change shifts. Most of the women pointed out that flexibility worked both ways - that they were willing to help their employer out so long as their employer obliged them when the need arose. For instance, Rebecca's employer allowed her six weeks unpaid leave to visit her mother in England, and also never rostered her on during Sundays so that she could attend church. Jane said of her hours that "I'm the one who can dictate their flexibility", and Sarah said "If I make other arrangements they have to work round me. Some wimps go along with their demands, but I don't let them walk all over me". Heather pointed out that she was only able to be flexible in meeting her employer's needs because she had "a really supportive family".

Few of the women received overtime or penal rates for working nights or weekends. Linda, Kirsten and Cordelia all had some form of penal rate operating. Cindy received time and a half only if she worked over 12 hours in one day, which had only ever happened once. Heather received time in lieu for weekend or evening work. Several of the women spoke of undertaking work outside paying hours. Brigid mentioned that often she felt obliged to attend after-school meetings or activities, and Hope spoke of using her initiative to complete work if busy.

7 Discovering the terms and conditions of employment

Few of the women thought that they had any chance of influencing the terms and conditions of their employment. Lucie said of her job "I accepted it for what it was". Kirsten pointed out that she did not discuss with her employer what she wanted from the job because she was just happy to get it. Hope said that initially money was irrelevant, and that it was much more important for her to establish herself in the school. Brigid summed up the situation by saying it was a case of "Would you like the job? Yes please". Emma pointed to the fact that the part-time nature of the job further made her feel that she had no choice.

However, several of the women did contribute to their terms and conditions. Hope ensured that her hours fitted in with her children's school hours, and Sarah requested school holidays off, noting that the employer was happy to oblige because it was the "done thing in those days". Jo is the only interviewee who significantly influenced her terms and conditions. She said "I wrote the terms and conditions of my employment", though she qualified this by pointing out that the nature of the work to be done was "final and concrete". Pat did not feel the need to question any of the terms and conditions offered to her, saying that she felt at the time, and still does, that they treated her very generously.

The women found out about the terms and conditions of their jobs in a number of ways. Many of them knew the rate of pay and hours before they applied for the job, but did not discover in greater detail the other terms and conditions until a later date. For instance, Emma was verbally told the terms and conditions of her job at the interview, and was subsequently sent a letter of confirmation with the written employment contract to sign. Pat discussed the terms and conditions at her interview, and was given a contract to take away and study. Lucie was verbally told the terms and conditions after accepting the job, and has never received anything written as a collective contract is still being negotiated. Cordelia was told her hours and rates of pay during the interview, and was given a contract to read and sign when the interview finished. She said "I was so pleased about having a job that I didn't take any of it in", and that also her employer was waiting for her to sign it so she did not want to ponder over it. During Cindy's interview she discovered that what she thought was a full-time job was in fact only part-time. She was given an idea of the hours she would be

required to work, and told that she would be paid the youth rate. Cindy later accepted the job over the phone, and was sent an employment contract that was "very thick". She read through the contract with an auntie who did not know all that much about it, but who Cindy said nonetheless "helped me with things I was worried about. I didn't know 100 per cent about it, but I got the gist of it". Kirsten knew the pay before starting her job, but the other terms and conditions she learnt about as the job progressed. She never received anything written - "no contract or nothing". As Kirsten said, "It was a job, and in a place I liked". Anna rang an old employer for a job, and was called in for training that Friday night. She said discussion was not at all encouraged, and it was only later that she found out about her job, for instance that she would have to put up with abusive phone calls, and that some of the staff were paid more than her. Anna was given a contract to sign at the training session, but it was a case of "just sign the contract, otherwise you don't work here". She was unable to absorb any details of the contract - "At that stage I'd never seen a contract before, and I didn't understand what I was reading and I didn't know the language so I just signed it". Brigid was aware that the terms and conditions of teaching do not vary, and depend upon qualifications and experience. However, she was not told of terms and conditions that relate specifically to part-time teaching. For instance, the first time she was sick she arranged to work an extra day at a later date. Subsequently she discovered that she was entitled to a paid sick day.

Several of the women were aware in hindsight that they would have benefitted from somebody knowledgeable in the terms and conditions appropriate to their job. The fact that Cindy approached an aunt with no known experience of employment contracts is testimony to this. Sarah also observed that she felt the need of assistance - "I felt the absence because we were such a small group of workers, and because we don't have a base, we work in the community". Some of the women pointed out that at the time it did not cross their minds to request help with negotiating or discovering the terms and conditions of their employment, mainly because their employer would not have approved. In comparison, Jo felt very in control of the terms and conditions of her job. She said "I felt I was being treated generously and in an adult fashion".

