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New Zealand: Workers Rights in the Fast Food Industry

How UNITE Took on the Fast Food Companies Over Zero Hour Contracts and Won!

Par Socialist Project
Mondialisation.ca, 22 mai 2015
Socialist Project

Région : Oceania

Workers in the fast food industry in New Zealand scored a spectacular victory over what has been dubbed "zero hour contracts" during a collective agreement bargaining round over the course of March and April this year. The campaign played out over the national media as well as on picket lines. The victory was seen by many observers as the product of a determined fight by a valiant group of workers and their union, Unite. It was a morale boost for all working people after what has seemed like a period of retreat for working-class struggle in recent years.

Workers in the fast food industry have long identified "zero hour contracts" as the central problem they face. These are contracts that don't guarantee any hours per week, meanwhile workers are expected to work any shifts rostered within the workers' 'availability'. Managers have power to use and abuse the rostering system to reward and punish, without any real means of holding them to account.

This year, all the collective agreements with the major fast food companies (McDonald's, Burger King, Restaurant Brands) expired on March 31. We were already in dispute with Wendy's, as their agreement remains unresolved from last year. Unite Union was determined to end the system of zero hours and get guaranteed hours included in the new collective agreements. We had no illusions that this was going to be easy. We knew this would be a tough battle and we needed to prepare for that reality if we were to have a chance of success. At organizing meetings I would sometimes use a phrase that appealed: "If you want peace, prepare for war." I was told later it is taken from a Latin adage: "Si vis pacem, para bellum." Whoever coined the phrase, it is a wise strategy.

Not a New Phenomenon

These zero-hour contracts are not a new phenomenon. They became entrenched in the 1990s during the dark days of the Employment Contracts Act. They affect literally hundreds of thousands of workers in fast food, cinemas, hotels, home care, security, cleaning, hospitality, restaurants and retail. The fast food industry in New Zealand includes the foreign owned McDonald's, Burger King and Domino's Pizza chains, the locally-owned businesses that pay for the right to market brand names in New Zealand like Wendy's and Restaurant Brands, and then the home-grown brands like Hell's Pizza and Burger Fuel which

also have international ambitions.

We have been successful in negotiating collective employment agreements with McDonald's, Restaurant Brands, Burger King and Wendy's. None of these companies welcomed Unite Union's presence. However, the competitive nature of the industry and the desire of these companies to protect their "brands" has given the union some leverage at times to amplify the organizing we have been able to do on the ground.

It took a major, national SupersizeMyPay.Com campaign from 2005 to 2006 to get the first collective employment agreements. Our targets in that campaign were threefold: a major boost to the minimum wage; an end to youth rates; and what we called 'Secure Hours'.

Through that campaign and later rounds of bargaining (including major disputes with McDonald's in 2008 and 2013) we have been able to make significant improvements. Whilst it is true that the minimum wage continues to govern the start rates in the industry, it was during the first period of bargaining with these companies when there was a substantial increase in the real value of the minimum wage under the 1999-2008 Labour Party-led government. The previous National Party-led government had let the minimum wage drop in value by increasing it only once in nine years – the year it was in coalition with NZ First. The Labour-led government which followed then presided over a restoration of the real value of the minimum wage from around one-third to one half of the average wage.

Unite kept the pressure on the National government elected in 2008 by launching a petition drive in June 2009 to boost the minimum wage to $15 an hour. That gained over 200,000 signatures. Partly due to that, the new National government has felt obliged to maintain the minimum wage at around 50 per cent of the average wage. There have been increases every year they have been in government.

We also got rid of youth rates, increased the paid break from 10 to 15 minutes, and won new wage rates above the minimum for workers after a certain period of time on the job, or in recognition of training. The frequency of paid and unpaid breaks was improved and enforced more effectively.

We sought to improve the rostering regime and security of hours by introducing clauses into the collective agreements that said the companies should not hire staff before offering hours to existing staff. But these clauses proved ineffective and almost impossible to enforce given the companies complete control over rostering. We came to the conclusion that "secure hours" needed to be replaced by "guaranteed hours" as the only way to incorporate enforceable clauses in the collective agreements.

