



ANALYSIS

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1978, No. 40

An Act to amend the Industrial Relations Act 1973

[9 October 1978]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Industrial Relations Amendment Act 1978, and shall be read together with and deemed part of the Industrial Relations Act 1973 (hereinafter referred to as the principal Act).

2. Constitution of Arbitration Court—(1) Section 33 of the principal Act (as substituted by section 3 of the Industrial Relations Amendment Act 1977) is hereby amended by repealing subsection (3).

(2) Section 38 of the principal Act (as substituted by section 3 of the Industrial Relations Amendment Act 1977) is hereby consequentially amended by omitting from subsection (1), and also from subsection (2), the words “(not being the Judge to whom section 33 (3) of this Act applies)”.

3. Salaries and allowances of Judges—(1) The principal Act is hereby amended by repealing section 39 (as substituted by section 3 of the Industrial Relations Amendment Act 1977), and substituting the following section:

“39. (1) There shall be paid to each Judge of the Arbitration Court out of the Consolidated Account, without further appropriation than this section,—

“(a) A salary at such rate as the Governor-General by Order in Council, from time to time determines;

and

“(b) Such allowances as are from time to time prescribed by the Governor-General by Order in Council;

and

“(c) Such additional allowances, being travelling allowances or other incidental or minor allowances, as may be fixed from time to time by the Governor-General.

“(2) In the case of the Chief Judge, the rate of salary determined under subsection (1) of this section and the allowances prescribed or fixed under that subsection may be higher than those for the other Judges.

“(3) The salary of a Judge shall not be diminished during the continuance of his appointment.

“(4) Any Order in Council made under paragraph (a) or paragraph (b) of subsection (1) of this section and any determination made under paragraph (c) of that subsection, and any provision of any such order or determination, may be made so as to come into force on a date to be specified in that behalf in the order or determination, being the date of the making of the order or determination or any other date, whether before or after the date of the making of the order or determination or the date of the commencement of this section.

“(5) Every such Order in Council or determination, and every provision of any such order or determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the order or determination.

“(6) Every Order in Council made under subsection (1) of this section shall be deemed to be a regulation for the purposes of the Regulations Act 1936.”

(2) Notwithstanding that the Industrial Court became the Arbitration Court with the coming into force of the Industrial Relations Amendment Act 1977, an Order in Council may be made under section 39 (1) (a) of the principal Act

determining the salary of the Judge of the Industrial Court in respect of the period commencing with the 11th day of October 1977 and ending with the close of the 16th day of April 1978.

4. Penalties and presumptions—(1) Section 81 of the principal Act is hereby amended—

(a) By omitting from paragraph (b) (as amended by section 6 (1) of the Industrial Relations Amendment Act 1977) the words “on summary conviction to a fine”, and substituting the words “to a penalty”:

(b) By omitting from paragraph (c) the words “charged with the”, and substituting the words “alleged to be in”.

(2) Section 125 of the principal Act (as substituted by section 21 of the Industrial Relations Amendment Act (No. 2) 1976 and as amended by section 6 (1) of the Industrial Relations Amendment Act 1977) is hereby amended—

(a) By omitting from subsection (1), and also from subsection (3), the words “commits an offence and shall be liable on summary conviction to a fine”, and substituting in each case the words “shall be liable to a penalty”:

(b) By omitting from subsection (5) the words “any offence against”, and substituting the words “a breach of”:

(c) By omitting from subsection (5) the words “commits an offence and shall be liable on summary conviction”, and substituting the words “shall be liable”:

(d) By omitting from paragraphs (a) to (d) of subsection (5) the word “fine” wherever it appears, and substituting in each case the word “penalty”:

(e) By omitting from subsection (6) the words “an offence against”, and substituting the words “the recovery of a penalty for a breach of”.