Four of the women had experienced no changes to their terms and conditions of employment - Cordelia, Pat, Jane and Jo. Pat's contract is subject to an annual review, but she is very happy with her terms and conditions and has no wish to change them. Although her job description no longer accurately describes the work she does, this does not concern her as she prefers the way in which her job has evolved. Similarly, Jo observed "one grows with a job", pointing out she has acquired more sole responsibility. Jane described her attitude as "utilitarian", her only reason for working being to pay for her studies. Therefore, unless her wages were to suddenly drop she is not overly concerned with her terms and conditions.

The changes that occurred to the remaining women's terms and conditions were caused by a number of factors. Some were employee-initiated. For instance, Rebecca's employer was obliging when she requested a decrease in her hours so that she could commence employment as a bank teller. Lucie also chose to decrease her hours. Hope annually requests a pay rise, and her employer has every time obliged. However, Hope pointed out "Twelve dollars is not enough for running a school".

Some of the changes were instigated by the employer. For instance, both Emma and Brigid were pleased to work increased hours at their employer's request. Not all of the women felt positively about changes brought about by their employer. For instance, Hope was distrustful of the changes made to her job description by the Board of Trustees. Heather mentioned that the changes which are frequently made to her job are employer-driven, and relate to cost-efficiencies. Kirsten noted that although her pay has risen since she began work, her hours have recently been significantly cut. Kirsten also observed that her employer had presented the nursing staff with their first employment contract, but that they had not been happy with it, so they were presently being assisted by the union in negotiating a mutually acceptable contract.

Many of the changes were the result of a new contract. Cindy observed that after six months of pressuring management, management had found time to have a meeting with the union to negotiate the terms and conditions of their contract. Many of the staff's requests were not met, but one of the successful changes was an extra three dollars per week uniform allowance. Rebecca mentioned the new collective contract covering all checkout staff at her

supermarket chain, which had got rid of penal rates for weekend or night work. Anna too was under a new collective contract that had given her 30 cents more an hour, better cumulative sick leave entitlements, and a guaranteed 15 minute break. Sarah spoke of joining the union two years into working as a home help, and of the union negotiated award that improved working conditions. However, since the Employment Contracts Act the terms and conditions had been "rolled over", and staff were suffering from both loss of work and hours. A new collective contract was currently being negotiated, and Sarah expected to lose long service leave and perhaps non-taxable allowances. Better sick leave entitlements may also ensue. Heather pointed out that since her employer union had amalgamated with another union she had experienced a number of changes to the terms and conditions of her job. Initially the main change was that she negotiated that her employer contribute to nannying expenses as her hours were changed but she could not immediately change her child's creche hours. The amalgamation had led to "swings and roundabouts" in terms and conditions, with gains and losses being made. Also, the workplace became considerably more hierarchical, and Heather has decided to look elsewhere for employment.

9 What happens when problems arise

Several of the women felt that if they had a concern about their job they would initially approach their employer or supervisor, but if help was not forthcoming or if the issue was significant or involved a lot of people they would seek help elsewhere. Hope pointed out that she would first go to see her principal "because he's approachable", but if he "rejected" her she would go to the union. Cindy, Rebecca, Brigid and Emma all expressed similar views. Cordelia was not aware of any union or employee representative she could approach, and stated that anyway she would happily discuss any problems with her employer. "Discuss" in the circumstances entailed either telephone conversations or the exchange of notes, as Cordelia works weekends when her employer is not present. Jane described her attitude as "cynical". She pointed out that she did belong to the union, but if her job became too tiresome or unrewarding she would simply leave it and devote herself to full-time study. Jane did mention that she was very lucky she had a supportive chairperson, and that not all university staff were as fortunate as her in this respect. Jane also mentioned how disillusioned in general she was with working at the University, which has no career structure

for secretaries, and which has no identifiable standards or criteria for general staff promotions.

