ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial at the earliest possible moment.

(c) The Committee requests the Government to ensure that workers are able, without previous authorization, freely to establish organizations of their own choosing, in accordance with the principles of freedom of association and, in particular, that the formalities prescribed by law for the establishment of a trade union are not applied in such a way as to delay or prevent the setting up of occupational organizations.

(d) The Committee requests the Government to communicate as soon as possible its observations on the allegations concerning measures of intimidation against the organizers of the May Day 1992 demonstrations.

(e) Noting with regret that the Government has still not replied to the allegations concerning the surrounding of the CDT's premises and the prohibition of access to them on 21 April 1992, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers at the Bahia-Baladi enterprise in Rabat, the Committee urges the Government to supply the observations requested without delay.

Case No. 1646

COMPLAINT AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY - THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT) AND - THE GENERAL UNION OF WORKERS OF MOROCCO (UGTM)

614. The Committee examined this case at its February 1993 meeting [see 286th Report of the Committee, paras. 647-673, approved by the Governing Body at its 255th Session (March 1993)], when it reached interim conclusions.

615. The Government sent new observations in a communication dated 6 October 1993.

616. Morocco has ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).

A. Previous examination of the case

617. At its February 1993 meeting, the Committee examined allegations concerning measures taken by the management of the Autonomous Urban Transport Company of Casablanca (RATC) and the local authorities during a strike launched by RATC workers on 17 February 1992, for the purpose of obtaining better conditions of employment. These measures included, in particular, the recruitment by the RATC management of more than 300 new employees, the arbitrary transfer and dismissal of strikers, and the imprisonment and trial of Messrs. Nejmi Abdellatif, Kassih Abdelaziz, Touga Ahmed and Maâ Noureddine, militant trade unionists who participated in the strike.

618. At this meeting, the Committee made the following recommendations [see 286th Report of the Committee, para. 673]:

(a) Recalling that the right to strike is one of the essential means available to workers' organizations to promote and defend the economic and social interests of their members, the Committee calls on the Government to refrain from the use of measures in the future which are not in conformity with freedom of association principles.

(b) Recalling that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association, the Committee asks the Government to indicate whether striking workers were transferred, and if so, for what reasons, and to indicate if the workers dismissed have actually been reinstated in their jobs.

(c) As regards the imprisonment and sentencing of striking trade union militants, Mr. Nejmi Abdellatif, Kassih Abdelaziz, Touga Ahmed and Maâ Noureddine, the Committee, in order to have all the necessary information on this aspect of the case, requests the Government to provide as soon as possible detailed information on the charges brought against these persons and to communicate the text of the sentences issued and the reasons adduced.

(d) The Committee requests the Government to provide information on the judicial proceedings allegedly still under way against two staff members who went on strike.

B. The Government's further reply

619. In its communication of 6 October 1993, the Government states that the right to strike is guaranteed by the Constitution and is publicly exercised in practice. According to the Government, this is demonstrated by the number of strikes launched by workers in many sectors, in establishments where trade union organizations are

represented as well as in establishments where they are not. The exercise of trade union rights is respected in accordance with the principles adopted by the Committee on Freedom of Association.

620. As regards the proceedings brought against several employees of the Autonomous Urban Transport Company of Casablanca (RATC), the Government believes it is necessary to provide more detailed information concerning the inquiries which have been conducted, the validity of the proceedings and the verdicts handed down against these employees.

621. According to the Government, Lotfi Mostapha, an employee of the RATC, complained with the police that he was stopped by three employees of the company as he was getting off an RATC vehicle, that they insulted and threatened him, incited him to participate in the strike and could have injured him, if he had not fled.

622. As part of the inquiry, the police interviewed the driver of the vehicle, who stated that Touga Ahmed, Kassih Abdelaziz and Nejmi Abdellatif approached him, ordering him to stop. They asked him why he continued to work instead of striking as the other unionized workers did, and incited him to stop working and to join them to ensure the success of the strike. Lotfi Mostapha, who was in the vehicle, got out and intervened between the driver and the strikers. He was insulted and threatened with a knife.

623. When summoned by the police to state their case, the defendants said that they had noticed the vehicle during the strike. They tried to keep the driver from working and incited him to participate in the strike with them. When Lotfi Mostapha intervened between them and the driver, they insulted him, threatened him and incited him to strike.

624. Following an examination of the police report by the judicial police on 2 April 1992, charges were brought against the three defendants for obstructing the right to work, in accordance with the provisions of section 288 of the Criminal Code. The Government states that their cases were subject to the procedure reserved for defendants caught in the act under sections 76 (as amended) and 395 of the Code of Criminal Procedure. The defendants were brought under arrest, before a court. When questioned by the prosecutor in the presence of their lawyers they denied the charges brought against them and the statements they had made to the police. Their cases were subsequently referred to a court.

625. As regards the verdicts, the Government states that the court summoned the defendants to several hearings, that they benefited fully from due process of the law, that they were assisted by attorneys and that they were entirely free to raise any defence. Once the case was heard in accordance with the legal procedures and in a public trial, as required by law, and after the defence attorneys had addressed the court, the public prosecutor asked for a conviction based on the statements made to the judicial police. On 12 October

1992 the court of first instance of Casablanca gave Touga Ahmed, Kassih Abdelaziz and Nejmi Abdellatif a one-month suspended sentence and fined them 200 dirhams for obstructing the right to work. The Government emphasizes that the court recognized extenuating circumstances in the light of their social situation and the absence of prior criminal records in giving them a one-month suspended sentence, insofar as the law provides for a minimum sentence of one month's imprisonment for such offences. The Government adds that the defendants appealed against this sentence.

C. The Committee's conclusions

626. The Committee notes that the Government states once again that the right to strike is guaranteed by the Constitution, that workers in numerous sectors often resort to strikes and that the exercise of trade union rights is respected in accordance with the principles adopted by the Committee on Freedom of Association.

627. The Committee none the less observes that in the last few years it has examined a growing number of allegations concerning serious restrictions on the right to strike in Morocco, including physical attacks, arrests, convictions, dismissals or other measures of anti-union discrimination in employment and the repression of demonstrations and strike movements, which are contrary to the principles of freedom of association [see, inter alia, 281st Report, Case No. 1574, para. 219; 286th Report, Case No. 1640, para. 644; 287th Report, Case No. 1589, paras. 154 and 156; Case No. 1643, paras. 193, 195, 196 and 198]. The Committee can only express its concern at this situation and is obliged once again to remind the Government of the importance it attaches to the right to strike as one of the essential means through which workers' organizations may promote and defend the economic and social interests of their members. [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, para. 363.] It again requests the Government to take all measures necessary to ensure that the right to resort to strikes may be exercised without the intervention of the public authorities and with respect for the principles of freedom of association.

628. As regards the imprisonment and trial of the striking trade union militants, Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed, the Committee takes note of the detailed information provided by the Government concerning the inquiries, judicial proceedings and trials of their cases. It observes that the Government states that the defendants were convicted by the court of first instance of Casablanca and given a one-month suspended sentence and fined 200 dirhams for having obstructed the right to work, and that the court recognized extenuating circumstances in the light of their social situation and absence of prior criminal records. The Committee recalls that taking part in picketing, and firmly but peaceably inciting other workers to keep away from their workplace, cannot be

considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [Digest, op. cit., para. 435]. Emphasizing the danger for the free exercise of trade union rights of measures of detention and sentencing of workers' representatives for activities performed in the defence of the interests of their members, the Committee urges the Government to take all measures necessary to ensure that this principle is respected and, in any event, to keep it informed of the outcome of the appeal made by Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed against the verdict of the court of first instance.

629. The Committee further notes with regret that the Government has not provided any information concerning the striking trade union militant, Mr. Maâ Noureddine, who, according to the allegations, was also imprisoned and tried by the authorities on contrived charges. It urgently requests the Government to provide detailed information on the charges brought against him, and to furnish a copy of the text of the verdict issued, along with reasons adduced.

630. As regards the allegations concerning the arbitrary transfer and dismissal of striking workers by the management of the RATC, the Committee notes with regret that the Government has not replied. Recalling that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association [Digest, op. cit., para. 444], the Committee urgently requests the Government to indicate whether the striking workers were transferred, and if so for what reasons, and if all the workers dismissed have actually been reinstated in their jobs.

631. Similarly, as regards the allegations concerning the judicial proceedings against two striking staff members of the RATC, the Committee urgently requests the Government to send its observations.

The Committee's recommendations

632. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee once again requests the Government to take all measures necessary so that the right to resort to strikes may be exercised without the intervention of the public authorities and with respect for the principles of freedom of association.

(b) Emphasizing the danger for the free exercise of trade union rights of measures of detention and sentencing of workers' representatives for activities performed in the defence of the

interests of their members, the Committee urges the Government to take all measures necessary to ensure that this principle is respected, and to keep it informed of the outcome of the appeal made by Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed against the verdict of the court of first instance.

(c) As regards the striking trade union militant, Mr. Maâ Noureddine, who was reportedly imprisoned and tried by the authorities on the basis of contrived charges, the Committee regrets that the Government has not replied. It urgently requests that it provide detailed information on the charges brought against him and furnish a copy of the text of the verdict issued, along with its reasons adduced.

(d) Recalling once again that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association, the Committee urgently requests the Government to indicate whether the striking workers were transferred, and if so for what reasons, and if all the workers dismissed have actually been reinstated in their jobs.

(e) Similarly, the Committee requests the Government to send its observations as soon as possible on the allegations concerning the judicial proceedings brought against two striking staff members of the RATC.

Case No. 1651

COMPLAINT AGAINST THE GOVERNMENT OF INDIA PRESENTED BY THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS ASSOCIATION (IUF)

633. In a communication dated 1 June 1992, the International Union of Food and Allied Workers' Association (IUF) submitted a complaint of violations of freedom of association against the Government of India. It sent additional information in communications dated 11 June, 11 July and 23 July 1992.

634. The Government supplied its observations on the case in communications dated 1 November 1993 and 10 March 1994.

635. India has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

636. In its communication of 1 June 1992, the IUF alleges that the Government carried out various acts of interference with the functioning of an international seminar conducted by the IUF in Bombay from 16 to 20 September 1991. During the seminar, a police officer interrogated seminar organizers Bob Ramsay and Ma Wei Pin. He asked what the IUF was, what the seminar was about and who was attending it. He was shown copies of letters sent by the IUF to government ministries requesting assistance in arranging visas, as well as the names of participants in the seminar. In this respect, the IUF provides a copy of the visiting card of the police officer, which he gave to the organizers at the time of his visit to the seminar.

637. In addition, participants from Pakistan were required to report to a police station daily. In one case, this caused them to miss a seminar session. The seminar, which brought together worker representatives from the Unilever company, was also attacked at a Bombay press conference by representatives of Hindustan Lever, India's Unilever subsidiary, who alleged that the seminar was intended to disrupt the normal functioning of Unilever companies in India and Asia and to sabotage India's economic reforms. The IUF encloses a copy of Hindustan Lever's press release as well as a packet of articles from the Bombay press that report on the press conference. The IUF contends that the above actions taken together constitute interference in its legitimate functioning and that of its affiliated unions which sent representatives to the seminar. Article 5 of Convention No. 87 specifically guarantees the right of organizations of workers to conduct international meetings free from interference by governments or employers.

638. In its communication of 11 July 1992, the IUF provides further information on violations of trade union rights at different plants of Hindustan Lever in Bombay and in other cities as follows. In Bombay (Sewri plant, Research Centre, Fine Chemicals and Head Office) union members have been illegally suspended, dismissed or charge-sheeted. Elected union leaders have been isolated from other workers by being forced to work in a separate depot or go-down. The democratically elected union was de-recognized by management in 1989. Moreover, in Garden Reach, Calcutta, 300 contract workers were retrenched in 1988, while struggling for their right to organize. In addition, in Shyamnagar, Calcutta, the union leader S.B. Roy was dismissed in 1988.

639. In Chindwara (state of Madya Pradesh), the democratic union organizing almost all workers was not recognized. Instead, a settlement was signed with a "welfare committee". The same was done in Orai (state of Uttar Pradesh) where in adition the union secretary has been retrenched. In Etah (Uttar Pradesh) union leaders have been retrenched (1980 - M.P. Gupta, General Secretary; 1984 - Pravad, President; 1990 - R. Sharma, General Secretary; Swaveny, Joint

Secretary; and R. Palsingh, active member). The union is now management-controlled.

640. In Ghaziabad, management has not signed an agreement with the democratically elected union committee since 1971. Instead, they signed four agreements with undemocratic committees. The 1991 settlement, with a wage increase, is only operational for workers who sign an individual agreement in which they accept the undemocratic committee and the settlement. In 1975, the chair of the union, Mr. Bidani, was transferred to the Delhi branch despite protests. Later, Mr. Bidani was dismissed and from 1987 management refused to speak with him.