"End Zero Hour Contracts" Campaign

Deciding to take on the major companies in a campaign to end a practice they have been happily using for several decades was not made lightly. We were convinced that so long as managers had the power to use and abuse a worker through their complete control over rostered hours, we would always have an uphill battle in getting workers to assert their rights and have the confidence to join a union. We get story after story of workers losing shifts for demanding the right to a break, for taking sick leave, for being 'too lippy'. Often the managers in this industry are too young and inexperienced to be able to make judgements devoid of favouritism.

Organizing fast food workers is a very difficult task. Workers are spread across hundreds of relatively small establishments often working 24/7 shifts. Turnover of staff is at least two out of three workers every year. Unite has 7000 members (including 4000 in fast food) and must recruit 5000 members a year just to remain at this size. The fast food sector is also heavily reliant on migrant workers on temporary visas which are often tied to a company. Typically, 30-40 per cent of staff are on these permits. These 'visa workers' are naturally nervous about doing anything that would displease their boss.

McDonald's has 9,500 staff spread over 163 stores, 80 per cent of stores are franchised. Franchise owners treat a worker joining the union as a personal betrayal. Average membership is only about eight per cent as a consequence. At the company-owned stores, we have about 30 per cent of staff as members.

At Burger King, which has 80 stores and 2600 staff, our membership is about 25 per cent. This company is owned by the Blackstone Group – a U.S. vulture fund. We had to withstand a viscous anti-union campaign in 2012 that resulted in half our 600 members being forced to resign over a period of a few months. We are now back to our previous membership position, but the company and management remain actively hostile.

At Restaurant Brands, which runs the KFC, Carl's Jr, Pizza Hut and Starbucks brands, we have over 50 per cent of their 4000 staff as members. Here we have the benefit of the fact that the company is publicly listed and therefore a bit more responsive to public pressure and only a handful of stores are franchised.

Having 4000 dues-paying members in the fast food industry is actually quite an accomplishment by international standards, especially where there is completely voluntary unionism in law as is the case in New Zealand. But further progress requires empowering workers so that the fear of the consequences of joining the union are removed as much as possible. So while our members were clearly telling us that this was a major issue, it was also clear that our long-term future as a union also depended on us cracking this issue.

Unite was fully aware that all the fast food contracts were expiring at the same time. We decided to make a virtue of necessity by turning this year's bargaining into an industry-wide campaign along the lines of the "SupersizeMyPay.Com" campaign of a decade earlier. We suspected it would also require a similar investment of resources and determination to see the campaign through to the end.

At the end of bargaining two years ago, we informed all the companies of our intention to campaign for and win guaranteed hours into the collective agreements the next time we bargained. We wanted no misunderstandings or excuses on their part. We reminded them of this determination each time we met over the last two years.

Preparing a Campaign

We started the final preparations for preparing the campaign in the middle of last year. How we represented the campaign and the slogans were going to be important. We liked the use of "zero hour" terminology that has been used to describe these contracts in the UK. It was accurate and able to shock. But we needed to "brand" these fast food companies as zero hour employers. That was to prove to be quite easy of course because the employment agreements almost boasted of this reality.

Again there was no secret to our views. In August 2014 we did a blog on a number of websites headed "Putting an end to Zero Hour Contracts in 2015." We did a survey of fast food members and 1000 participated in the online survey. This was a fantastic result and reflected their deep concern. The results have been published here and are a fascinating read. What is very clear is that workers want more hours and more secure hours.

We needed hard data for the campaign – average age, how many with kids, average hours worked, changes from week to week. We started identifying "faces" for the campaign. We wanted members who represented the reality of the workforce which included people with dependants, not just school students. We needed to explain that it is impossible to get a mortgage or other loans on these contracts. We wanted to point out the huge difficulties imposed on workers if they had to negotiate the interface with Working For Families, the in-work tax credit used by the government to top up low wages, which assumes regular permanent hours.

In November 2014, we did a final visit to all fast food employers and gave them a heads up on what we want from the negotiations this year. No one could claim to be surprised by the demand.

We began talking to the media about the existence of zero hour contracts in the fast food industry and how bad they were for workers. The business editor for Radio New Zealand featured fast food workers and zero hour contracts in a series of reports over a week long period in November. "Zero Hour Contracts" entered the public discussion like never before.

Fortuitously at that time, the plight of many workers in vulnerable employment positions became 'newsworthy'. Around the same time, a petrol station worker complained about having his pay docked because a customer drove off without paying. The worker was held responsible. His story became a sensation. Why this worker, at this time, suddenly became a 'story' worth telling I am not sure. But there was a broad, instantaneous public condemnation of the employer and his actions and sympathy and support for the worker. The media began looking for other 'stories' and our fast food workers had many stories to tell.