Kirsten, Anna and Sarah evinced a much greater reliance on their union. Sarah said that, even though she got on "quite well" with her employer, she would never go to see her employer about a job concern unless accompanied by a union representative or another home help. Sarah summed up her opinion of the union - "I don't know where I'd be without the union; unions open doors for you". Anna spoke of regular meetings between staff and management, in which "we don't get anywhere, but we make our point known". She had a cautious attitude to her employer, and said that if the issue concerned anything important they would have the union write a letter to the employer, otherwise they would get nowhere. Kirsten spoke of the work environment in a hospice. She pointed out that all those who work there are very emotionally bound to the hospice, and that in the past staff have been reluctant to ask for better terms and conditions because they are continually reminded of the lack of money and the many volunteers who work at the hospice. For this reason, when the need for a written contract and pay rise became urgent, the nurses turned to their union for help - "We could only do it together, none of us could do it alone". Kirsten praised the union for its assistance - "Now that we do have a union it's nice to know there's someone who can do something for us; it's been very helpful having someone to talk to".

Jo, Pat and Lucie saw no need to involve anyone other than their employer if they had a concern about their job. Lucie felt she got on "pretty good" with her supervisor, who was a personal acquaintance prior to commencing employment at that workplace. Pat said she would be "absolutely" happy to discuss any job-related concern with her supervisor, and that she had in fact done so in the past. She described him as "wonderful - a good listener and a good person". Jo said she would be "quite capable" of discussing any work problems with the head of her department, and any personal problems with the human resources manager. She felt that she had been given amazing opportunities by her employer, including a fortnight overseas at a patent attorney conference, and that significant job-related problems were unlikely to arise.

Given the small number of women that I interviewed, it is inappropriate to attempt to glean a general theme from the interviews. Nonetheless, by focusing on what these women told me about the initial bargaining stage of their jobs and subsequent negotiations that have taken place, a number of observations can be made.

Firstly, few of the women ever believed that they had a role to play in the negotiation of the terms and conditions of their job. On the contrary, they were resigned to accept the job for whatever their employer had decided it would entail. As Brigid said, it was a case of "Would you like the job? Yes please". However, some of the women did actively participate in negotiation with their employer, and others refrained from doing so because they felt they were receiving a reasonable (and in Pat's case, a "generous") deal. It is interesting to observe that, apart from Jo, all of the arrangements instigated by the interviewees related to fitting their jobs around childcare commitments.

Secondly, the interviewees' knowledge of the terms and conditions under which they were to be employed differed dramatically. At one end of the scale were those women who had never received anything written. At the other end of the scale were Pat and Emma who were sent a copy of their employment contracts to peruse before accepting the job. In between were those who were expected to read and digest a contract in the presence of their employer at an interview before accepting the job, and those who were sent a contract to read and sign after accepting the job.

The changes that these women's jobs have subsequently undergone were primarily instigated by the employer or resulted from a new contract. In both cases, the women experienced gains and losses. The primary gains seem to be those women who happily accepted the increased hours offered to them by their employer, and the occasional advantage derived from a new contract. The main losses that have resulted from changes to terms and conditions are decreased hours, and less favourable terms in new contracts. Sarah was the only interviewee who expressly attributed her previous advantageous working conditions to a union-negotiated award, as compared to contractual changes currently taking place in the employment climate brought about by the Employment Contracts Act.

Most of the women I interviewed felt comfortable enough in their relationship with their employer to directly approach their employer with any job-related concerns. For most of these women, however, this would be conditional on their employer listening to and acting upon those concerns. All but one interviewee said that, if necessary, they would take their concerns to a union representative, and that one interviewee was in fact not aware of any union representative. Three groups of women emerged when asked about their response to job-related concerns. Firstly, there were those who felt it would be unlikely they would experience job-related concerns, such as Pat, and Jo. Secondly, there were those whose "pragmatic" attitude to their job meant that if they were particularly troubled about their job they would simply leave it. Finally, there were those who were aware of their vulnerable position in the workplace, and who took the issue of job-related concerns very seriously. They observed that all job-related concerns would either be initially discussed with a union representative, or would be directly broached to the employer in the presence of a fellow employee or union representative.

Those three groups of women are also relevant when the broader issue of employee representation is discussed. In all of these cases women represented themselves in the initial negotiation stages of employment. If they had then proceeded to individual employment contracts on the basis of these negotiations, in general those women who were aware of and capable of negotiating terms and conditions appropriate to their job were in fact offered them anyway. Pat, Jo, Emma and Brigid, all of whom were tertiary educated, fell within this group. For Jane and Cordelia, who saw their jobs as merely a temporary money-earning device, and who would willingly leave their job if the terms and conditions suddenly worsened, the negotiation of terms and conditions did not overly concern them. However, for those women whose part-time employment was long-term and was necessary for their financial "survival" the situation was very different. In the initial stages of their job, they tended to be aware of little else other than the hours required of them and the rate of pay. Any broader implications of the job were in some cases discovered subsequently from an employment contract, and in other cases had not yet been discovered. These women tended to have the greatest reliance on fellow employees and union links, the significance of which dawned upon them once employment had commenced. For three women in particular - Sarah, Kirsten and Cindy - the negotiation of favourable terms and conditions was attributed solely

to the collective strength they attained when their union negotiated on their behalf with their employer.