641. In Taloja (Bombay), all contract workers and contractors were changed when the union tried to organize them. Now, contract workers are often changed. In Mangalore (Karnataka state), workers have been suspended illegally and others have been illegally charge-sheeted due to their union activities. Generally, the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by management not to join the federation. Many federation leaders have been retrenched (Mr. R.L. Gupta - President, Mr. Bidani and Mr. S.B. Roy) and others separated from workers (Mr. B. D'Costa - General Secretary and Mr. F. D'Souza).

642. Finally, the IUF states that during research to compile this information, six places (21 establishments) were visited. In these six places, researchers were followed by police or security personnel from Hindustan Lever. In three places, researchers were called to the local police station and in four cases the researchers were told that they would have to leave. In many cases, workers were told not to meet with the researchers and security was doubled at the factories. In Shyamnagar one researcher was taken in by the police and assaulted in the police van. The police threatened to further assault the researcher or jail him although he was later released without any charges.

643. In its communication of 23 July 1992, the IUF alleges that there have been further violations of trade union rights by Hindustan Lever and that the Government has not taken effective measures to safeguard these rights. It contends that on three different occasions (29 April, 11 May and 22 June 1992), an office-bearer of the Hindustan Lever Research Centre Employees' Union, Mr. A.J. D'Souza, was physically prohibited by company management from leaving his place of work to attend proceedings in the Industrial Tribunal or Labour Commission offices. In addition, on 12 May 1992, Mr. D'Souza was threatened with retaliation by the company's personnel manager if he continued to attend conciliation/adjudication proceedings. The IUF encloses letters from the union to the personnel manager of the Hindustan Lever Research Centre in Bombay, complaining about the above incidents. It submits that these actions of Hindustan Lever are clearly aimed at preventing the union from seeking redress from government machinery for its grievances.

B. The Government's reply

644. In its communication of 1 November 1993, the Government explains in a general manner that its comments are based on information provided by the State Governments of Maharashtra, Uttar Pradesh, Karnataka, Madya Pradesh and West Bengal. This is because the allegations refer to violations at different units of Hindustan Lever Limited at its plants located in these States whose Governments are responsible for enforcing the provisions of the industrial relations laws.

645. Concerning more specifically the alleged interrogation of the seminar organizers and the issue of participants from Pakistan being asked to report to the police station daily causing them to miss a seminar session, the Government states that a report is awaited from the Home Department of the Government of Mahrashtra. On receipt of this information by the federal Government, the Committee will be apprised. The Government contends that the alleged attack on the seminar by representatives of Hindustan Lever Limited at a Bombay press conference cannot be termed as interference by the management. Trade unions, through the medium of a seminar, are free to express their views on the activities of the management. Similarly, management has the freedom to express its apprehensions through the media about the deliberations and conclusions at a seminar organized by trade unions.

646. The Government then refers to the allegations of violations of trade union rights at different plants of Hindustan Lever in Bombay. With respect to the allegation that union members have been illegally suspended, dismissed or illegally charge-sheeted, the Government explains that three of the five employees dismissed/terminated from their services (Mr. Bennet D'Costa, Mr. V.P. Ghuge and Mr. Nand Kumar) were office-bearers of the union. These three had been dismissed after domestic inquiries were held for the charges levelled against them. After conciliation, the industrial dispute regarding Mr. Ghuge's dismissal was referred to the Labour Court, Bombay, by an order of the State Government dated 16 November 1990. This case is sub judice. Mr. D'Costa and Mr. Nand Kumar had made an application for reinstatement under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The court had stayed the dismissal order of Mr. D'Costa who is still working in the factory.

647. Turning to the allegation that elected union leaders have been isolated by the company and are forced to work elsewhere, the Government replies that the Assistant Commissioner of Labour, Bombay, who recently visited the Sewri factory found that the President and Vice-President of the union were working at a go-down which is about 2 kilometres from factory premises. Four union committee members had been transferred to a go-down which is about a kilometre from factory premises. However, the management informed the Assistant Commissioner of Labour that it is a practice to rotate the workmen in different

departments and go-downs and that office-bearers of the union cannot claim exemption from this practice. The Government adds that under the Industrial Disputes Act, the concerned union could have raised an industrial dispute regarding the transfer of office-bearers from the factory to the go-down. However, the union had not taken recourse to this action nor had it filed any complaint in the Labour/Industrial Court.

648. Concerning the issue of de-recognition by management of the democratically elected union in 1989, the Government indicates that under the Code of Discipline in Industry (which it attaches to its observations), the management had given recognition to the Hindustan Lever Employees' Union on 27 March 1972 and to the Hindustan Lever Research Centre Employees' Union on 2 May 1984. According to the management, the Hindustan Lever Employees' Union failed to observe the conditions stipulated by the Code and, therefore, the said union was de-recognized in September 1989. In spite of the de-recognition, the management continues to hold discussions and negotiations with this union. The unions referred to above have made applications in the Industrial Court to be declared as recognized unions and to obtain the status of sole bargaining agents. These applications are pending before the Industrial Court, Bombay.

649. Regarding the retrenchment of 300 contract workers in Calcutta while struggling for their right to organize, the Government indicates that in 1991 the management of Hindustan Lever stopped contract works at their unit located in Garden Reach, Calcutta. As a result, about 300 contract labourers employed by different contractors were rendered jobless. It was alleged by the union that the management had intentionally stopped the contract works on flimsy grounds in order to punish the contract labourers. The dispute which is now pending before the Conciliation Authority could not be taken up for conciliation earlier as a court case between two rival factions of the union was pending before the Calcutta High Court. With respect to the allegation that the union leader Mr. S.B. Roy was dismissed in 1988, the Government replies that this union leader was reportedly a worker employed by a contractor and that he might have lost his job due to stoppage of contract works by the management.

650. As regards the allegation that in Chindwara (Madya Pradesh) the union organizing almost all the workers was not recognized and that a settlement was signed instead with a "welfare committee", the Government indicates that a settlement was signed on 5 October 1990 with the "negotation committee" which was duly elected by the Hindustan Lever Employees' Union in 1989.

651. Concerning the allegation that the union secretary was retrenched in Orai (Uttar Pradesh), the State Government emphasizes that the union secretary, Mr. Krishnan Swarup Shukla, an employee of the Hindustan Lever Limited at Orai, was dismissed from service because of misconduct and inefficiency and not due to trade union activities. Moreover, Mr. Shukla has collected all his dues. As regards the allegation that various union leaders named by the

complainant have been retrenched in Etah (Uttar Pradesh) and that the union is now management-controlled, the State Government points that as from 11 May 1984 the Etah unit of Hindustan Lever Limited is being managed by M/S Lipton India Limited. Prior to this date, there were two cases of termination of service of employees who were office-bearers of the trade union at the Etah unit of Hindustan Lever. Mr. Mathura Prasad, Secretary of the union, and Mr. B.S. Rawat, Joint Secretary of the union, were dismissed from service on 26 February 1980 and 13 August 1983 respectively, both on account of misconduct. The industrial disputes in this regard are pending in the Labour Court, Agra, which is being requested to expedite these two cases. According to the State Government, apart from these two industrial disputes, no other matter has come to its notice and industrial peace prevails at the unit at present.

652. The Government refutes the allegation that in Ghaziabad management has not signed any agreement with the democratically elected union committee since 1971 but instead signed four agreements with undemocratic committees. It explains that the management of the Ghaziabad unit of Hindustan Lever Limited has from time to time signed agreements with a trade union by the name of Hindustan Lever Mazdoor Sabha. On 30 December 1971, an agreement was signed when Mr. R.P. Bidani was the Chairman of the union. On 28 January 1976, the management signed an agreement regarding dearness allowance with 37 workers. On 5 December 1977, 3 November 1979, 8 August 1981 and 19 October 1982, agreements regarding dearness allowance, wages and bonus were signed with the above union. On 3 May 1991, an agreement covering various aspects of working conditions of workers was signed with this union. All these agreements were signed without any coercion or pressure to provide favourable working conditions to the workers. With respect to the allegation that the 1991 settlement with a wage increase is only operational for workers who sign an individual agreement in which they accept the undemocratic committee, the Government argues that since the 1991 agreement was signed by 226 of the 300 workers of the Department of Labour office and since only 12 workers have opposed the agreement and have not availed themselves of its benefits, this agreement can by no stretch of the imagination be termed as "undemocratic".

653. The Government then deals with the issue of the forced transfer of the Chairman of the Union, Mr. R.P. Bidani, as well as of his subsequent dismissal. It explains that on 26 September 1975 Mr. Bidani was transferred from the Hindustan Lever unit located at Ghaziabad to the Delhi Branch Office. Mr. Bidani had raised an industrial dispute before the Labour Court on this matter and the Court declared his transfer as null and void on 30 April 1985. This award was published on 29 June 1985 and Mr. Bidani filed an application regarding the delay in the implementation of the award by the management on 16 June 1986. Against this application and the above award of the Labour Court, the management obtained a stay order from the Allahabad High Court. In the meantime, the Delhi Branch Office of Hindustan Lever Limited terminated the services of Mr. Bidani on 10 August 1984 after holding a domestic inquiry. For

approval of their action, the management moved an application in the Industrial Tribunal, Delhi, under the provisions of the Industrial Disputes Act. In view of the award of the Labour Court, Ghaziabad, dated 30 April 1985, the Industrial Tribunal, Delhi, dismissed the application as it felt that this case was outside its jurisdiction. On this matter, the management has filed a writ petition in the Delhi High Court which is sub judice.

654. As regards the allegation that in Taloja, Bombay, all contract workers and contractors were changed when the union tried to organize them and that now contract workers are often changed, the Government indicates that, according to the management, this issue probably relates to the disruption of activity in 1986 due to a strike by the contract labour engaged by the contractors working on the site of the Hindustan Lever unit of Taloja. In April 1986, the Maharashtra General Kamgar Union (MGKU) had submitted a charter of demands to the contractors regarding revision of wages and services of the contract workers. Later the MGKU had also urged Hindustran Lever to intervene for an early settlement of the matter. Since the matter was entirely between the contractors and the contract workers, the management could not be involved. Still, the factory manager used his good offices to arrange several meetings between the two parties. However, on 24 August 1986 a personal dispute arose between one of the contract workers and his contractor which resulted in the termination of the contract of the contract worker concerned. Because of this action, ten employees of the contractor concerned were not allowed to enter the factory. The other contractors who were working at different sites were forced to suspend their work because of the threats they received from the contract labour. The State Government of Maharashtra is of the opinion that the management was not concerned with the termination of services of the contract labour, since this was a dispute between the contractors and their employees. In the event of termination of the contract, the services of the contract labour automatically get terminated. In these circumstances, it is not correct to assert that the management changed the contractors and the contract workers when the union tried to organize them. Moreover, in 1986, neither any union nor any contract worker had lodged a complaint with the Labour Commissioner/Assistant Labour Commissioner's Office concerning termination of services. The State Government adds that the Assistant Commissioner of Labour who recently visited the factory at Taloja found that contract workers are performing their normal duties and a situation of peaceful industrial relations prevails there.

655. With respect to the issue of workers having been suspended and others having been illegally charge-sheeted due to their union activities in Mangalore, the Government submits that the allegation of violation of trade union rights by the management does not appear to be correct. On 7 December 1991, there was an incident of "gherao" (i.e. a practice whereby workers surround company premises for a few hours or even days so as to physically prevent management personnel from leaving in order to press their claims) of the company manager of Hindustan Lever Limited in Mangalore. This resulted in the suspension

of eight workmen. However, conciliation proceedings were immediately initiated by the officials of the Labour Department and a settlement was signed on 12 December 1991. The suspension orders of the workmen were revoked. In addition, a long-term settlement was also signed between the workmen and the management on 21 September 1992. Now a cordial relationship appears to exist between the two social partners at the unit in Mangalore.

656. The Government then responds to the allegation that the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by the management not to join the federation and that many federation leaders have been retrenched and others separated from the workers. It states that Hindustan Lever Limited has plants in different parts of the country and gives a description of the company's seven plants and offices in the state of Maharashtra. It explains that employees of these seven establishments have formed the following three unions: (i) Hindustan Lever Employees' Union; (ii) Hindustan Lever Research Centre Employees' Union; and (iii) Hindustan Lever Mazdoor Sabha. All these three unions are affiliated to the Federation of Hindustan Lever Limited and/or its Associated/Allied Companies' Employees' Union. The Government refers to its previous comments with respect to the alleged retrenchment, etc., of federation leaders, Mr. S.B. Roy and Mr. B. D'Costa. Regarding the alleged retrenchments of federation leaders Mr. R.L. Gupta, President, Mr. Patni and Mr. F. D'Souza, the Government requests the IUF to provide details indicating the unit and year of dismissal so as to enable it to provide comments.