(3) Section 125A of the principal Act (as inserted by section 21 of the Industrial Relations Amendment Act (No. 2) 1976 and as amended by section 6 (1) of the Industrial Relations Amendment Act 1977) is hereby amended—

(a) By omitting from subsection (1), and also from subsection (3), the words “commits an offence and shall be liable on summary conviction to a fine”, and substituting in each case the words “shall be liable to a penalty”:

- (b) By omitting from subsection (4) the words “any offence against”, and substituting the words “a breach of”:
 - (c) By omitting from subsection (4) the words “commits an offence and shall be liable on summary conviction”, and substituting the words “shall be liable”:
 - (d) By omitting from paragraphs (a) to (d) of subsection (4) the word “fine” wherever it appears, and substituting in each case the word “penalty”:
 - (e) By omitting from subsection (5) the words “an offence against”, and substituting the words “the recovery of a penalty for a breach of”.
- (4) The said section 125A is hereby further amended—
- (a) By inserting in subsection (1) (a), after the words “his union” in both places where they appear, the words “or his branch of that union”:
 - (b) By inserting in subsection (2), after the words “by a union”, the words “or a branch of a union”:
 - (c) By inserting in subsection (2), after the words “of the union”, the words “or the branch”:
 - (d) By inserting in subsection (4) (d), after the word “union”, the words “, branch of a union”.
- (5) The said section 125A is hereby further amended by inserting, after subsection (4), the following subsections:
- “(4A) Where it is proved that workers employed in an export slaughterhouse within the meaning of the Meat Act 1964 have, without notice of intention to strike having been given in accordance with subsection (1) (a) of this section or before the expiry of any such notice, committed (other than for the purposes of a stopwork meeting authorised by the employer) one or more of the acts described in paragraphs (a) to (e) of section 123 (1) of this Act, the union to which those workers belong and each branch of that union to which those workers belong shall be deemed to have instigated a strike in contravention of subsection (4) of this section unless the union or the branch proves that the act or acts were not due to any combination, agreement, common understanding, or concerted action, whether express or implied, made or entered into by any workers.
- “(4B) Where it is proved that a person who is the holder of an export slaughterhouse licence within the meaning of the Meat Act 1964 has, without notice of intention to lock out having been given in accordance with subsection (3) (a) of this section or before the expiry of any such notice, committed

in relation to any workers who are employed in the slaughterhouse to which the licence relates one or more of the acts described in paragraphs (a) to (d) of section 124 (1) of this Act, that person shall be deemed to have contravened subsection (3) of this section unless he proves that the act or acts were not done with a view to compelling any workers, or to aid another employer in compelling any workers, to accept terms of employment or comply with any demands made by him.

“(4c) No action for the recovery of any penalty for a contravention of subsection (1) or subsection (3) of this section shall be commenced or continued against any worker or employer for doing or being concerned in doing anything in the nature of a strike or lockout if judgment has already been entered under subsection (4) of this section, in respect of the same matter, against—

“(a) Any union or branch of a union of which the worker or employer was a member when the alleged contravention occurred; or

“(b) Any association of which any such union was a member when the alleged contravention occurred.”

(6) The said section 125A is hereby further amended by adding the following subsection:

“(9) For the purposes of this section,—

“(a) ‘Branch’, in relation to any union, means any portion or division of the union’s membership in respect of which provision is made in the rules or by resolution of the union (or branch in the case of a sub-branch) for the local government of that portion or division of the membership by an executive or committee of management; and includes a sub-branch; and

“(b) A branch of a union may, as if it were a body corporate, be sued, and have judgment entered against it, in the name under which it carries on its activities; and

“(c) Sections 155 and 182 (5A) of this Act shall apply, with such modifications as are necessary, as if references to a union included references to a branch of a union.”

(7) Section 155 of the principal Act is hereby amended by omitting the word “offence”, and substituting the word “breach”.

(8) Notwithstanding anything in the principal Act, no information shall be laid in respect of an offence against section 81 or section 125 or section 125A of the principal Act which is alleged to have occurred on or after the 25th day of November 1976 and before the commencement of this Act, and where an information has been laid before the commencement of this Act in respect of any such offence, that information shall be deemed to have been withdrawn on the date of the commencement of this Act.

(9) The Industrial Relations Amendment Act 1977 is hereby consequentially amended—

(a) By repealing subsection (10) of section 8:

(b) By repealing so much of the First Schedule as relates to sections 81 (b), 125, and 125A of the principal Act.

5. Conduct of ballot required by Minister—Section 101b of the principal Act (as inserted by section 16 of the Industrial Relations Amendment Act (No. 2) 1976) is hereby amended by inserting in subsection (3), after the words “at his written request”, the words “and by such date (being not more than 2 months after the date on which the request is given to the union) as is specified by him in that request”.