On December 1-2, we held the Unite National Conference which formally launched the campaign. We had reps from other unions endorse and otherwise be part of our campaign. We had three opposition party leaders speak – Andrew Little for the Labour Party, Metiria Turei for the Greens and Winston Peters for NZ First. Again, media featured horror stories about zero hour contracts that were told at the conference, including one where a worker was stopped from leaving work despite coughing up blood and the worker complied because she feared having her hours cut the following week. More in-depth reporting began to appear.

Labour and the Greens announced that they would have MPs sponsor bills for debate in parliament to outlaw zero hour contracts.

We spent a month (mid January to mid February) engaging with members and doing surveys, discussing claims and getting worker volunteers for the campaign. We organized a national speaking tour with two young workers from the U.S. fast food workers campaign. The U.S. workers and Unite officials were able to brief a meeting of opposition MPs at parliament on the campaign as part of their visit.

A national fast food workers conference on February 14 determined to get rid of zero-hour contracts in the industry. The conference signed off on the claims for the companies and nominated delegates for bargaining. We also had workers in Korea, Philippines, Hong Kong and Indonesia do actions in support of our campaign on that day! It was an extraordinary sight to see photos of pickets in several countries where the local workers and unions had made banners using an anti zero hour design from our Facebook page for February 14.

Materials were designed and ordered: T-shirts, badges, stickers, banners, placards.

On February 24, *Campbell Live* – a major news and current affairs show broadcasting at 7pm on TV3 – joined the campaign against zero hour contracts with a story by Anna Burns-Francis called "Zero-hour contracts leave Kiwi families struggling." This programme gave a human face to the issue by interviewing two McDonald's workers, both of whom were part of the union bargaining team. It showed the contract clauses in the fast food company employment agreements offering no guaranteed hours. It also had images of workers fighting to change this state of affairs in previous years through strikes and pickets.

This was followed up with two further reports in the first week of March that continued interviews with fast food workers and others on zero hour contracts, updated viewers with the fact the union was bargaining that week and challenged the National Party Employment Minister Michael Woodhouse on what he planned to do about it.

These reports had a huge impact on the country. Everyone was now talking about zero hour contracts and how bad they were. The government was forced to say they were looking at the issue. Workers were getting sympathy and support from family and friends.

Shortly after the launch of this campaign by *Campbell Live*, the managing director of Media Works which owns TV3, Mark Weldon, announced a "review" of the future of the show. The company had been taken over by the big banks in 2013 in a debt restructure following a failed private equity takeover. Mark Weldon has made it clear he is not interested in news as such – particularly not in the type of investigative, advocacy journalism represented by the campaign against zero hours on *Campbell Live*. The fast food giants are also large advertizers on TV3 and would no doubt have expressed their displeasure.

Bargaining

The same week these major media reports ran, we also began bargaining with McDonald's, Burger King and Restaurant Brands. Morale in the bargaining teams was high. We were going into bargaining with the backing of not just our members but with significant media support and the overwhelming support of people throughout New Zealand. This was demonstrated in a later, very popular *Campbell Live* show which had John Campbell interviewing McDonald's drive through customers. They were unanimous in condemning zero hour contracts including by some of those interviewed who identified as employers.

For a number of reasons, we expected movement from Restaurant Brands first. We were stronger there and the company had begun their own process of centralizing the roster process which had led us to think they may be looking more seriously at meeting our expectations in bargaining. However, the company dragged its feet and made no meaningful offer on guaranteed hours until the contract had expired and we had told them we were going to a strike ballot. Maybe they were just testing our resolve. When they did

come back with an offer early April it was a meaningful one.

They promised to guarantee 80 per cent of hours worked over the previous three months. This would be a rolling average that would allow the guarantee to improve over time – especially for those who volunteer for extra shifts. Moreover, the union and the company have also agreed to trial permanent shift patterns at some stores to see how that may improve things. Most workers want regular shift patterns as well as secure hours and both the company and the union expect that to be the final outcome of a guaranteed hours regime. *Campbell Live* reported the victory, but so did many other media outlets as the issue had become mainstream. TVNZ, the other main television news channel in New Zealand, rarely reports any news about Unite activities but did this time.