657. As regards the allegation that during research to compile this information researchers were harassed and/or followed by police and security personnel from Hindustan Lever, the Government replies that it cannot provide any comments as the allegation is vague and non-specific.

658. The Government provides the following comments regarding the allegation that an office-bearer of the Hindustan Lever Resesarch Centre Employees' Union, Mr. A.J. D'Souza was physically prohibited on three different occasions by company management from leaving his place of work to attend proceedings in the Industrial Tribunal or Labour Commissioner's Office and that he was threatened with retaliatory action by the company's personnel manager if he continued to attend conciliation/adjudication proceedings. First, the Hindustan Lever Research Centre Employees' Union has filed Unfair Labour Practice (ULP) Complaint No. 910 of 1992 in the Industrial Tribunal in connection with the management's action prohibiting Mr. A.J. D'Souza from attending conciliation proceedings. The union has made the following prayer: (i) two representatives of the union may be permitted to attend the court cases which concern the union; (ii) the management should be restrained from taking any disciplinary action against any member of the union merely for the reason that he had remained absent when he was required to attend court cases concerning him. Second, regarding refusal of permission to Mr. A.J. D'Souza for attending conciliation proceedings on 22 June 1992, the State

Government indicates that the Joint Secretary of the union had requested the personnel manager of the company to allow Mr. A.J. D'Souza time off without deduction of wages to enable the latter to attend court case No. 526 of 1989 at the Industrial Court, Bombay. According to the management, however, there were no conciliation proceedings fixed for 22 June 1992 pertaining to the company at the Labour Commissioner's Office nor was there a case in the court. Therefore, the management refused to give time off to Mr. A.J. D'Souza on 22 June 1992. Mr. D'Souza thereafter took half a day's casual leave for his personal work.

659. In its communication of 10 March 1994, the Government states that more details would be required from the complainants concerning the retrenchments of the five union officials in Etah, since no case concerning these officials was brought to the attention of the State Government of Uttar Pradesh.

C. The Committee's conclusions

660. The Committee notes that the allegations in this case concern interference by the authorities and by the management of Hindustan Lever Ltd. in the functioning of an international seminar organized by the IUF in Bombay. These allegations also refer to several acts of anti-union discrimination against trade union officials and interference in trade union activities by the management of Hindustan Lever Ltd. at its different plants in various cities.

661. The Committee, at the outset, regrets in the present case the slow and bureaucratic nature of the procedure concerning the dismissals, some of which took place in 1980 and are still pending before the Labour Court.

662. Furthermore, the Committee expresses its concern over the alleged interrogation of the seminar organizers by a police officer as well as the fact that certain participants were asked to report to the police station daily. The Committee considers these allegations to be all the more serious since it would appear that the IUF had already cleared the necessary formalities with the relevant government ministries in order to hold this seminar and have a certain number of representatives from its affiliated organizations take part in it. In this respect, the Committee draws the Government's attention to the principle that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, should be based on objective criteria and be free of anti-union discrimination [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 532]. The Committee requests the Government to keep it informed of the outcome of the report on this matter that is being prepared by the State Government of Maharashtra.

663. The Committee observes that further allegations of interference in relation to this seminar refer to criticism of this seminar by representatives of Hindustan Lever Ltd., India's Unilever subsidiary, through the medium of a press conference. While acknowledging that such criticism might not be conducive to harmonious industrial relations between representatives of Unilever companies and unions in India, the Committee does not believe that such criticism amounts to an act of interference in the functioning of an international seminar. In its view, the full exercise of freedom of association calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publication and in the course of their other activities [see Digest, op. cit., para. 175].

664. As regards the illegal dismissals of union members in the Hindustan Lever plant in Bombay, the Committee notes with concern the allegations concerning anti-union discrimination. The Committee notes that according to the Government three office-bearers of the union (Mr. Bennet D'Costa, Mr. V.P. Ghuge and Mr. Nand Kumar) were dismissed after domestic inquiries were held for the charges levelled against them. The Government, however, does not specify what charges were brought against these three union leaders. In the absence of such information, the Committee would recall that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see Digest, op. cit., para. 556]. In this case, the Committee notes that the Labour Court, Bombay, had stayed the dismissal order of Mr. D'Costa who is still working in the factory. The Committee further notes that Mr. Ghuge's case which was referred to the Labour Court, Bombay, is sub judice while Mr. Nand Kumar has made an application for reinstatement before the same Court. The Committee therefore requests the Government to keep it informed of the progress and outcome of the court proceedings in these two cases.

665. As regards the allegation that several union leaders have been retrenched in Orai (Mr. Krishnan Swarup Shukla, Union Secretary) and in Etah (Mr. M.P. Gupta, General Secretary; Mr. Pravad, President; Mr. R. Sharma, General Secretary; Mr. Swaveny, Joint Secretary; and Mr. R. Palsingh, active member), the Committee notes that the Government merely provides information in the case of Mr. Shukla, stating that he was dismissed from service because of misconduct and inefficiency and not due to trade union activities. As regards the allegations concerning the retrenchments of the five union officials in Etah, the Committee notes the Government's statement that more details would be required from the complainant in this respect, since no case concerning these officials was brought to the attention

of the State Government of Uttar Pradesh. The Committee therefore requests the complainant to provide details on the alleged retrenchment of the five union officials in the Etah units of Hindustan Lever Ltd. It further requests the Government to keep it informed of the outcome of the judicial proceedings pending before the Labour Court, Agra, in relation to the dismissal from service of two office-bearers at the Etah Unit of Hindustan Lever, namely Mr. Mathura Prasad, Secretary, and Mr. B.S. Rawat, Joint Secretary dismissed in February 1980 and August 1983 respectively. Finally, it requests the Government to keep it informed of the outcome of the writ petition filed by the management in the Delhi High Court in relation to its dismissal of Mr. R.P. Bidani, Chairman of the union of the Hindustan Lever Unit located at Ghaziabad before his transfer to the Delhi Branch Office.

666. With respect to the allegation that elected union leaders in a Hindustan Lever plant in Bombay have been isolated from other workers by being forced to work in a separate depot or go-down, the Committee observes that the Assistant Commissioner of Labour from Bombay had indeed found that the President and the Vice-President of the union had been transfered to a go-down which was about 2 kilometres from factory premises, while four union committee members had been transferred to a go-down a kilometre away from factory premises. According to the management, it is a practice to rotate workers in different go-downs and that office-bearers of the union cannot claim exemption from this practice. Apart from failing to see the need to transfer six office-bearers away from factory premises at the same time, the Committee considers that such transfers may seriously harm the efficiency of trade union activities [see Digest, op. cit., para. 560]. It therefore requests the Government to ensure that an independent and impartial inquiry is held in order to ascertain whether the transfers of these six office-bearers were based on acts of anti-union discrimination and, if so, to ensure that these office-bearers are transferred back to the factory premises of the Hindustan Lever plant in Bombay. It also requests the Government to ensure in future that employers refrain from having recourse to such measures.

667. Concerning the issue of de-recognition by the management of the democratically elected union in 1989 at Bombay Sewi Plant, the Committee notes that the management admits to having de-recognized the Hindustan Lever Employees' Union in September 1989 because the latter failed to observe the conditions stipulated by the Code of Discipline in Industry. The Committee notes, however, that this unilateral de-recognition by the management is not in line with the Code which stipulates "that no unilateral action should be taken in connection with any industrial matter and that disputes should be settled at the appropriate level" (article II(i)). In addition, if the management continues to hold discussions and negotiations with this union as it says it does, the Committee fails to see why it proceeded with the de-recognition in the first place. Moreover, the Committee also notes with concern that since de-recognition of this union in 1989, there is no indication that the management held negotiations with another

workers' organization or indeed that another representative workers' organization exists. In this connection, the Committee would draw the Government's attention to the fact that direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [Digest, op. cit., para. 608]. The Committee requests the Government to keep it informed of the outcome of the applications before the Industrial Court, Bombay, by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

668. Regarding the retrenchment of 300 contract workers in Garden Reach, Calcutta, the Committee notes that according to the complainant, these workers were retrenched in 1988 while struggling for their right to organize while according to the Government these workers were rendered jobless in 1991 when the management of Hindustan Lever stopped contract works at their unit in Garden Reach, Calcutta. In view of the contradiction between these two statements, the Committee is not in a position to ascertain whether these workers were retrenched for reasons of anti-union discrimination or due to economic reasons leading to the complete stoppage of contract works in this unit in Calcutta. The Committee notes, however, that the dispute is now pending before the conciliation authority in Calcutta and requests the Government to keep it informed of its outcome. Similarly, the Committee notes that the complainant states that the union leader S.B. Roy was dismissed in 1988 in Calcutta whereas the Government indicates that he might have lost his job due to stoppage of contract works by the management, as he was a contract labourer. The Committee therefore requests both the complainant and the Government to provide, as soon as possible, information relating to the exact reasons for the retrenchment of the trade union leader Mr. S.B. Roy as well as the reasons as to why the management stopped contract works in the unit in Calcutta in 1988, so that it can examine this aspect of the case in full knowledge of the facts.

669. The Committee notes that the Government refutes the allegations that in Chindwara and Ghaziabad the management signed agreements with undemocratic committees instead of with the committees of democratically elected unions. According to the Government, in Chindwara a settlement was signed in 1990 with a committee which was duly elected by the Hindustan Lever Employees' Union and in Ghaziabad several agreements were signed with the Hindustan Lever Mazdoor Sabha over a period of years, the last one being in 1991 which was signed by 226 of the 300 workers. In view of the contradiction once again between these two statements, the Committee will only recall the principle that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

670. Regarding the allegation that in Taloja, Bombay, all contract workers and contractors were changed when the union tried to organize them, the Committee notes that according to the detailed information provided by the Government, the termination of services of the contract labour occurred initially because of a personal dispute which arose between a contractor and a contract worker which resulted in the termination of the contract of the latter. This dispute then spread to other sites when other contract workers protested against this incident. The Committee, for its part, is not in a position to know whether the services of these contract workers were terminated due to reasons of anti-union discrimination since the complainant merely indicates that all contract workers were changed when the union tried to organize them, without providing further information to back up this allegation. The Committee therefore requests the complainant to provide, as soon as possible, information indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination.

671. Concerning the allegation that in Mangalore workers were illegally suspended and charge-sheeted due to their union activities, the Committee notes that eight workmen were indeed suspended in December 1991 following an incident of "gherao" of the company manager. In the Committee's view, the practice of "gherao" cannot be considered as a legitimate trade union activity. It notes, moreover, that the suspension orders of these workmen were revoked following conciliation proceedings. It therefore considers that this aspect of the case does not call for further examination.

672. With respect to the allegation that the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by management not to join the federation, the Committee notes that according to the Government, employees of certain plants and offices have formed three different first-level unions which in turn are affiliated to the Federation of Hindustan Lever Ltd. and/or its Associated/Allied Companies Employees' Union. The Committee notes, however, that these plants and offices are only those which are to be found in the state of Maharashtra whereas Hindustan Lever Ltd. has plants in different parts of the country. In order to enable it to examine this allegation in full knowledge of the facts, the Committee would request the complainant to provide information specifying which first-level unions at which plants are advised by management not to join the trade union federation of Hindustan Lever companies, as well as information on any incidents which demonstrate that management hinders the activities of the federation. Similarly, regarding the alleged retrenchments of federation leaders, Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza, the Committee requests the complainant to provide information indicating the Hindustan Lever Unit at which these persons were employed and their respective years of dismissal. The Committee further requests the complainant to provide detailed information relating to the allegation that during research to compile this information, researchers were harassed and/or followed by police and security personnel from Hindustan Lever. It would ask the complainant to indicate in particular the names of the six places

and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation occurred.

673. As regards the allegation that an office-bearer of the Hindustan Lever Research Centre Employees' Union was physically prohibited by company management from leaving his place of work to attend conciliation/adjudication proceedings concerning the union and that he was threatened with retaliatory action if he continued to attend such proceedings, the Committee notes the Government's statement that according to the management, it refused to give time off to the office-bearer to attend conciliation proceedings on 22 June 1992 because no such proceedings were fixed for this date. Even if this were so, the Committee observes that the office-bearer was nevertheless prevented from attending such proceedings on two other occasions and, in addition, threatened with retaliatory action. In this respect, the Committee would draw the Government's attention to the relevant provisions of the Recommendation concerning the protection and facilities to be afforded to workers' representatives in the undertaking (No. 143), which stipulate, amongst other things, that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking (Paragraph 10(1)). The Committee further notes that the union has filed an unfair labour practice complaint before the Industrial Tribunal in connection with the management's actions prohibiting the office-bearer from attending conciliation proceedings. The Committee requests the Government to keep it informed of the progress and outcome of the complaint filed by the union.