6. Failure of union to supply list required for purposes of ballot—The principal Act is hereby amended by repealing section 101c (as inserted by section 16 of the Industrial Relations Amendment Act (No. 2) 1976), and substituting the following section:

“101c. (1) Where any union fails to comply with subsection (3) of section 101b of this Act within 2 months after the date on which the written request mentioned in that subsection was given to the union (whether that request was given before or after the commencement of the Industrial Relations Amendment Act 1978), the Registrar or designated person shall give written particulars of that failure to the Minister.

“(2) Where written particulars have been given to the Minister under subsection (1) of this section, the Governor-General may, by Order in Council made on the recommendation of the Minister and published in the *Gazette*, declare—

“(a) That any unqualified preference provision already inserted in the relevant award or collective agreement shall be of no effect; and

“(b) That an unqualified preference provision shall be inserted in the relevant award or collective agreement (or in any award or collective agreement made in substitution for that award or collective agreement) only—

“(i) Pursuant to section 99 (b) of this Act; or

“(ii) If not less than 50 percent of the valid votes recorded in a ballot conducted pursuant to section 101A of this Act, subsequent to the coming into force of the Order in Council, are in favour of the insertion in the award or collective agreement of an unqualified preference provision.

“(3) Every Order in Council made under subsection (2) of this section shall, notwithstanding anything in this Act, have effect according to its tenor.”

7. New sections inserted—The principal Act is hereby amended by inserting, after section 101E (as inserted by section 16 of the Industrial Relations Amendment Act (No. 2) 1976), the following sections:

“101F. **Applications for inquiries**—(1) Where, in the case of a union of workers, not less than 10 percent or 50 of the financial members (whichever is the smaller number) claim—

“(a) That the provision set out in section 175A (1) of this Act has not been complied with by the union; or

“(b) That—

“(i) Notwithstanding compliance with the provision set out in section 175A (1) of this Act, the special meeting or special meetings of the union did not constitute an adequate opportunity for the adult workers, who were members of the union and who, on the making of the award or collective agreement, would be bound by it, to show whether a majority of them were in favour of the insertion in it of an unqualified preference provision; and

“(ii) Such an opportunity has not been afforded to those workers during the preceding 3 years by a ballot held pursuant to section 100 or section 101A of this Act; or

“(c) That there has been an irregularity in or in connection with the conduct of a ballot which has been conducted pursuant to section 100 or section 101A of this Act,—

they may apply to the Court for an inquiry into the matter.

“(2) An application under this section shall—

“(a) Be in writing:

“(b) Be lodged with the Registrar of the Court:

“(c) Specify—

“(i) The ground or grounds relied on under subsection (1) of this section:

“(ii) The non-compliance (if any) in respect of which the application is made or the irregularity (if any) which is claimed to have occurred:

“(d) State the facts relied on in support of the application:

“(e) Be accompanied by a statutory declaration by one of the applicants declaring that the facts stated in the application are, to the best of the applicant’s knowledge and belief, true:

“(f) Where it is made pursuant to subsection (1) (c) of this section, be made during the month beginning with the date on which the Registrar certifies the result of the ballot.

“101G. **Jurisdiction and procedure of Court**—(1) On the receipt by the Registrar of the Court of an application under section 101F of this Act, the inquiry shall be deemed to have been instituted in the Court.

“(2) Notwithstanding anything in section 53 of this Act, the jurisdiction of the Court in and in relation to an inquiry or an application for an inquiry and in matters arising out of an inquiry or any such application shall be exercised by a Judge alone.

“(3) Subject to this section and to sections 101F and 101H of this Act, the provisions of this Act as to the jurisdiction and procedure of the Court shall, so far as they are applicable and with the necessary modifications, apply in relation to an inquiry in like manner as they apply to other proceedings before the Court:

“Provided that every order or decision made under this section or section 101H of this Act by a Magistrate to whom the Court has delegated any of its powers or functions shall take effect as an order of the Court upon being signed by the Magistrate and filed with the Registrar of the Court, and shall not be subject to appeal.

“101H. **Functions and powers of Court**—(1) At an inquiry the Court shall inquire into and determine—

- “(a) The truth of the claim made in the application; and
- “(b) Such questions relevant to the claim as the Court thinks necessary.

