ANALYSIS

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1991, No. 32

An Act to amend the Union Representatives Education Leave Act 1986 [*7 May 1991*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Union Representatives Education Leave Amendment Act 1991, and shall be read together with and deemed part of the Union Representatives Education Leave Act 1986 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 15th day of May 1991.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the terms "service organisation" and "society of workers", and substituting the following definitions:

" 'Service organisation' has, in relation to the Police of New Zealand, the meaning given to it by section 2 of the Police Act 1958:

" 'Society of workers' means a society of employees lawfully associated for the purpose of protecting or furthering the employment interests of employees (whether incorporated or not); and includes an employees organisation within the meaning of the Employment Contracts Act 1991:".

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term "union" (as substituted by section 353 of the Labour Relations Act 1987), and substituting the following definition:

" 'Union' means—

"(a) A society of workers:

"(b) A service organisation:".

3. Disputes—The principal Act is hereby amended by repealing section 28 (as substituted by section 354 of the Labour Relations Act 1987), and substituting the following section:

"28. (1) Where a dispute arises between an employer and an employee in relation to—

"(a) The granting of paid education leave to that employee; or

"(b) The deferral of the granting of paid education leave to that employee; or

"(c) The payment of wages to that employee in respect of any day on which that employee is on paid education leave; or

"(d) The failure of that employee to attend an approved union education course in respect of which that employee has been granted paid education leave,—

the dispute shall be settled in accordance with the disputes provisions applicable in respect of disputes on the interpretation of the relevant contract of service or, if there are no such provisions, the provisions of the Second Schedule to the Employment Contracts Act 1991 (which provisions shall apply with all necessary modifications).

"(2) Where any party to the dispute exercises any right of appeal against a decision of the disputes committee, or any part of that decision, the decision to which the appeal relates shall remain in full force pending the determination of the appeal."

4. Undue influence—Section 29 of the principal Act (as amended by section 355 of the Labour Relations Act 1987) is hereby amended by repealing subsections (3) to (9), and substituting the following subsections:

"(3) Every person who contravenes subsection (1) or subsection (2) of this section shall be liable to a penalty in the Employment Tribunal under the Employment Contracts Act 1991 and the provisions of that Act relating to penalties shall apply accordingly.

"(4) An action for the recovery of a penalty for an alleged contravention of subsection (1) or subsection (2) of this section may be brought only by the person in relation to whom the breach is alleged to have taken place."

5. Dismissal and other prejudicial acts in respect of employees—The principal Act is hereby amended by repealing section 31 (as amended by section 357 of the Labour Relations Act 1987), and substituting the following section:

"31. (1) Where any employer dismisses any employee (not being a State employee) or alters any such employee's position in the employment to the employee's prejudice, and at any time within 12 months before the employee's dismissal or alteration of position the employee—

"(a) Had taken education leave; or

"(b) Had been an employee in respect of which the grant of paid education leave was sought under section 15 (1) of this Act,—

the employer shall be liable to a penalty in the Employment Tribunal under the Employment Contracts Act 1991, which penalty shall be recoverable at the suit of the employee.

"(2) Where any employer alters the rostered day off of any shift worker (not being a shift worker who is a State employee) in respect of whom a notice under section 15 (1) of this Act has been given and the effect of the alteration is such that a day in respect of which paid education leave is sought or has been granted becomes a rostered day off for that shift worker, the employer shall be liable to a penalty in the Employment Tribunal under the Employment Contracts Act 1991, which penalty shall be recoverable at the suit of the shift worker.

"(3) It shall be a defence to an action under subsection (1) of this section if the employer proves that the employee was dismissed or that the employee's position was altered for a reason other than that the employee had taken education leave or had been an employee in respect of which the grant of paid education leave was sought under section 15 (1) of this Act.

"(4) It shall be a defence to an action under subsection (2) of this section if the employer proves that a shift worker's rostered day off was altered for a reason other than that paid education leave had been sought or granted in respect of the day that became by virtue of the alteration a rostered day off.

"(5) If proceedings have been taken under the procedure set out in the First Schedule to the Employment Contracts Act 1991 (or any alternative procedures contained in any

employment contract) in relation to any case to which this section also applies, proceedings may not be taken under this section in respect of that case.

"(6) If a penalty is imposed as a result of proceedings taken under this section in relation to any case to which the procedures set out in the First Schedule to the Employment Contracts Act 1991 (or any alternative procedures contained in any employment contract) also apply, proceedings may not be taken under those procedures in respect of that case.

"(7) If—

"(a) Proceedings have been taken and determined under this section in relation to any case to which the procedures set out in the First Schedule to the Employment Contracts Act 1991 (or any alternative procedures contained in any employment contract) also apply; and

"(b) A penalty has not been imposed in that case as a result of the proceedings taken under this section,—

proceedings may be taken under the procedures in that Schedule (or the procedures alternatively provided) in respect of that case, but the grounds for those additional proceedings shall not relate to the matters arising out of this Act.

"(8) If any action for the recovery of a penalty is taken under subsection (1) of this section, and judgment is given against the employer, the Employment Tribunal, in addition to or instead of imposing a penalty under this section, shall make an order for the reimbursement to the employee of a sum equal to the whole of the wages lost by the employee as a result of the employee's dismissal or of the alteration of the employee's position; and may also in its discretion make an order for—

"(a) The employee's reinstatement in the employee's former position or in a position not less advantageous to the employee; or

"(b) The payment to the employee by the employer of such sum as the Employment Tribunal thinks fit by way of compensation; or

"(c) Both such reinstatement and such payment."

This Act is administered in the Department of Labour.