However, by early April, neither Burger King nor McDonald's had a meaningful offer on hours on the table. Secret strike ballots as required by law were held at both companies. These are usually held as an online ballot, as it is very difficult to hold meetings at which all members can attend and we have better participation. Members overwhelmingly approved taking action. April 15 was chosen as the first day for industrial action as that day had already been designated as a day of action by the international fast food workers campaign of solidarity.

Our members at Burger King were particularly keen to go on strike. We hadn't felt strong enough to take action at BK stores in previous rounds of bargaining after the first SupersizeMyPay campaign. But with the success of pushing back the company's anti-union drive in 2012 and the confidence workers were getting with the public support over the zero hours issue, our members were telling us they wanted to take action this time.

Maybe that is why the company decided to make a last minute offer to end zero hour contracts on the eve of the April 15 action. BK's offer was even more comprehensive than Restaurant Brands. They proposed to move straight to fixed shifts rostering within six months. Moreover, when a worker left the company, their shifts could be given to existing staff who wanted them and be incorporated in their guaranteed minimum. *Campbell Live* reports "Another win against zero hour contracts."

Wendy's workers took action in February and March while the other companies were bargaining. Strikes occurred in Auckland, Palmerston North,Christchurch and Dunedin. The opening of a Wendy's store in Dunedin helped focus the campaign there for a protest on March 14. Again, the local media approached the issue with care and depth.

Other companies like Burger Fuel and Hell's Pizza were making public announcements that they were no longer using zero hour contracts without us even bargaining with them.

With the offer from BK meeting our demands, that company was removed from the strike action on April 15, much to the disappointment of our members. The advantage for us was that the most stubborn opponent, McDonald's, had successfully put themselves into the frame as a recalcitrant hold-out on the issue.

McDonald's Counter-Attack

Throughout bargaining, McDonald's had been actively taking their own steps to undermine the union. They had told non-union staff earning more than the minimum wage that they would be getting the same 50 cent increase as the minimum wage staff as a flow on effect

of the minimum wage increase on April 1. However, union members earning above the minimum wage were being told that they would not be getting a pay increase until there was an overall settlement of the agreement. The company also threatened not to back pay the settlement if it was concluded after April 1. They obviously hoped that union members would quit the union in order to get the pay rise.

Then McDonald's made sure the non-union staff got their pay rise before union members by delaying bargaining for two weeks with the claim they would be bringing a meaningful offer on guaranteed hours that would be a "game changer" in the industry. When they came back to the table in early April, their offer was a joke, affecting at best ten per cent of their staff. The 'offer' in fact underscored the importance of getting rid of zero hour contracts because they wanted the "right" to take secure hours away again even for this group of workers if they did two 'no-shows', that is the situation when staff don't turn up for a rostered shift and have failed to notify the company beforehand or have given what the company considers an inadequate reason for the absence. By including that escape clause, the company was confirming that they viewed the roster as a tool to discipline and punish workers without a proper lawful process. At this point, we told the company we were "in dispute" and would be taking a ballot for strike action.

However, bargaining continued with McDonald's after the strike ballot was held and before the day of action on the 15th. At one session, McDonald's made a deliberately deceptive offer to the union that claimed to get rid of zero hours and released that offer to the public while we were still in bargaining. They said they would guarantee 80 per cent of 'rostered' hours. That formula is simply nonsense. Any company can guarantee 100 per cent of rostered hours because they control the roster. Rosters go up and down. They are at the discretion of the company. The union can't see them or enforce anything to do with them. On average workers work 20 per cent more than their rostered hours because over employing and under rostering is the essence of the zero hours regime. It keeps workers willing to jump at offers of more hours. That is why we decided to use the formula of 80 per cent of hours worked with Restaurant Brands. We can monitor and enforce that formula.

McDonald's was hoping to appear reasonable and paint the union as acting in bad faith. But their strategy backfired and the media saw their 'offer' for what it was. The company was publicly claiming there was no real difference between rostered hours and hours worked. They asked for a further round of bargaining with a mediator from the Ministry of Business Industry and Enterprise assisting before the April 15 action. This was held on April 14. However, the company representatives refused to budge from their formula of rostered hours and the union bargaining team walked out to prepare for the strike action the next day.

Coincidentally or not, the Unite Union offices were burgled and trashed in the early morning of April 16 and some expensive cameras, projectors and other gear was stolen. However, if someone was trying to hurt us, they failed. Dozens of individuals and unions rallied to contribute to a fund that has more than covered our costs. It was a lovely expression of solidarity and a thank you to Unite for its campaign.