The Committee's recommendations

674. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee notes with concern that during an international seminar organized by the IUF in Bombay, seminar organizers were interrogated by a police officer and certain participants were asked to report to the police station daily. It requests the Government to ensure that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, are based on objective criteria and free of anti-union discrimination. Furthermore, it requests the Government to keep it informed of the outcome of the report that is being prepared on this matter by the State Government of Maharashtra.

(b) Regretting the slow and bureaucratic nature of procedures concerning allegations of anti-union dismissal, the Committee requests the Government to ensure that workers enjoy adequate protection against all acts of anti-union discrimination in respect of their employment. It draws the Government's attention to the danger that justice will be denied as a result of the slowness of the judicial procedures.

(c) In view of the principles enunciated above, the Committee requests the Government to provide information relating to: (i) the progress and the outcome of the proceedings before the Labour Court, Bombay, concerning the dismissal from service of Mr. Ghuge and Mr. Nand Kumar, office-bearers of the Hindustan Lever plant in Bombay; (ii) the progress and the outcome of the judicial proceedings before the Labour Court, Agra, concerning the dismissal from service of Mr. M. Prasad and Mr. B.S. Rawat, office-bearers of the Etah Unit of Hindustan Lever; and (iii) the progress and the outcome of the writ petition filed by the management of the Delhi Branch Office of Hindustan Lever before the Delhi High Court concerning the dismissal of Mr. R.P. Bidani, Chairman of the Ghaziabad Unit of Hindustan Lever, before his transfer to Delhi.

(d) The Committee requests the Government to ensure that an independent and impartial inquiry is held with respect to the forced transfers of trade union officials away from factory premises in order to ascertain whether the transfers of these six office-bearers were based on acts of anti-union discrimination and, if so, to ensure that these office-bearers are transferred back to the factory premises of the Hindustan Lever plant in Bombay. It also requests the Government to ensure in future that employers refrain from having recourse to such measures.

(e) Taking into account the particular circumstances of this case, the Committee requests the Government to ensure that direct negotiation between the undertaking and its employees does not by-pass representative organizations where these exist. The Committee thus requests the Government to keep it informed of the outcome of the applications before the Industrial Court, Bombay, by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

(f) The Committee requests the Government to keep it informed of the progress and the outcome of the dispute pending before the conciliation authority in Calcutta concerning the retrenchment of 300 contract workers in the Hindustan Lever Unit in Calcutta. It further requests both the complainant and the Government to provide information relating to the exact reasons for the retrenchment of the trade union leader, Mr. S.B. Roy, as well as the reasons as to why the management stopped contract works in the unit in Calcutta in 1988.

(g) The Committee requests the Government to ensure that the principle that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration is respected.

(h) The Committee requests the complainant to provide, as soon as possible, information: (i) giving details on the alleged retrenchments of the five union officials in the Etah Unit of Hindustan Lever Ltd.; (ii) indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination; (iii) specifying which first-level unions at Hindustan Lever plants are advised by management not to join the trade union federation of Hindustan Lever companies and describing incidents which demonstrate that the management hinders the activities of the federation; (iv) indicating the Hindustan Lever Unit in which retrenched federation leaders Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza were previously employed and their respective year of dismissal; and (v) relating to the allegation that during research to compile information leading to the complaint researchers were harassed and/or followed by police and security personnel from Hindustan Lever, and in particular on the names of the six places and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation allegedly occurred.

(i) The Committee requests the Government to keep it informed of the progress and outcome of the unfair labour practice complaint pending before the Industrial Tribunal, Bombay, which was filed by the Hindustan Lever Research Centre Employees' Union in connection with the management's actions prohibiting an office-bearer from attending conciliation proceedings pertaining to the union.

Case No. 1698

COMPLAINT AGAINST THE GOVERNMENT OF NEW ZEALAND PRESENTED BY THE NEW ZEALAND COUNCIL OF TRADE UNIONS (NZCTU)

675. In a communication dated 8 February 1993, the New Zealand Council of Trade Unions (NZCTU) submitted a complaint of violations of freedom of association against the Government of New Zealand. It sent additional information and supporting evidence relating to its complaint in communications dated 11 March and 21 June 1993. Public Services International (PSI), the International Union of Food and Allied Workers' Associations (IUF), the International Confederation of Free Trade Unions (ICFTU), the International Federation of Commercial,

Clerical, Professional and Technical Employees (FIET) and the International Federation of Building and Woodworkers (IFBWW) associated themselves with this complaint in communications dated 3 and 15 March, 19 April, 5 May and 20 August 1993 respectively.

676. The Government's observations on the case were contained in a communication received on 14 September 1993. It sent additional information in a communication dated 12 October 1993.

677. New Zealand has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), or the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

678. At its November 1993 meeting, the Committee decided to postpone its examination of this case to its meeting in March 1994 where it would only take into consideration information received up to November 1993. The Committee was informed that the Office had recently recived other information. It decided to examine this case in conformity with its decision of November 1993.

A. The complainant's allegations

679. In its complaint the NZCTU alleges that the Employment Contracts Act (hereinafter "the Act") which came into effect on 15 May 1991 violates Conventions Nos. 87 and 98 in the collective bargaining process and by its restrictions on the right to strike. The NZCTU acknowledges that prior to the introduction of the Act there was agreement between the Government and the central workers' and employers' organizations that New Zealand's system of bargaining on an occupational basis needed to be changed in view of the more open, rapidly changing economy. However, it was the form of change that was in dispute and the NZCTU opposed the Act on the grounds that it did not provide an adequate legislative framework for the exercise of the right to organize and to bargain collectively.

680. In explaining the background of the legislative reform, the NZCTU points out that the National Party campaigned in the 1990 election on a platform that it would repeal the Labour Relations Act and introduce legislation which brought workers under a system of employment contracts as soon as it came into office. As a result, the Employment Contracts Bill was introduced into Parliament on 19 December 1990. However, the Government was advised by the Department of Labour before the Act came into force that it was not compatible with collective bargaining as envisaged by Convention No. 98. In this respect, the NZCTU quotes certain passages from a report by the Department of 3 April 1991:

> The Employment Contracts Bill stops short, however, of favouring collective over individual contracts. It says that it

is up to the parties to determine in order to best suit their own circumstances. It is neutral on the issue.

The thrust of Article 4 of Convention No. 98 really is that collective bargaining, via voluntary negotiation, should be promoted. The Employment Contracts Bill gives no such encouragement or promotion.

681. The NZCTU states that a select committee which heard submissions on the Bill reported back on 23 April 1991. One hundred and eighty-eight submissions opposed the Bill, 71 supported it. Although the select committee summarized the major grounds for opposition, it took no account of them and made no recommendations on the substantial grounds for opposition to the Bill. The Bill was altered in a technical fashion and came into force on 15 May 1991.

682. The NZCTU enumerates more specifically the violations of Conventions Nos. 87 and 98 in the collective bargaining process under the Act. It states first of all that the Act has greatly reduced the coverage of collective agreements. It provides data in an appendix to its complaint which shows that following the 1989-90 bargaining round, collective agreements covering 721,000 workers were settled. The 1990-91 bargaining round began after the introduction of the Act, although before it came into force; as a result, some employers refused to settle agreements, preferring to wait to bargain under the Act. Thus, the number of workers covered by collective agreements dropped to 610,200 workers. Finally, according to the most recent estimate, the number of workers covered by collective agreements as at 1 October 1992 was 376,000. This data shows that there has been a 45 per cent fall in the number of workers covered by collective agreements since the 1989-90 bargaining round. This not only indicates that the Act does not encourage or promote collective bargaining as envisaged by Convention No. 98 but also that it is obstructive and hostile to collective bargaining.

683. Secondly, the NZCTU contends that collective employment contracts under the Act are not collective agreements as contemplated by the ILO because they do not necessarily result from a process of real collective bargaining involving workers' organizations. Collective employment contracts under the Act can be formed without a representative workers' organization and without a process of collective agreement by workers. For example, 28 per cent of collective employment contracts in the Infometrics database were negotiated without the involvement of workers' organizations. This is contrary to Article 4 of Convention No. 98 which says that collective bargaining is "voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements".

684. The NZCTU refers to specific provisions to describe the bargaining system under the Act. Section 9(a) provides that workers and employers have the right to choose whether they will bargain for

themselves or through employee or employer organizations or through any other group or person. Under the terms of section 9(b), employment contracts may be either individual or collective. Individuals, individual agents or organizations can bargain both types of contract. The only limit on who can be a representative is that the other party can object to a representative who has certain criminal convictions (section 11). The Act contains no provisions on the recognition of workers' (or employers') organizations and no reference to representative workers' (or employers') organizations. Where workers or employers choose to bargain through a representative they must individually authorize that representative (section 12(1)). Where a representative has obtained an authority the other party must recognize that the person so authorized is the representative (section 12(2)). Recognition entitles the representative to access in terms of section 14. It creates no obligation on the employer to negotiate or bargain in good faith with that representative. Finally, section 17 provides that a bargaining agent may become a party to the collective employment contract with the consent of the employer and employee parties. This means that collective employment contracts can be formed without a collective process of representation even where workers have authorized a union.

685. The NZCTU maintains that such contracts are not true collective agreements but simply aggregations of individual agreements. It asserts that there are many examples of employers forming collective employment contracts directly by this method with workers who had authorized a union and had given the authorities required by the Act. It refers in particular to the example of the Adams v. Alliance Textiles Mill case. The Dairy Food and Textile Workers' Union had members at the Redruth Alliance Textiles Mill. The union was in the process of obtaining authorities under the Act to continue negotiations begun before the Act came into force. The manager of the mill circulated a "collective employment contract" individually to workers. Some workers signed it while negotiations were continuing. The manager asked each worker to withdraw his authority to the Dairy Food and Textile Workers' Union before signing his collective employment contract. The NZCTU indicates that there are other similar cases (which it describes in detail later on) which illustrate that employers had negotiated collective contracts in this manner and had bypassed authorized representative unions.

686. The NZCTU further alleges that the process of collective bargaining which has emerged under the Act is contrary to the principle that both employers' and workers' organizations should bargain in good faith and make every effort to come to agreement. A pattern of interference and discrimination during collective bargaining has emerged contrary to Articles 2 and 4 of Convention No. 98 and Articles 2 and 3 of Convention No. 87. The NZCTU maintains that the provisions of the Act on anti-union discrimination have not proved adequate to prevent this interference and analyses the relevant provisions.

687. Sections 6 and 7 forbid contracts and other agreements or arrangements which interfere with freedom to join a union (or not) or contain preferences on the basis of union membership. Section 8 forbids undue influence on workers to join or leave a union or on union representatives to cease to act for members who have authorized them. These provisions do not prevent actions intended to interfere with the relationship between workers and unions which do not relate to joining or leaving a union. This means that employers are free to interfere with or attempt to influence a worker's decision to authorize a union and to discriminate against workers on the basis that they have authorized a union.

688. The NZCTU goes on to describe provisions under which personal grievances are available to workers. Section 28(1) defines the types of discrimination which will give rise to a right to a personal grievance claim. These include discrimination against workers who are involved in the activities of an employees' organization. All these grievances protect workers who are discriminated against in the course of their employment. Section 28(2) further limits the scope of protection against discrimination, restricting grievance rights to workers who have had an active role in the union. This section would not create a remedy for workers who are discriminated against due to their membership or authorization of a union. Section 30 defines duress directed to union membership which gives rise to personal grievance rights. This section applies to agreements which require membership or non-membership, and to undue influence on workers to join or leave workers' organizations and on union representatives to cease to act for workers. Again it provides no protection for interference or discrimination in relation to the authorization relationship. The only protection against interference or influence on a worker's decision to authorize a union to represent him is section 57 which prohibits harsh and oppressive behaviour. According to the NZCTU however, section 57 provides a very limited remedy.

689. The NZCTU contends that some employers acknowledge that the union has been authorized, then bypass it to negotiate directly with the workers. They then move on to actively pressurize their employees to sign the employer's chosen individual or collective employment contracts without their representatives. The NZCTU alleges that this pressure amounts to interference and refers to a certain number of cases where such interference has occurred. The following three are examples of such cases. The Ports of Auckland case involved a harbour company employing workers who were members of the Harbour Workers' and Waterfront Workers' Unions. The company had been restructuring for some years and wished to speed up the process. It therefore sought these changes in a proposed employment contract which substantially altered the methods of payment of members of the workforce. The company approached workers individually and suggested that if the contract was not signed workers were in danger of being made redundant. Workers who signed the contract would receive as much as 40 per cent reduction in earnings but received initial one-off payments of up to 10 per cent of their current earnings. The company

asked workers to withdraw their bargaining authority to the Harbour Workers' Union before signing the company's document. After some individuals had signed these contracts, the union was notified of redundancies (the contracts which the workers remained under had a provision requiring six weeks' notice to the union of potential redundancies). The number of redundancies was equal to those workers who had not signed the company's contract because they had insisted that the company negotiate with their union. The union took a case claiming that the company had interfered with the authorities given by their members by asking them to withdraw these authorities and threatening those who did not sign their document with redundancy. The court refused to hear this argument saying the authority relationship is not a question of employment contracts and therefore is out of the jurisdiction of the Employment Court.