For this third group of women, the correlation between collective action and advantageous working conditions appears strong indeed. In their own words, the union opened doors for them, gave them someone to talk to, and did things for them. These women realised that individually they were likely to achieve little. As Kirsten said of her fellow nurses when discussing the negotiation of their first written employment contract, "We could only do it together, none of us could do it alone". Any suggestion that these women would effectively represent and achieve their own best interests if negotiating terms and conditions of employment with an employer appears highly questionable. These women were too aware of their own vulnerability within the workforce, of the easily-replaced nature of their work, or of the traditional status and value attributed to their work, to consider, let alone undertake, strategic negotiations with their employer. The need to retain their jobs was so important that concessions were accepted, or improvements were not requested. For those women in this third group who were comfortable in their relationship with their employer, their employer was seen as the first person to approach if job-related problems arose. Unions were retained in the background in case these concerns were not resolved. However, for those women who did not benefit from a positive relationship with their employer, and whose employer they could not guarantee would listen or act upon their concerns, union representatives were the primary advisors when problems arose.

The lack of negotiating opportunity experienced by these women can be explained by their constrained choice¹⁷⁷ - their lack of choice in the need to work; their lack of choice in the hours they work if they are also to undertake unpaid domestic labour; their lack of choice in the type of labour they are able to participate in and that the labour market has to offer them; and so the list goes on. In effect, it equates with a diminished actual and perceived ability to negotiate reasonable terms and conditions without the assistance of others, be they fellow employees or people acquainted with the job and its associated entitlements.

¹⁷⁷ See above n 142, 45, for Davidson and Bray's observations about choice and part-time workers.

To suggest that this third group of women in my interviews are capable of effectively participating in negotiations with their employer in order to arrive at mutually-advantageous terms and conditions of employment is to disregard the experiences of Sarah, Kirsten, Cindy, and the many other women part-time workers who occupy similar positions in New Zealand's labour market.

VIII CONCLUSION

For part-time women workers in New Zealand who wish to negotiate new or improved terms and conditions of employment, the bargaining provisions of the Employment Contracts Act 1991 offer little consolation. This is primarily because the Act actively discourages collective action and union activity, the two principle strategies by which part-time women workers have sought to overcome their relative powerlessness in the labour market.

A multitude of reasons explain why women who are working part-time are relatively powerless in New Zealand's current labour market. Firstly, many women's participation in the workforce is not accompanied by a decrease in domestic responsibilities. The pressure of maintaining a home and caring for children may leave little time or energy to devote to a paid job. Secondly, by entering the workforce women are entering a traditional male forum. They will have to contend with the image of the "ideal worker". As a result of their continuing domestic duties, or of others' perceptions of their domestic duties, women are destined not to live up to the "ideal worker" image. Women may also be ill-equipped themselves to operate successfully in the labour market. The labour market condones self-interested behaviour. Under the individualised bargaining regime of the Act, the need to act in a self-interested manner is heightened. However, women are socialised into placing the needs and demands of others before their own. When it comes to negotiating the conditions of their working lives, they are strategically disadvantaged. As Wanda Wieggers points out, women, unlike men, have been expected to adhere to a morality of self-sacrifice, and are therefore more vulnerable to exploitation.¹⁷⁸ Furthermore, social inequality itself can result in, among other things, conditional subservience, a tendency to defer to the judgment of

¹⁷⁸ Above n 120, 193.

others, and a fear of making just demands.¹⁷⁹ Part-time work is looked upon as a peculiarly female way of participating in the labour market. Consequently, the gendered implications of being woman in the workforce are unavoidable, and potentially exacerbated.