“(2) In the course of conducting an inquiry the Court may make such orders (including an order for the recounting of votes) as the Court thinks necessary for the purposes of the inquiry.

“(3) If the Court finds that the claim made in the application is true it may in its discretion, but subject to subsection (4) of this section, make one or more of the following orders:

“(a) An order declaring the truth of the claim:

“(b) An order declaring any ballot, in or in connection with which an irregularity has occurred, to be void:

“(c) An order directing that a ballot or a new ballot be conducted under section 100 of this Act:

“(d) An order directing, notwithstanding anything in the rules of the union, the taking of such safeguards as the Court thinks necessary against irregularities in or in connection with any ballot directed to be conducted:

“(e) An order amending an award or collective agreement by inserting or deleting an unqualified preference provision from it, either forthwith or on a date to be specified in the order, which order shall have effect notwithstanding anything in section 97 of this Act:

“(f) An order incidental or supplementary to any order under this section.

“(4) The Court shall not declare a ballot to be void or delete an unqualified preference provision, unless the Court is of the opinion that,—

“(a) Whether or not the provision set out in section 175A (1) of this Act has been complied with, a substantial number of members of the union have been deprived of an opportunity of considering whether an unqualified preference provision should be included in the award or collective agreement; or

“(b) Having regard to the irregularity found in or in connection with the conduct of the ballot, and any circumstances giving rise to a likelihood that

similar irregularities may have occurred, the result of the ballot may have been affected by irregularities.

“(5) No order under subsection (3) of this section (other than an order under paragraph (e) of that subsection) shall affect the validity of an unqualified preference provision already inserted in an award or collective agreement at the time when the order is made.

“(6) Section 209 of this Act shall apply, with such modifications as are necessary, in relation to every inquiry under section 101G of this Act as if it were an inquiry under Part XIII of this Act.”

8. Jurisdiction concerning penalties—The principal Act is hereby amended by repealing section 147 (as amended by section 6 (1) of the Industrial Relations Amendment Act 1977), and substituting the following section:

“147. (1) Subject to subsection (2) of this section, the Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act, whether for the breach of an award or collective agreement or otherwise.

“(2) Magistrates’ Courts shall have (to the exclusion of the Arbitration Court) jurisdiction to hear and determine any action for the recovery of any penalty provided for in section 81 or section 125 or section 125A of this Act; and sections 151 to 157 of this Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(3) An action for the recovery of a penalty provided for in section 81 or section 125 or section 125A of this Act may be brought—

“(a) In the case of a breach of section 81 of this Act alleged to have been committed by a party to the dispute or by any worker affected by the dispute or by any employer in relation to any worker, only at the suit of—

“(i) Any party to the dispute or any union or association to which that party belongs; or

“(ii) An Inspector of Awards and Agreements:

“(b) In the case of a breach of section 125 or section 125A of this Act (being a breach alleged to have been committed by a worker or, in the case of a breach

of section 125 (5) or section 125A (4) of this Act, in relation to a strike by a worker), only at the suit of—

“(i) An employer of the worker; or

“(ii) A union to which the employer of the worker alleged to have struck belongs or any association of unions of employers to which any such union belongs; or

“(iii) An Inspector of Awards and Agreements:

“(c) In the case of a breach of section 125 or section 125A of this Act (being a breach alleged to have been committed by an employer or, in the case of a breach of section 125 (5) or section 125A (4) of this Act, in relation to an alleged lockout by an employer), only at the suit of—

“(i) The union of workers to which the worker alleged to have been locked out belongs; or

“(ii) The association of unions of workers to which the union mentioned in subparagraph (i) of this paragraph belongs; or

“(iii) An Inspector of Awards and Agreements.”