690. Similarly, in the Alliance Textiles case, the employer had approached union members individually and asked them to withdraw the bargaining authorities given to the union and sign non-union contracts which offered bonuses. The employer also paid for workers to go to an outside legal adviser to discuss the union authorities. The Employment Court considered that there was no remedy under the Act for these attempts to influence workers. The Court found that although there was an attempt to influence the workers, it was not an attempt to cause them to leave the union and therefore there was no remedy under the Act. The Court moreover, refused to apply section 57 which prohibits harsh and oppressive behaviour. It emphasized that this section would only apply in cases involving very serious influence, duress or threats. It also suggested that it would be difficult to find that there was harsh and oppressive behaviour where the contract formed was not, in itself, harsh and oppressive.

691. The Richmond case involved Richmond Limited, a meat processing company which had lockouts at three plants. The NZCTU states that since the work is seasonal, the workers were prevented from returning to work after the seasonal layoff in 1991 until they had agreed to the new contract structure. The NZCTU then provides 42 briefs of evidence from workers at these three plants who are members of the New Zealand Meatworkers' Union. These workers state that shortly before resuming work in October 1991, they were told by their respective plant managers and/or foremen that they would have to sign the company's plant level contract. Failure to sign would result in loss of seniority or be considered as an abandonment of their jobs. In previous years they were not required to sign anything, it being understood that they employment was not terminated at the end of each season. They normally received a letter indicating the date at which they had to resume work. Moreover, that year they were required to sign another document rescinding the union as their bargaining agent. Most of them refused to sign this contract since they had previously voted by a large majority for the union to remain as their bargaining agent and to negotiate a company-wide agreement. Most of them had nominated the union as their bargaining agent because in the words of Mr. Peter Baird, worker at the Richmond Oringi Plant: "I nominated the union because that is my only protection from the company.

Negotiating your terms and conditions is a tricky business and I wanted the union doing that work on behalf of myself and everyone else on the plant. There are not many workers on the plant who are able to negotiate their own contracts. That is why the company made people cancel the union as their bargaining agent." Certain workers, like John William Henderson from the Oringi Plant, noted quite a few changes between the company's new contract and the previous agreement, despite the company's assurances that workers would be starting work that season on the same terms and conditions as before. Some workers, like Ivena Joan Martin from the Richmond Pacific Plant, were told that the company would not mind if the workers had union officials from the plant as their individual bargaining agents but that they could not name the New Zealand Meatworkers' Union as their bargaining agent. Some workers, like Peter Haye from the Oringi Plant signed the contract a few weeks later because he "had to get some money". All those who did not sign the contract described the financial and emotional hardship that they suffered during the lockouts at the three plants. Finally, certain workers who signed the contract left the union either because they felt they could not stay in the union after breaching its rules and resolutions or because they felt like Ngai John James August from the Oringi Plant that it "... was a waste paying $5.00 a week union fees if you can't use the union as your bargaining agent".

692. The NZCTU submits that the provisions of the Act on recognizing authorized representatives are contrary to Article 2(2) of Convention No. 98 since they allow recognition of bargaining representatives appointed by or under the domination of employers. In this respect, it refers again to section 9(a) which provides that in negotiating for an employment contract, workers may conduct the negotiations on their own behalf or may choose to be represented by another person, group or organization. It adds that the various surveys all show statistically significant levels of bargaining involving company-based bargaining agents or nominated workers. These may be workers who represent fellow workers, workers appointed by employers, or other agents recommended by the employer. This type of agent cannot in practice, in a great majority of cases, be considered to be acting free of employer influence or dominance. It gives two examples of such employer domination. The Ohope Lodge Limited employment contract was negotiated and written by a bargaining agent appointed by the employer who also represented the workers involved. Secondly, some third-tier managers at the Accident Compensation Corporation (ACC), a state-run corporation, were members of a management staff association which was subsidized by the employer. The employer paid for a bargaining agent to negotiate for the staff association.

693. Moreover, the provisions of the Act on recognizing workers' representatives are a barrier to the right to organize for the purpose of collective bargaining as recognized in Articles 2 and 3 of Convention No. 87. The NZCTU alleges that the need to demonstrate authorization, to the standard required in the Act, is onerous and obstructs unions in the practice of collective bargaining. Authorized

representatives must establish their authority for all those they claim to represent. A union must obtain 100 per cent support in the form of an authority to take any action on behalf of its members. Some employers have gone so far as to require a list of members who have authorized the union, or copies of authorities, each time the union wishes to exercise one of the representation rights. For example, the State Services Commission issued initial bargaining documents requiring unions in the public health service to provide the names of each individual who had authorized them and to update it on any withdrawals of authorities during bargaining. The Southland Hospital Board requested not only a schedule of names but copies of each of the authorities.

694. The NZCTU alleges that collective employment contracts concluded through non-union agencies have limited or excluded trade union rights in violation of Articles 3, 8 and 11 of Convention No. 87. The ability of employers to negotiate collective employment contracts under the Act without the involvement of workers' organizations enables them to exclude union rights from those contracts. This is demonstrated by the Heylen Teesdale Meuli Survey, a survey of labour market adjustment under the Act, which was conducted for the Department of Labour in 1992. This survey contains an analysis of changes in representation rights where new collective employment contracts have been formed. The NZCTU states that in the group of enterprises surveyed: 12 per cent of enterprises have reduced or abolished union rights to access a workplace; 26 per cent have stopped supplying names of members to unions or have limited that supply; 25 per cent have reduced or stopped deducting union fees; and 22 per cent have cut time off for union meetings.

695. According to the NZCTU, the Act interferes in the free choice of the level at which bargaining takes place and has been used illegitimately by the Government to promote enterprise-level bargaining. The restrictions on the right to organize contained in the Act and, in particular, the restrictions on the right to strike for a document covering more than one employer (see paragraph 697), are barriers to the settlement of collective agreements at the industry level. In this connection, the NZCTU mentions the example of the New Zealand Engineers' Union (NZEU). The NZEU planned to negotiate a multi-employer metals industry contract to which end it obtained authorizations. The union was obstructed from negotiating this document centrally with the Employers' Federation or Metals Industry groupings. Industrial action in support of a central negotiation was illegal under the Act and would have left the union liable for losses by employers during the strike. The union was thus forced to negotiate by agreeing on the basic metals contract with a core group of employers in the South Island and including a clause allowing the addition of new employer parties to the document. The union then had to negotiate with individual employers and include them in the document. The union had to repeat this process for the North Island.

696. In addition, the Government has actively interfered in negotiations between state employers and workers to prevent the settlement of agreements at the industry level, issuing instructions to settle enterprise-level documents. For example, the Tertiary Institutes Allied Staff Association (TIASA), the representative union of workers in polytechnics, reached preliminary agreement for a multi-employer collective employment contract with the central body of polytechnic employers, the Association of Polytechnics of New Zealand (APNZ). However, the State Services Commission told the APNZ to delay negotiation until the Cabinet subcommittee on wages approved the agreement because "... a multi-employer collective contract for allied staff creates a highly undesirable precedent". At the meeting of the Cabinet subcommittee, the Minister of Labour said, amongst other things, that "it is the Government's intention and expectation that state-funded organizations will move this year to enterprise agreements" and "failure to achieve enterprise agreements will have implications for future funding decisions". Following this, the Minister wrote to the APNZ suggesting that funding to polytechnics would be altered to fit with the Government's enterprise bargaining objectives. Polytechnic employers issued a notice that they could only negotiate enterprise documents. The NZCTU adds that since the average New Zealand enterprise only employs 7.6 workers, negotiating primarily at the enterprise level is causing extreme organizational difficulties for the union movement in this country.

697. Finally, the NZCTU alleges that the Act broadly restricts the right to strike. Under the terms of section 63, strikes are unlawful if: a collective employment contract is in force; they relate to a personal grievance, a dispute, or issues of freedom of association; they are for a document which will bind more than one employer; they are in an essential industry and prior strike notice is not given. Strikes which do not involve any of the above elements are lawful only if they relate to the negotiation of a collective employment contract (section 64(1)(b)) or if they are justified by a health and safety issue (section 71). Workers who strike unlawfully are not protected against economic torts. This means that unions and their members could be sued for conspiracy to interfere in contractual relations, intimidation, inducement of breach of contract or unlawful interference with trade, business or employment (section 73). These legal actions can be taken by the employer of the striking workers in the case of secondary action or by the company whose products or services were being banned as part of secondary action. This means that there are effective penalities against strikes for multi-employer documents, and strikes in pursuit of general, or social and economic policy issues and secondary industrial action.

698. The NZCTU reiterates its view that the prohibition on multi-employer industrial action restricts the freedom of the parties to choose the level at which they bargain their collective contract. This is reflected in the 90 per cent fall in the number of collective agreements settled at industry or national level since the Act came into force. The fact that an employer can immediately take out an injunction to prevent strikes for multi-employer documents has

prevented industrial action by several unions. To illustrate this point, the NZCTU explains what happened to the Resident Doctors' Association (RDA) which represents junior doctors in public hospitals. Their award, deemed to be a collective employment contract by the Act, expired in 1991. The RDA wished to negotiate a national collective employment contract to replace the expired one. In August 1991, the Area Health Boards refused to negotiate nationally and the RDA issued notices that junior doctors would strike in support of a national collective contract. The Area Health Boards issued an action in the Employment Court for an injunction preventing the strike. The RDA withdrew its notices and called off the strike. This had to be done to avoid the inevitable costs of the court issuing an injunction. Similarly, the NZEU was unable to call for industrial action in support of the metals industry collective contract (see paragraph 695 above) and TIASA was unable to call for strike action in support of its preliminary agreement for a national polytechnic collective contract (see paragraph 696).

B. The Government's reply

699. Before specifically addressing the allegations made by the NZCTU, the Government describes the social, political and industrial relations framework in New Zealand and gives an overview of employment legislation. It states generally that post-war New Zealand had developed a highly protected economy, using measures such as import controls, a closed financial system and subsidies to protect domestic industries and maintain the welfare state. The recent deregulation of the economy had been undertaken in response to a series of international and domestic economic pressures. In conjunction with the deregulation of the economy, some changes were made in the highly regulated industrial relations system to increase the flexibility of the labour market. Traditionally, New Zealand had a conciliation and arbitration system designed to balance the interests of capital and labour and to avoid industrial disruption by providing for compulsory arbitration of disputes which could be activated by either party. Unions were organized on an occupational basis, leading to a pattern of bargaining on an occupational basis also. This system provided minimum wages and conditions for workers in a particular occupation across the economy. As part of the process of deregulation from 1984, compulsory arbitration was abolished that same year and the Government adopted a policy of non-intervention in disputes from 1985.

700. This policy was confirmed in the Labour Relations Act of 1987 by making the parties themselves responsible for negotiations and enforcement. The Act of 1987 maintained the registration of unions, which provided them with the exclusive coverage of workers covered by their membership rules and exclusive rights to negotiate with employers on behalf of those workers and put certain obligations on them in the administration of their affairs. The registration system was intended to encourage unions to be more effective and accountable

in the exercise of their rights. Settlements between unions and employers could be registered as awards or agreements. Awards could (and generally did) include a "subsequent parties" clause which extended "blanket" coverage across all workers covered by the award and their employers. This system meant that employers not present at the negotiations had no say in whether or not they were covered by the award. Workers were represented by unions at the negotiations, but all workers within the work description of the award were covered by it whether or not they belonged to the union. Although some flexibility was achieved under the Labour Relations Act of 1987, there were widely held views that it promoted inappropriate structures and outcomes which were not responsive to the economic pressures resulting from the exposure of New Zealand businesses to international competition. Various groups recognized that further change needed to occur in the labour market. The NZCTU issued a booklet in 1988 seeking a move to industry rather than occupational bargaining. Employer groups argued that the legislation perpetuated occupationally dominated bargaining, that unrealistic wage settlements were undermining business competitiveness and generating unemployment. It was in this environment that the Government introduced the Employment Contracts Act.

701. The Act, which was implemented in May 1991 and which has removed much of the previous regulation, provides an environment of voluntary association and freedom of bargaining in order to enable workers and employers to adopt flexible work practices necessary to a competitive economy. Under the new system the outcomes of bargaining apply only to the parties who have been actively involved in their negotiation. The immediate and most apparent result of the Act is therefore a significant change in the structure of bargaining. The following table provides an indication of the change, as reported by the Heylen Teesdale Meuli survey which was conducted for the Government in 1992. The survey covers private sector enterprises with four or more employees. The table shows the percentage of employees in the 1,437 surveyed enterprises who were covered by the different types of documents in May 1991, just before the Act came into effect, and in August 1992, 15 months later.