Around this time, editorials began to appear in provincial papers calling for an end to zero hours. The *Timaru Herald* headlined: "Time to kill off zero hour contracts." *The Manawatu Standard* headlined: "Workers need guaranteed hours of work."

May Day Action Called

With McDonald's now a more isolated target, we called another national day of action for May 1st, international workers' day. This time we appealed for unions, community groups, political parties and churches to "Adopt a Maccas" – that is to choose a store they could focus on for leafleting and picketing on that day. We explained that the workers needed the solidarity of the community to win. Many workers would take action, but given the retaliation possible by managers and franchise owners, we accepted that many members would be fearful and not all our members would be able to take action. These workers also needed solidarity outside their stores to encourage and embolden them to take action wherever possible.

Another bargaining date was set for April 28. Media pressure continued to build on the company. Even some right wing media commentators like Paul Henry were sympathetic to the anti-zero hours argument.

This time, the company came to bargaining with a clear proposal to end zero hour contracts and a timetable for implementation. It was based on the formula of guaranteeing 80 per cent of hours worked, and this calculation to be repeated every three months. New staff would be given an initial guarantee which would be reviewed after working through a three month block. But when we asked for clarification of what this meant for secure and regular shifts going forward, and expressed a desire to continue bargaining on some other matters, the company walked out in a huff.

We knew we had achieved a huge victory in forcing the company to move seriously on the issue of zero hours. We knew that, longer term, this victory would give workers more confidence to assert their rights, including their right to join the union. It did appear, though, that the company's bargaining representatives had convinced themselves that the union just wanted to keep pressing on for strikes on May Day regardless. At this stage the former National Secretary of Unite, Matt McCarten, said he was available to open channels between the parties to continue a dialogue if both sides agreed. With his help, we concluded a deal just before midnight on April 29. We called off the May Day actions, having achieved a comprehensive victory over zero hours in the industry.

Government Under Pressure

The government is feeling a bit of pressure on the issue of zero hour contracts and has announced that it is doing a rethink on whether these contracts should be allowed. My fear is that they will only deal with the very worst abuses and leave the big fast food, cleaning and security companies alone. But our campaign has made the issues very clear and it will be hard for the government to wriggle out of taking some action.

The largest daily newspaper in the country, the *NZ Herald*, carried an editorial on April 16, that never mentioned Unite or unions once but did focus on the real issues in dispute.

"Zero-hour contracts are common in the fast-food and service industries. Companies like McDonald's, Burger King and Wendy's still use them. Young and vulnerable workers are particularly affected. Probably among these are the offspring of National Party voters who are working in fast-food outlets while, say, in tertiary study. A message about the implicit unfairness of their lot will have reached the Beehive.

"Mr Woodhouse insisted initially that there should be no rush to reform because zero-hour contracts could be valid in certain circumstances. That may be so with casual agreements

involving university students, where it suits either party to be able to say yes or no to work. In that situation, the balance is equitable. But this can hardly be used as a justification for maintaining the practice in circumstances where the balance is clearly unfair.

“Already, the minister has indicated change will occur in two areas. First, restraint of trade provisions that stop employees working for a competing business if their employer does not provide their desired hours of work will be outlawed. Second, shifts will no longer be able to be cancelled at short notice. The restraint of trade is especially unfair. It prevents workers taking on extra part-time work to provide far greater income certainty.

“Mr Woodhouse must not stop there, however. The Restaurant Brands employees won a guaranteed number of hours of work. That must also be part of the Government’s changes. The law must specify that workers paid at an hourly rate are assured an agreed weekly minimum number of hours. Employees will derive a benefit in terms of certainty and security. Workers, for their part, demonstrate far greater loyalty to employers if they feel they are being treated fairly. As with the best workplace law, advantages will flow to both sides.”

Our media statement was not overstating it when it said: “This is a historic agreement. Now all of the major fast food chains have committed to ending zero hours. This is the culmination of a decade-long campaign for secure hours by Unite Union. It will be welcomed by tens of thousands of workers in the fast food industry and hundreds of thousands more who will ultimately benefit in other industries. It represents a fundamental shift in the employment relationship of the most vulnerable workers in the country.”

Mike Treen is a Unite National Director. This article first appeared on the Unite website.

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