It has been suggested that the Act was a response to "deeply held grievances" on the part of employers and the government over the role and outcome of collective bargaining under the former labour regime.¹⁸⁰ Certainly it is apparent that collective bargaining mitigates the vulnerability of individual workers, empowering them to collectively assert their right to equitable employment conditions. Given the heady rhetoric of the New Right agenda, it is perhaps understandable that the government believed a more competitive and efficient labour market system would evolve from individualised workplace bargaining, and that employer groups believed they would benefit from the new competitive wages and conditions that ensued. However, the blatant disregard paid by the government and by employer groups to the disempowered status of many groups of workers in the workforce - among them part-time women workers - is inexcusable. It is inexcusable because it ignores a history of labour relations in New Zealand aimed at empowering disempowered individuals. It is also inexcusable because it accepts at face value the misconstrued belief that formal equality before the law can be effective in securing substantive justice.

Among the women that I interviewed, the *only* factors that determined whether they were able to contribute to the terms and conditions of their job were education, financial status, and collective action. Without higher education and without the advantages derived from not needing money, these part-time women workers were dependent on the assistance of others. Similarly with Davidson and Bray's "focus groups", the most significance was attributed to unions and collective action by those women who had little else with which to negotiate. Amongst the women that I interviewed and the women in the focus groups, those who had to work to survive, those who had little choice in the nature or hours of work undertaken, and those who worked in low-status female-dominated occupations, revealed a manifest dependence on unions to exact fair terms and conditions of employment from employers with

¹⁷⁹ Above n 120, 192.

¹⁸⁰ Above n 60, 167.

whom the women themselves were unable to effectively negotiate with. In an employment regime that advocates direct employer and employee negotiations, these women - amongst the most vulnerable and easily exploited of workers within the workforce - may well fare appallingly if isolated from outside support.

That is not to suggest that all part-time women workers are in need of third party assistance. It is simply an acknowledgement of the fact that the Employment Contracts Act does not provide bargaining assistance for those who need it the most. Nor is it to suggest that unions are necessarily the most effective and equitable advocates of women's interests. On the contrary, history has taught us that this is often not the case. However, the underlying objective of the labour movement, to bring about the best interests of labour despite management opposition, coincides with the objective required of an advocate for part-time women workers. Furthermore, unionism is itself not so essentially flawed that it is incapable of being transformed in a manner more receptive to the needs of part-time workers.

In an ideal world, women workers would not experience disadvantage in the labour market merely on account of their gender. Similarly, part-time workers would not experience disadvantage merely on account of the gendered implications of part-time work. The cumulative effect of this disadvantage goes without saying, and cries out for a revisioning of job allocation and, indeed, gender itself, if it is ever to be resolved. In the meantime, legislative measures that seek to counter this disadvantage are required. The Employment Contracts Act has failed in this respect.

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APPENDIX A**QUESTIONNAIRE**

- date
- name
- age
- race
- level of education
- family status, ie single no dependants, single with children, married
- when did you start the job you are in now
- occupation, industry
- outline your employment history
- for what reasons is your job important to you? ie, need money, enjoy the work
- how did you get the job? ie, knew someone who worked there, answered advertisement
- how many hours per week is your job?
- do you have more than one part-time job?
- why are you working part-time? ie, couldn't get full-time job, wanted part-time job because care for children, responsibilities in the home or community, other activities occupy your spare time

- how did you find out about the terms and conditions of your job?

ie, were you given a "standard form" contract to sign, with the list of terms and conditions already on it?

- was the acceptance of the job offer conditional on an acceptance of the already-decided terms and conditions of the job?

- did your potential-employer discuss the terms and conditions of your job with you?

- did you discuss with your potential-employer what you wanted from your job? ie, hours of work, leave, pay, etc. If you wanted to discuss these things with your employer but you did not, why not?

- did you have somebody (ie, a union representative) to talk to yourself, or to talk to your potential employer, about the terms and conditions of your job? Would you have liked to have somebody help you in this way?

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- why are you working part-time? ie, couldn't get full-time job because
care for children, responsibilities in the home or community, other activities occupy your
spare time

- have any of the terms and conditions of your job changed since you first began? If yes, how?

- if yes, who decided they were to change? you, your employer, somebody else?

are you happy with the changes?

if you were not happy with the changes, did you tell your employer or someone else?

- how would you describe your relationship with your employer?

- do you have any say in the hours you work? Are your hours regular or do they change? Are you ever made to work on short notice, even if you have made other arrangements? Are you ever on call? Are you paid overtime or penal rates for weekend or evening work, or work which is not in your usual hours?

- if you had a concern about your job (ie, you would like to change your hours, you would like a raise, you would like some new responsibilities) would you feel happy discussing this with your employer? Or would you prefer that somebody else discusses this with your employer on your behalf? Or would you feel better just leaving it alone?

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