	Awards & multi-employer documents	Enterprise agreements	Combined IEC & CEC	IECs
May 1991	59%	13%	-	28%
August 1992	8%	35%	5%	52%

Note: IEC = individual employment contract. CEC = collective employment contract.

The table shows a significant shift from blanket coverage awards and other multi-employer documents to single enterprise agreements and individual employment contracts. The combined figures indicate a fall in coverage of collective bargaining from 72 per cent to 43 per cent. The changed bargaining structure reflects the intent of the Act that bargaining should be conducted at the level that suits the enterprise concerned and that the parties should be able to choose the form of contract they wished to negotiate. The evidence is that many employers and employees are choosing enterprise bargaining.

702. The Government then addresses the specific points raised by the NZCTU. Although the NZCTU acknowledges that prior to the introduction of the Act there was agreement between the social partners that the system of bargaining needed to be changed, the NZCTU has not accepted the legislation as the appropriate way of managing industrial relations. The Government submits that the Act is an appropriate mechanism in the new environment since it gives businesses the freedom they need to adopt flexible work practices in order to compete effectively in international and domestic markets. In particular, it is important that businesses can negotiate at any level, including enterprise level, conducive to achieving the terms and conditions appropriate to the parties themselves. It is for this reason that the system has been changed to one where the parties themselves are directly responsible for bargaining. The Government stresses, however, that both collective and individual bargaining are possible under the Act and that collective employees' organizations, including unions which were previously registered under the Labour Relations Act, may be the authorized representatives of employees if those employees so decide.

703. Turning to the allegation that the select committee hearing the submissions on the Bill took no account of the majority of submissions opposing the Bill, the Government replies that the select committee does not view submissions as a referendum. It considers all submissions and makes its recommendations to Parliament on the merits of the arguments and evidence put forward.

704. Regarding the allegation that the Act has greatly reduced the coverage of collective agreements, the Government indicates that in formal terms the coverage of collective outcomes has declined for a number of reasons. The primary immediate cause is the removal of the ability to negotiate a subsequent parties clause which extended the coverage of the award to all workers under the work description contained in the award. Awards registered under the Labour Relations Act were deemed to be collective contracts as the Employment Contracts Act came into effect. The Act provides that when collective contracts expire, employees become covered by an individual contract based on the applicable collective contract until a new collective contract is negotiated. As the awards expired a substantial number of employees moved on to individual employment contracts automatically.

705. At the same time there has been, according to the Government, an underlying movement over some years towards enterprise

bargaining. When the restrictions were removed by the Act, many more employers and workers took advantage of the new freedom to bargain at enterprise level. Some of these choose to bargain collectively, some individually, in line with the choice offered by the Act. Moreover, to some extent the number of individual contracts is a transitional effect where workers are covered by individual employment contracts when awards or agreements or collective contracts expire. This does not mean that some of these employees will not negotiate new collective contracts in due course. As a result of this transitional effect, the data on bargaining structure tend to exaggerate the incidence of individual bargaining.

706. In addition, the figures used by the NZCTU to show the decline in the coverage of collective bargaining span a two-year period which starts well before the introduction of the Act. Raymond Harbridge of the Industrial Relations Centre of Victoria University of Wellington argues that the 1989-90 bargaining round must be taken as the base year because it was the last "normal" round before the introduction of the Act. Choosing a two-year period to document changes in normal patterns of bargaining is misleading in that it suggests that bargaining behaviour changed as a result of the new legislation in a context that was otherwise stable. However, the difficulties encountered in settling some previous awards and the recognition of this fact by the previous Government were indications that coverage of collective bargaining had already begun to fall before the Act was introduced. In the 1990-91 round, coverage of collective bargaining had already dropped from 721,000 to 610,000, a fall of about 15 per cent. A further 30 per cent fall occurred in the following year, according to Harbridge's figures. It is misleading to claim that the 1989-90 round was "normal" and then to suggest that the entire fall spread over two years was the result of the Act only.

707. Finally, the Government rejects the NZCTU's assertion that the Act is hostile to collective bargaining. The Act which provides for both collective and individual bargaining allows employees to choose whether to be represented by unions or by an individual or a group of employee representatives. In order to ensure proper representation, representatives must establish their authority to represent the employees concerned, and employers must recognize authorized representatives for the purpose of negotiations. Employment Court cases such as Alliance Textiles have established that employees have the right to decide on representation for themselves and to change their minds if they decide to do so, whether or not the decision is made on the basis of information provided or persuasion by the employer. Authorized representatives have a right to enter the workplace at reasonable times to discuss matters related to the negotiations. Collective employment contracts may cover one or more employers and any agreed group of employees working for these employers, thus allowing for negotiation at different levels of bargaining. Moreover, these collective contracts are enforceable. Collective bargaining is protected by section 23 of the Act which provides that the parties may agree in writing to vary a collective contract. The Employment Court has confirmed on a number of occasions

that contracts may not be unilaterally changed by one party. The Government believes therefore that the Act provides for voluntary collective bargaining with adequate safeguards to ensure that the parties have the right to choose their representative and negotiate the bargaining structure.

708. With respect to the NZCTU's argument that collective employment contracts under the Act are not collective agreements as contemplated by the ILO because they do not necessarily result from a process of real collective bargaining involving workers' organizations, the Government explains that under earlier legislation, awards were negotiated by a small group of unions and employer organizations and that unions, not workers, were party to these awards. All rights and the ability to enforce the awards were derived from the unions. Now, however, the Act has formalized the contract system and clarified the existence of contracts, whether individual or collective. In doing so it establishes the responsibility of individual employers and workers for bargaining. Hence it is important that workers should be able to make decisions on representation for themselves. Nevertheless, unions continue to play a leading role in collective bargaining for a large number of employees. In the majority of collective contracts, particularly larger contracts, the authorized representative is a union, formerly registered under the Labour Relations Act. The Heylen Teesdale Meuli data show that 57 per cent of employees under collective contracts in the private sector covering four or more employees were represented by a union.

709. At the same time, significant proportions of smaller collective employment contracts are negotiated by individual representatives or groups of employee representatives. These representatives are chosen by workers and authorized to represent them in bargaining. The exercise of the right to choose other representatives is indicative of the degree of responsibility employees now have for their own bargaining. The Act, for the first time in New Zealand, gives workers the opportunity to be actively involved in collective bargaining. Moreover, while the Government agrees with the NZCTU that 129 of 457 collective contracts (28.2 per cent) in the Infometrics database were negotiated without union involvement, it points out that these contracts covered only 13 per cent of all employees covered by the 457 contracts in the database. Again this shows that unions tend to represent employees in larger contracts. It is further evidence that workers in small workplaces have been and are still poorly represented by unions. These workers are now more directly involved in bargaining than they could have been under the award system.

710. Referring to the example given by the NZCTU of the Adams v. Alliance Textiles case where the manager of the Redruth Alliance Textiles Mill asked workers to withdraw their authority to the Dairy Food and Textile Workers' Union, the Government admits that there have been cases where the employer, having recognized the authorized union representative, has then tried to persuade employees to bargain

directly with the employer. In cases that have been taken to the Employment Court, the Court has generally found that the employer must recognize the employees' authorized representative and must negotiate, if at all, with that representative. However, where the employer has recognized the authorized representative and respects the right of employees to continue to rely on that representative, there is no reason why the employer cannot try to persuade employees to change their minds, reverse the authorization and bargain directly with the employer. The Court has stressed that such persuasion must fall short of undue influence. In this particular case, the Court referred to the fact that the employer asked the workers to withdraw their authority to the union before signing the contract as evidence that the employer had recognized the union's authority to represent the workers. The workers were entitled to change their mind as to representation and the employer ensured that they had done so before signing the contract. The Government adds that this case has been appealed to the Court of Appeal but that the decision has not yet been issued.

711. Regarding the allegation that a pattern of interference and discrimination during collective bargaining has emerged under the Act, the Government stresses that the Act provides a framework in which the parties can choose to bargain collectively and that various provisions restrict the ability of employers to interfere with the decisions of employees in relation to association and representation. The case law which has developed around industrial relations legislation also reinforces the protection available under the statues. In particular, it has been developing in the specific area of what constitutes legitimate bargaining tactics under the new legislation. Generally, the Employment Court has established that the Act gives the parties to negotiation the right to endeavour to persuade and influence each other as to their respective point of view. This may include attempts to persuade employees to change their minds and negotiate directly with the employer after they have authorized a representative. These principles do not mean that employers can "interfere" in the relationship between workers and unions, as alleged by the NZCTU. An attempt to influence workers' decisions to authorize a union to represent them in negotiations does not constitute interference. Similarly, if workers have been persuaded to change their minds and bargain directly with the employer, it does not amount to discrimination to provide them with the benefits of the contract which they have signed. At the same time, no one party can go so far in the attempt to influence the other as to use undue influence or harsh and oppressive behaviour to threaten their freedom of association.

712. As regards the allegation that the process of collective bargaining which has emerged under the Act is contrary to the principle that both employers' and workers' organizations should bargain in good faith, the Government states that although the Act does not have an explicit requirement to bargain in good faith, the provisions for collective bargaining and freedom of association give employers and employees an effective role in bargaining. The Employment Court has rejected the claim that a requirement to bargain

in good faith could be read into New Zealand law. In the Alliance Textiles case, the union referred to Canadian legislation which, as part of its requirement to bargain in good faith, requires that there should be no interference from the employers in the employees' process of entering into negotiations, appointing representatives or negotiating or ratifying settlement proposals. The Court, however, dismissed these requirements in the New Zealand context, stating that the Act does not require the employer to remain strictly neutral when its vital interests are affected.

713. The Government then refers to particular cases on the process of collective bargaining mentioned by the NZCTU. In the Ports of Auckland case (see paragraph 14) the Harbour Workers' Union challenged the validity of redundancy notices issued by the company because it believed that they were being used to pressure the employees into signing the employment contract. The Employment Court found, however, that the potential for redundancy was a real one which might have been avoided by achieving the changes sought in the contract. In the Alliance Textiles case, the employer, despite the authorization of the union as representative by the employees, had approached the employees individually and persuaded many of them to sign the collective employment contract. The union alleged a breach of freedom of association. However, the Court rejected the allegation on the ground that there was no obligation on the employer to stop talking to the employees just because they had authorized an agent to bargain for them. It was legitimate for the employer to try to persuade the employees not to choose a particular representative, and to promote an alternative union, provided that the employer's actions did not amount to undue influence. Finally, in the Richmond case related to allegations of unlawful lockouts at three plants of the Richmond Limited company, the three members of the Employment Court disagreed on the question of whether there was a lockout, since the work is seasonal and the workers were prevented from returning to work until they had signed the new plant-specific employment contract as opposed to a company-wide contract. However, the Chief Judge, who took the view that there was a lockout, found that it did not interfere with freedom of association because the company continued to deal with the union. The company could be seen to be exercising its freedom to negotiate plant-specific employment contracts and the purpose of the lockout was to support this intention. According to the Government, this case reinforces other decisions of the Employment Court to the effect that, while employers should not interfere with the relationship between workers and their union, quite robust tactics, including lockouts and direct approaches to workers, are a legitimate part of the bargaining process. The letters from workers provided by the NZCTU show that the company approached the workers directly. They do not, however, suggest that the company deprived the workers of their right to contact the union or each other and to remain members of the union.

714. With respect to the allegation that the Act allows recognition of bargaining representatives appointed by or under the domination of employers, the Government submits that the Act allows

employees to choose any individual, group or organization to represent them in negotiations for an employment contract. According to the Heylen Teesdale Meuli survey, 28 per cent of employees under collective contracts were represented by someone other than a union. This group was made up of individual representatives (13 per cent), nominated groups of workers (10 per cent) and others (5 per cent). A further 8 per cent of employees had no representation. Variation in representational arrangements is consistent with the intent of the Act that bargaining arrangements should meet the needs of the business and its employees. The Government adds that the NZCTU is seeking to maintain the regulated form of representation traditional in New Zealand which is not practicable in an environment of voluntary freedom of association. In referring to the two examples cited by the NZCTU in which it alleges that the bargaining agent was appointed or paid by the employers, the Government indicates that it has no independent information on these cases. Clearly the freedom of choice available to employees to choose their representative allows the possibility that they may accept representatives offered by the employer. If the employees are not happy with the representative, however, they have the opportunity under the authorization and ratificiation procedures to reject the representative and the proposed settlement.