9. Obligatory rule concerning unqualified preference provisions—(1) The principal Act is hereby amended by inserting, after section 175, the following section:

“175A. (1) The rules of every union of workers shall include, or, in the case of the rules of a union of workers that is registered at the commencement of this section, shall be deemed to include, the following provision (which shall not be amended by the union and which shall prevail over any other provision of the rules):

“(1) The union shall not seek, or agree to, the insertion of an unqualified preference provision in any award or collective agreement—

“(a) Unless, before initiating a dispute of interest relating to the procurement of that award or collective agreement (but not earlier than 3 years before the date on which the proposed award or collective agreement is expected to come into force),—

“(i) Written notice of the intention to seek, or agree to, the insertion of such a

provision in the award or collective agreement is given or posted to each financial member of the union; and

“(ii) The intention is discussed at a special meeting, or at a series of special meetings, of financial members of the union, called for the purpose; and

“(iii) The majority of the valid votes cast in a secret ballot or secret ballots of the financial members of the union present at the special meeting or special meetings is in favour of the insertion of an unqualified preference provision in the award or collective agreement (being a ballot or ballots conducted under the supervision of the Registrar of Industrial Unions or by some person, being an officer of the Department of Labour, designated by the Registrar of Industrial Unions in that behalf); or

“(b) Unless not less than 50 percent of the valid votes recorded in any ballot conducted (within the 3 years preceding the date on which the proposed award or collective agreement is expected to come into force) pursuant to section 100 or section 101A of the Industrial Relations Act 1973 is in favour of the insertion in the award or collective agreement of an unqualified preference provision.

“(2) For the purposes of this rule the term special meeting includes any meeting of the financial members of the union residing or working in any particular locality, being a meeting called expressly for the purpose of considering whether an unqualified preference provision should be included in any award or collective agreement.’

“(2) The provision included, or deemed to be included, by subsection (1) of this section in the rules of any union of workers shall be included in or supplied with every copy of those rules delivered or supplied pursuant to section 180 of this Act.”

(2) Notwithstanding the provisions of subsection (2) of section 175A of the principal Act (as inserted by subsection (1) of this section), where the provision set out in subsection

(1) of section 175A of the principal Act is deemed to be included in any rules in force at the commencement of this section, it shall not be necessary to include that provision in or to supply that provision with any copy of those rules delivered or supplied pursuant to section 180 of the principal Act before the 1st day of January 1979.

(3) At any time before the 1st day of April 1979, a union of workers may, without complying with the provision included or deemed to be included in its rules by section 175A (1) of the principal Act (as inserted by subsection (1) of this section), seek, or agree to, the insertion of an unqualified preference provision in any award or collective agreement.

10. Levies to pay fines and penalties—Section 182 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection:

“(5A) Notwithstanding anything in the foregoing provisions of this section or in the rules of any union of workers or society of workers, where any fine or penalty has been imposed, under this Act, on any union of workers or society of workers, it shall be competent for the union or society to require its members, by means of a resolution passed in accordance with subsection (2) (b) of this section, to pay a levy to be applied—

“(a) In payment of the whole or any part of that fine or penalty; or

“(b) In reimbursing the funds of the union or society for any amount applied in payment of the whole or part of that fine or penalty.”

11. Provisions to facilitate amalgamation of unions—(1) Section 192 of the principal Act is hereby amended by repealing subsection (6) (as amended by section 36 of the Industrial Relations Amendment Act (No. 2) 1976), and substituting the following subsections:

“(6) The Registrar shall not record an amendment to the rules of a union, or register a new union, under this section, unless—

“(a) Not less than one month has elapsed since the date on which the application was made; and

“(b) He is satisfied that the requirements of section 196 of this Act have been complied with; and

“(c) He is satisfied that the unions that are parties to the amalgamation have notified sufficient details of both the proposed amalgamation and the reasons for it to their members; and

“(d) He is satisfied that—

“(i) In the case of an amalgamation under subsection (1) of this section, a majority of the members of the union, or of each of the unions, being included within the membership of another union are in favour of the proposal; or

“(ii) In the case of an amalgamation under subsection (2) of this section, a majority of the members of each union that is a party to the amalgamation are in favour of the proposal.

“(6A) The Registrar may, for the purposes of subparagraph (i) or subparagraph (ii) of subsection (6) (d) of this section, accept that there is sufficient evidence that a majority of the members of a union are in favour of an amalgamation if—

“(a) The number of members of the union who have notified him in writing that they object to the amalgamation does not exceed 50, or 10 percent of the number of members of the union, whichever is the less; or

“(b) The majority of the valid votes cast in a ballot of the members of the union is in favour of the amalgamation.”

(2) Section 36 of the Industrial Relations Amendment Act (No. 2) 1976 is hereby consequentially repealed.