715. As regards the allegation that the provisions of the Act on recognizing workers' representatives are a barrier to the right to organize for the purpose of collective bargaining, and that the need to demonstrate authorization to the standard required in the Act is onerous and obstructs unions in the practice of collective bargaining, the Government contends that the Act provides for freedom of association so that any group can establish an employees' organization as defined in section 2. Section 12 requires any representative organization, group or individual to establish their authority to represent the employee(s) or employer, and requires the other party to recognize the authority of the representative. The Act does not specify how the authority is to be established, but leaves this up to the parties. Section 16 provides that employees or employers and their representative should agree on a procedure for ratifying a settlement within the three months preceding the negotiations. These provisions provide protection for employees to ensure that they are able to maintain control over the negotiation of their contract. They do not set rules for procedures: it is the responsibility of the employers and employees and their representatives to agree on what the procedures will be. They are substantially less onerous than the detailed provisions for registration of unions and bargaining procedures which applied under the Labour Relations Act.

716. The Government then addresses the NZCTU claim that the State Services Commission required unions in the public health service to meet onerous requirements in order to establish their authority to represent employees in contract negotiations. It points out that the Commission was not party to the negotiations in the public health service and was therefore not in a position to require a particular standard from unions. The 14 area health boards were, as individual

employers, directly responsible for conducting their own negotiations under authority delegated from the Commission for the bargaining round. Advice went from the Commission to area health boards in the form of suggestions on what sort of standard would meet the requirement for establishing authority to act. This advice was based on agreements that had been reached with unions in other parts of the state sector. The suggested approach for employers with medium to large numbers of employees was to require a list of names, an authorization form, a statement that those on the list had signed the form, and agreement that the union would supply on request the actual authorization form from any individual on the list. In practice this approach was adopted by the majority of employers and unions in the sector. The Government admits that the Southland Area Health Board example cited by the NZCTU is one case where an employer required a different process to establish authority to act (requiring copies of authorization forms rather than a list of names and example of authority). This approach was the cause of some debate between the parties, but ultimately did not prove to be a barrier to the negotiating process. The Southland Board was the second of the 14 boards to successfully negotiate a collective employment contract in that round of negotiations.

717. The Government believes that certain specific rights which the NZCTU claims have been reduced as a result of collective employment contracts being concluded through non-union agencies (i.e. the right of access to workplaces, the right to have names of members supplied to unions, deduction of union fees and time off for union meetings) are not a necessary part of the activities of workers' organizations as prescribed by Article 3 of Convention No. 87. Authorized representatives have a legal right under the Act to enter the workplace to discuss matters related to negotiations. The Government adds that this right of access has been clarified by the Employment Tribunal in NZ Nurses Union v. Argyle Hospital Ltd. and reinforced recently by the Employment Court in Service Workers' Union of Aotearoa Inc. v. Southern Pacific Hotel Corporation (NZ) Ltd. and others. Otherwise, the rights mentioned by the NZCTU are negotiable by the parties. Although some of these rights were provided for under the Labour Relations Act, statutory provisions such as these are not appropriate in the voluntary environment of the Act where employees may choose their representation and where employment contracts may be individual or collective.

718. Turning to the allegation that the Act interferes in the free choice of the level at which bargaining takes place and has been used illegitimately by the Government to promote enterprise-level bargaining, the Government asserts that the Act provides a free choice for employers and employees to negotiate the type of contract that will cover them. While the number of contracts covering more than one employer has declined, this decline is partly as a result of the principle of the Act that employment contracts cover only those who have agreed to be covered by them. Moreover, despite the restriction on striking for multi-employer contracts in the Act, collective bargaining can and does occur at an industry level. In this

connection, the Government states that the New Zealand Engineers' Union (NZEU) is a significant participant in multi-employer contracts. According to the NZCTU, the NZEU was unable to call for a strike over the issue of multi-employer bargaining in relation to the Metals Industry collective contract. Nevertheless, the NZEU succeeded in negotiating two Metals Industry contracts, in the North and South Islands, and a number of other multi-employer contracts. Multi-employer contracts covered 17 per cent of its members in May 1992, just one year after the Act came into effect.

719. The Government then contends that the allegation that the Act has been used "illegitimately" by the Government to actively interfere in negotiations between state employers and employees and prevent multi-employer industrial settlements, and the example cited by the NZCTU in support of this claim, display a fundamental misunderstanding of the conduct of industrial relations in the public sector. While both public and private sectors share a common legislative basis for bargaining in the form of the Act, a separate statutory framework has been preserved for the public sector in recognition of the Government's collective interest in the state agencies funded by it and therefore accountable to it. This statutory framework is provided by the State Sector Act, 1988, under which the State Services Commission is responsible for negotiating, in consultation with employers, collective employment contracts in the public, health and education services. While the Commission has largely delegated its bargaining authority in the tertiary sector (universities, polytechnics and colleges of education), tertiary chief executives are required to consult with the Commission before entering into any collective employment contract. Within this statutory framework, the primary institutional means by which the Government manages its employer interests in the pay-fixing process is through the Cabinet Subcommittee on State Wages. The subcommittee provides a forum for the discussion and approval of wage round strategies developed by employers. In the specific case cited by the NZCTU - that of the polytechnics - the principle of enterprise-based bargaining was supported by the employers concerned; at issue was the desired rate of change from old bargaining structures to new and the willingness of the Government to bear the costs arising from a delayed reform process. In the event, employers decided to pursue, rather than delay, enterprise-based bargaining. This decision was taken by the employers concerned and not the Government. While the process by which this decision was arrived at involved discussions between employer representatives and ministers, to characterize this as an illegitimate interference by Government is unjustified. Finally, the Government disputes both the accuracy and completeness of the notes taken by one of the employer representatives at the APNZ meeting with the Cabinet subcommittee, and relied upon by the NZCTU in support of its complaint.

720. As regards the question of organizational difficulties of small unions, the Government indicates that the NZCTU is correct in stating that the average size of enterprises in New Zealand is 7.6 employees. However, although the vast majority of enterprises (90.5

per cent) employ fewer than ten people, 51.9 per cent of employees work in the 1.5 per cent of enterprises which employ 50 or more people, and 71.5 per cent work in enterprises of ten or more. Thus current union strategies to focus on larger enterprises, including chains, can be successful in covering a large number of employees even where they are unable to reach small workplaces. Given the freedom to choose representation, workers in many small enterprises have indicated that they prefer to represent themselves.

721. Regarding the allegation that the Act severely restricts the right to strike, the Government responds that the strike provisions provide for lawful strike action in support of negotiations for a collective contract, if there is no current collective contract relating to the employees participating in the strike. Participation in a lawful strike ensures protection from legal action. The continuity of service of striking employees is protected so that service-related benefits are not lost. Strikes are unlawful in relation to personal grievances and disputes because there are adequate procedures for resolving them through the Employment Tribunal to which all employees have access. In essential industries, strikes for a collective contract are lawful provided an adequate period of notice is given.

722. While the Act restricts the right to strike over the issue of whether a collective employment contract will bind more than one employer, this restriction is intended to protect the freedom of choice of employers as well as employees in the negotiation of bargaining structure. It does not restrict strikes in support of negotiations once a multi-employer structure has been agreed to. Moreover, although the NZCTU claims that the restriction on strikes over the coverage of multi-employer contracts is reflected in the fall in the number of collective agreements settled at industry or national level since the Act came into force, the Government does not believe that the decline in multi-employer contracts can be attributed simply to the strike restriction. The fall is immediately attributable to the removal of the ability to negotiate a subsequent parties clause. The underlying cause is the general trend towards enterprise bargaining. As for the example of the Resident Doctors' Association, the Government believes it has been over-simplified by the NZCTU to the extent that it does not accurately identify the key issues in the dispute. The notice of strike action to area health boards did not state that it was in support of a national collective contract as claimed by the NZCTU. In fact the strike notices were withdrawn in some boards at an early stage because of agreements reached at an enterprise level on issues to be addressed in local negotiations. The dispute was characterized by confusion over whether the union was seeking national or regional contracts. The key issue as portrayed by the union at the time of the strike notice was the need to maintain training programmes, and it was agreement on a process related to this issue that led to the withdrawal of strike notices.

723. Finally, the Government states that strikes in pursuit of general or social and economic policy issues and secondary action are

not specifically designated as lawful or unlawful in the Act. However, only lawful strikes are protected against legal proceedings. The Employment Court decides on a case-by-case basis whether the strikers are liable for damages in any particular case. The Government believes that there are other effective means of expressing opinions on social and policy issues. Freedom of expression and of peaceful assembly are specifically protected under the Bill of Rights Act, and demonstrations are normally conducted peacefully and without interference from the authorities. Moreover, consultation through discussion documents and submissions is a normal process in the development of policy at all levels of government, and the select committee process provides for public input into the legislative process on most legislation.

C. The Committee's conclusions

724. The Committee notes that the allegations in this case concern various violations of freedom of association and collective bargaining principles following the implementation of the Employment Contracts Act in May 1991. The Government maintains that the intent and practice of the Act is consistent with freedom of association. Both parties refer to various supporting documents including surveys, statistics, case law, union and company literature and written testimonies to back up their respective arguments.

725. The complainant submits first of all that a select committee heard submissions on the Bill and that 188 submissions opposed the Bill and 71 supported it. However, the select committee took no account of the majority of submissions opposing the Bill. The Government replies that the select committee does not view submissions as a referendum. However, it also states that consultation through submissions is a normal process in the development of policy at all levels of Government, and the select committee process provides for public input into the legislative process on most legislation. The Committee underlines that the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached.

726. The complainant then contends that the Act does not promote collective bargaining since collective employment contracts under the Act do not necessarily result from a process of real collective bargaining involving workers' organizations. The Committee notes that while there are no restrictions on the establishment of an employees' organization which is defined in section 2 as "any group, society, association or other collection of employees, however described and whether incorporated or not, which exists in whole or in part to further the employment interests of the employees belonging to it," the Act contains no express provisions on the recognition of workers' organizations for the purposes of collective bargaining and no

reference to representative workers' organizations. In effect, section 9(a) provides that employees and employers may choose to bargain for themselves or may choose to be represented by any other person, group, or organization, and section 12(1) requires any representative individual, group, or organization to establish their authority to represent the employer(s) or employee(s) concerned in negotiations for an employment contract. The Committee recalls the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not, and reminds the Government that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of the workers employed by them [Digest of decisions and principles of the Freedom of Association Committee, paras. 588 and 617].

727. The complainant further asserts that the fall in the number of workers covered by collective agreements since the 1989-90 bargaining round is further evidence of the preference by the Act for individual over collective bargaining. The Committee notes that the Government does not contest the data provided by the complainant in this respect. However, the Government disputes the fact that the 1989-90 bargaining round must be taken as the base year since, in this event, the 45 per cent decline in the coverage of collective bargaining would span a two-year period which started well before the introduction of the Act. However, even if the 1990-91 bargaining round were to be taken as the base year, the Committee notes that a further 30 per cent fall in the coverage of collective bargaining occurred during this period. The Government attributes this decline to various reasons. First, it states that there has been an underlying movement over some years towards enterprise bargaining, and that when previous restrictions were removed by the Act, many more employers and workers took advantage of the new freedom to bargain at enterprise level. It seems to the Committee that as a result of the new legislation, advantage was taken of the new freedom to bargain at an individual as opposed to collective level, which also resulted in a decline in the coverage of collective bargaining.

728. Another reason for this decline, according to the Government, is that the Act provides that when collective contracts expire, employees become covered by an individual contract until a new collective contract is negotiated. As the awards under previous legislation expired, a substantial number of employees moved on to individual contracts automatically. The Government feels that this is transitional and there is no reason to believe that some of these employees will not negotiate new collective contracts. The Committee, however, notes the Government's assertion that the "Act has formalized the contract system ... and in doing so it establishes the responsibility of individual employers and workers for bargaining", and the Act's emphasis on freedom of choice. The Committee also notes the complainant's argument which is not refuted by the Government that collective employment contracts under the Act can be formed without a process of collective agreement by workers and without a

representative workers' organization even where workers have authorized a union. It notes that in the example of the Adams v. Alliance Textiles Mill case, the manager circulated a "collective employment contract" individually to workers and asked them to withdraw their authority to the union before signing their contracts. The Government admits that in these and other cases where the employer successfully bypassed the authorized union representative, the Employment Court has not found the employer's actions to be at variance with the Act. The Committee requests the Government to provide further information on decisions of the courts and their consequences. The Committee is concerned that the emphasis on individual responsibility for bargaining in the Act and in the ensuing practice can be detrimental to collective bargaining. It draws the Government's attention to the role of workers' organizations in collective bargaining and to the principle that negotiation between employers or their organizations and organizations of workers should be encouraged and promoted.

729. In view of the reasons outlined above, the Committee considers that, taken as a whole, the Act does not encourage and promote collective bargaining. It would therefore request the Government to take the appropriate steps to ensure that legislation encourages and promotes the development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, in conformity with freedom of association and collective bargaining principles. In so doing, the Committee would suggest that the Government have regard to the relevant provisions of the Promotion of Collective Bargaining Recommendation, 1981 (No. 163), which enumerates various means of promoting collective bargaining, including the recognition of representative employers' and workers' organizations for purposes of collective bargaining (Paragraph 3(a)).

730. As regards the allegation that a pattern of interference and discrimination during collective bargaining has emerged under the Act, the Committee notes that in various cases described to it by both parties, workers were asked to sign collective employment contracts individually and, at the same time, asked to withdraw their authorization of the union as their bargaining agent. The Committee further notes that case-law established that such attempts by the employer to "persuade" workers are perfectly valid since the Act does not require the employer to remain strictly neutral when its vital interests are affected and it asks the Government to provide further information on whether this remains the situation. The Committee considers that employers' attempts to negotiate collective contracts by seeking to persuade employees to withdraw authorizations given to a trade union could unduly influence the choice of workers and undermine the position of the trade union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be promoted.

731. The Committee also observes that, while the Act does afford some protection against interference and discrimination on the basis of union membership, it gives clearly insufficient protection against actions intended to interfere with a worker's decision to authorize a union and to discriminate against a worker on the basis that he or she has authorized a union. However, it is clear to the Committee from the evidence provided by the complainant that, in practice, there may be interference by employers in the internal affairs of employees' organizations through attempts to influence workers' decisions to authorize a union, and discrimination against workers who have authorized their union and refuse to rescind their authorization. In the three Richmond company plants, for instance, workers were approached individually and threatened with loss of seniority and/or employment if they did not withdraw their authority to the union.

732. Thus, the Committee is of the view that protection against interference and discrimination on the basis of membership of a union is insufficient in the New Zealand context, if it is not accompanied by protection against interference and discrimination on the basis of authorization of a union. The Committee notes in this context the evidence provided by the complainant from workers at the three Richmond plants who withdrew their authority to the union as bargaining agent and who crossed the picket lines, following "persuasion" by their employer. All of these workers (as well as those who did not withdraw their authorization) felt that they could not continue as union members either because they had breached union rules - which stated that those who breached union resolutions were subject to expulsion from the union - or because they did not see the point in continuing to pay union dues for a union that was no longer going to bargain for them. The Committee considers that interference and discrimination on the basis of authorization of a union could amount to interference and discrimination on the basis of membership of a union. In this respect, the Committee would recall the principles that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [Digest, op. cit., para. 538] and that legislation should lay down explicitly remedies and penalties against acts of interference and of anti-union discrimination by employers in workers' organizations to ensure the effective application of freedom of association principles [Digest, op. cit., paras. 577 and 543]. Noting that the Act does not grant sufficient protection to workers against acts of interference and discrimination in case of authorization of a union, and that the absence of such protection means that protection against interference and discrimination on the basis of trade union membership or activities is ineffective in practice, the Committee would ask the Government to take the necessary steps so that legislation lays down explicitly remedies and penalties against acts of interference and discrimination on the basis of authorization of a union.

733. With respect to the allegation that the Act allows recognition of bargaining representatives appointed by or under the domination of employers, the Committee notes that according to a

survey conducted for the Government in 1992, 28 per cent of employees under collective contracts were represented by someone other than a union, and a further 8 per cent had no representation at all. According to the Government, this variation in representational arrangements is consistent with the intent of the Act that bargaining arrangements should meet the needs of the business and its employees. While noting the Government's argument that the freedom of choice available to employees to choose their representative allows for the possibility that they may accept representatives offered by the employer but that they may reject these representatives if they are not happy with them, the Committee also notes the two examples given by the complainant of bargaining agents appointed or paid for by the employer and who negotiated for the workers at the Ohope Lodge Ltd. company and for the management staff association at the Accident Compensation Corporation. In this respect, the Committee would recall the importance of the independence of the parties in collective bargaining [see Digest, op. cit., para. 581]. The Committee asks the Government to take the necessary steps to ensure that legislation specifically prohibits negotiations being conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations.

734. Turning to the allegation that the need to demonstrate authorization, to the standard required in the Act, is onerous and obstructs unions in the practice of collective bargaining, the Committee notes that section 12(1) requires any representative organization, group, or individual to establish their authority to represent any employee or employer in negotiations for an employment contract. Although the Act does not specify how this authority is to be established and leaves this up to the parties, the Committee cannot help but observe that in practice, employers can require workers to individually authorize their union should they choose to bargain through it. The Government itself states that, in the public health service, the approach adopted by the majority of employers with medium to large numbers of employees, was to require a list of names, an authorization form, a statement that those on the list had signed the form, and agreement that the union would supply on request the actual authorization form for any individual on the list. The Southland Area Health Board went one step further by requiring copies of authorization forms.

735. The Committee has stated in previous cases that recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [Digest, op. cit., para. 618] and that the competent authorities should have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that

union for collective bargaining purposes [Digest, op. cit., para. 620]. The Committee notes in the present case that not only does the Act not establish any procedure for the recognition of a representative workers' organization for purposes of collective bargaining, but that it requires that a union establish its authority for all the workers it claims to represent in negotiations for an employment contract. The Committee is of the view that this requirement is excessive and in contradiction with freedom of association principles since it may be applied so as to constitute an impediment to the right of a workers' organization to represent its members. The Committee requests the Government to take the necessary steps to ensure that this possibility is removed.

736. The Committee further notes the complainant's allegation that the ability of employers to negotiate collective employment contracts under the Act without the involvement of workers' organizations enables them to exclude certain union rights from those contracts, namely, the right of access to workplaces, deduction of union fees, the right to have names of members supplied to unions, and time off for union meetings. As regards the right of access, the Committee would generally recall the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the right of access to workplaces [Digest, op. cit., para. 143]. The Committee observes in the present case that authorized representatives have a right under section 14 of the Act to enter the workplace to discuss matters related to negotiations. Moreover, the Committee notes that this right of access has been clarified by the Employment Tribunal in NZ Nurses Union v. Argyle Hospital Ltd. This right is not strictly limited to occasions where negotiations are proceeding or about to proceed, but is available to discuss possible future negotiations for any employment contract. This right cannot be frustrated by a trespass notice under the Trespass Act 1980. The Committee therefore considers that the right of access to workplaces is sufficiently guaranteed by the Act and reinforced by case law. As regards the deduction of union fees, the Committee would point out that in previous cases, it has considered that problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country [see 284th Report, Case No. 1611 (Venezuela), paras. 338-339 and 290th Report, Case No. 1612 (Venezuela), para. 27]. The Committee would further point out that the right to have names of members supplied to unions and time off for union meetings are matters which are negotiable by the parties.

737. The complainant then alleges that the Act interferes in the free choice of the level at which bargaining takes place through its prohibition on the right to strike for a document covering more than one employer, which constitutes a barrier to the settlement of collective agreements at the industry level. It gives three examples of workers' organizations which it claims were unable to call for industrial action in support of collective contracts at the national or industry level. It further claims that the fact that this

prohibition restricts the freedom of the parties to choose the level at which they bargain is reflected in the 90 per cent fall in the number of collective agreements settled at industry or national level since the Act came into force. The Government, for its part, does not believe that the decline in multi-employer contracts can be attributed simply to the strike restriction. It contends that this decline is immediately attributable to the removal of the ability to negotiate a subsequent parties' clause and that the underlying cause is the general trend towards enterprise bargaining. Moreover, despite the restriction on striking for multi-employer contracts, collective bargaining can and does occur at an industry level. Be that as it may, the Committee considers that section 63(e) which prohibits strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer is contrary to the principles of freedom of association on the right to strike and that workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

738. As regards the allegation that the Government actively interfered in negotiations between state employers and workers to prevent the settlement of agreements at the industry level, the Committee notes that according to the complainant, the State Services Commission told the central body of polytechnic employers, the Association of Polytechnics of New Zealand (APNZ), to delay negotiations on a preliminary agreement for a multi-employer contract with the Tertiary Institutes Allied Staff Association (TIASA), the representative union of workers in polytechnics, until the Cabinet subcommittee on wages approved the agreement. Following the meeting of the Cabinet subcommittee, the then Minister of Labour wrote to the APNZ suggesting that funding to polytechnics would be altered to fit with the Government's enterprise bargaining objectives, as a result of which polytechnic employers issued a notice that they could only negotiate enterprise documents. The Government, however, insists that the decision to pursue enterprise-based bargaining was taken by the employers concerned and not the Government, and disputes the accuracy of the notes taken by one of the employer representatives at the APNZ meeting with the Cabinet subcommittee. The Committee considers that although the Government gave its opinion to employers in the public sector on how to carry out negotiations with their employees, the decision to pursue enterprise-based bargaining was taken by the employers concerned.

739. As regards the allegation that the Act severely restricts the right to strike, the Committee notes that section 63(f) prohibits strikes in an essential industry if prior strike notice is not given. The Committee further notes that the list of essential services given in the Third Schedule goes beyond the Committee's definition of essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [Digest, op. cit., para. 394]. However, since this restriction on the right to strike merely requires notice to be given and does not constitute a complete prohibition on the right to strike, and given that the notice

requirements in section 69 are reasonable, the Committee does not consider the restriction in the Act on the right to strike in an essential industry to be incompatible with freedom of association principles.

740. The Committee observes, however, that while strikes in pursuit of general or social and economic policy issues and secondary action are not specifically designated as lawful or unlawful in the Act, only lawful strikes are protected in case of legal proceedings. It would draw the Government's attention to the principle enunciated in this connection by the Committee of Experts on the Application of Conventions and Recommendations, namely that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies. However, strikes that are purely political in character do not fall within the scope of the principles of freedom of association [General Survey on Freedom of Association and Collective Bargaining, 1983, para. 216]. Accordingly, the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [Digest, op. cit., para. 388].

The Committee's recommendations

741. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee underlines that the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached.

(b) Noting that the Act contains no express provisions on the recognition of representative workers' organizations for purposes of collective bargaining, the Committee recalls the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not, and reminds the Government that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of the workers employed by them.

(c) The Committee notes that in cases where the employer successfully bypassed the authorized union representative, the Employment Court has not found the employer's actions to be at variance with the Act. The Committee requests the Government to provide

further information on decisions of the courts and their consequences.

(d) The Committee draws the Government's attention to the role of workers' organizations in collective bargaining and to the principle that negotiation between employers or their organizations and organizations of workers should be encouraged and promoted.

(e) Considering that, taken as a whole, the Employment Contracts Act does not encourage and promote collective bargaining, the Committee requests the Government to take appropriate steps to ensure that legislation encourages and promotes the development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements.

(f) The Committee notes that case law has established that attempts by the employer to persuade workers to withdraw their authorization to the union as their bargaining agent are perfectly valid since the Act does not require the employer to remain strictly neutral when its vital interests are affected, and it asks the Government to provide further information on whether this remains the situation. The Committee considers that employer attempts to negotiate collective contracts by seeking to persuade employees to withdraw authorizations given to a union could unduly influence the choice of workers and undermine the position of the union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be promoted.

(g) Noting that the Act does not grant sufficient protection to workers against acts of interference and discrimination by employers in case of authorization of a union and that the absence of such protection means that protection against interference and discrimination on the basis of trade union membership or activities is ineffective in practice, the Committee asks the Government to take the necessary steps so that legislation lays down explicitly remedies and penalties against acts of interference and discrimination on the basis of authorization of a union.

(h) Recalling the importance of the independence of the parties in collective bargaining, the Committee asks the Government to take the necessary measures to ensure that legislation specifically prohibits negotiations being conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations.

(i) The Committee is of the view that the requirement established by the Act that a union establish its authority for all the workers it claims to represent in negotiations for a collective

employment contract is excessive and in contradiction with freedom of association principles as it may be applied so as to constitute an impediment to the right of a workers' organization to represent its members. The Committee requests the Government to take the necessary steps to ensure that this possibility is removed.

(j) The Committee believes that the right of access to workplaces is sufficiently guaranteed by the Act and reinforced by case-law. It considers that problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country. It further considers that the right to have names of members supplied to unions and the right to time off for union meetings are matters that are negotiable by the parties.

(k) The Committee considers that the prohibition in the Act on strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer is contrary to the principles of freedom of association on the right to strike and that workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

(l) The Committee does not consider the restriction in the Act on the right to strike in an essential industry to be incompatible with freedom of association.

(m) The Committee draws the Government's attention to the principle that trade union organizations ought to have the possibility of recourse to protest strikes in particular where aimed at criticizing a government's economic and social policy. However, strikes that are purely political in character do not fall within the scope of the principles of freedom of association. Accordingly, the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

(n) The Committee moreover requests the complainant and the Government to provide any other information which they consider to be relevant to the practical implementation of the Act.

(o) Finally, the Committee notes the enormous complexity of the present case and the need to obtain additional detailed information in order to proceed to a definitive examination of the matter in full knowledge of all the facts. Therefore, it considers that it would be very useful for a representative of the Director-General to undertake a direct contacts mission to the country with a view to obtaining this information from the