



ANALYSIS

Title	174D. Provision for unqualified preference in certain existing industrial agreements
1. Short Title and commencement	174E. Requirements as to ballots taken on union membership
2. New sections substituted	174F. Qualified preference to apply unless unqualified preference provision is made
<i>Preference of Employment to Members of Unions</i>	174G. Enforcement of preference provisions
174. Interpretation	174H. Right of workers to become members of unions
174A. Abolition of compulsory unionism	3. Exemption from union membership on conscientious grounds
174B. Provision for unqualified preference in awards	4. Consequential amendments
174C. Provision for unqualified preference in amendments to awards	

1961, No. 125

**An Act to amend the Industrial Conciliation and Arbitration Act 1954** [1 December 1961]

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 and commencement**—(1) This Act may be cited as the Industrial Conciliation and Arbitration Amendment Act 1961, and shall be read together with and deemed part of the Industrial Conciliation and Arbitration Act 1954\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the expiration of three months after its passing.

\*1957 Reprint, Vol. 6, p. 443  
Amendments: 1958, No. 70; 1960, No. 110

**2. New sections substituted**—The principal Act is hereby amended by repealing section 174 and the heading above that section, and substituting the following heading and sections:

*“Preference of Employment to Members of Unions*

“174. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“‘Adult person’ means any person of the age of eighteen years or upwards, and any person who for the time being is in receipt of not less than the minimum rate of wages prescribed for adult workers by any award or industrial agreement; and ‘adult worker’ has a corresponding meaning:

“‘Authorised representative’, in relation to any union, means any person authorised in accordance with the rules of the union, or by its committee of management, to act on its behalf:

“‘Qualified preference provision’ means—

“(a) In the case of a provision deemed by this Part of this Act to be included in any award or industrial agreement, a provision to the effect that if any employer bound by the award or agreement engages or employs, in any position or employment which is subject to the award or agreement, any adult person (other than a person who holds a current certificate of exemption from union membership issued under this Act) who is not a member of a union of workers bound by the award or agreement and who fails to become a member of such a union within fourteen days after his engagement, or, as the case may require, after the provision comes into force, or who fails to remain a member of the union so long as he continues in the position or employment, the employer shall cease to employ that person when requested to do so by any officer or authorised representative of the union, provided that—

“(i) Such person has, at any time since his engagement, been requested to become a member of the union by any officer or authorised representative of the union; and

“(ii) There is a member of the union equally qualified to perform the particular work required to be done and ready and willing to undertake it:

“(b) In the case of a provision inserted by the Court in any award or industrial agreement, a provision to such effect as aforesaid, or such other provision to the like general effect as the Court thinks just, not being a provision amounting to anything in the nature of an unqualified preference provision:

“‘Unqualified preference provision’, in relation to any award or industrial agreement, means a provision to the effect that if any adult person (other than a person who holds a current certificate of exemption from union membership issued under this Act) who is not a member of a union of workers bound by the award or agreement is engaged or employed by any employer bound by the award or agreement, in any position or employment which is subject to the award or agreement, the person shall become a member of such a union within fourteen days (or such shorter period as may be specified in the award or agreement) after his engagement or, as the case may require, after the provision comes into force, and shall remain a member of the union so long as he continues in the position or employment.

“174A. **Abolition of compulsory unionism**—Notwithstanding anything in this Act, every provision in, or deemed by law to be included in, any award or industrial agreement in force at the commencement of this section whereby it is unlawful for any employer bound by the award or agreement to employ or to continue to employ, in any position or employment subject to the award or agreement, any adult person who is not for the time being a member of a union of workers bound by the award or agreement shall continue in force only—

“(a) Until the expiration of a period of fifteen months after the commencement of this section; or

“(b) Until the award or agreement is superseded by another award or agreement, or is cancelled; or

“(c) Until the award or agreement is amended or deemed to be amended, in accordance with this Act, by the insertion or inclusion therein of an unqualified preference provision or a qualified preference provision—

whichever event first occurs.

“174B. **Provision for unqualified preference in awards—** In making any award the Court shall insert therein an unqualified preference provision only if it is satisfied that—

“(a) Such a provision has been agreed to by all the assessors in the course of an inquiry into an industrial dispute by a Council of Conciliation; or

“(b) Not less than fifty per cent of the adult workers who, on the making of the award, will be bound by it desire to become or remain members of a union of workers that is a party to the award.

“174C. **Provision for unqualified preference in amendments to awards—**(1) On any application made in accordance with section 162 of this Act, the Court shall amend an award by inserting therein an unqualified preference provision only if it is satisfied that—

“(a) Such a provision has been agreed to by all the original parties to the award; or

“(b) In any case where the original parties to the award include any association or union of workers on the one hand and any association or union of employers on the other, such a provision has been agreed to by all those associations and unions; or

“(c) Not less than fifty per cent of the adult workers who, on the making of the amendment, will be bound by it desire to become or remain members of a union of workers that is a party to the award.

“(2) Where any application under subsection (1) of this section is supported by documentary evidence, satisfactory to the Court, that—

“(a) All the original parties to the award concur in the terms of the amendment applied for; or

“(b) In any case where the original parties to the award include any association or union of workers on the one hand and any association or union of employers on the other, all those associations and unions concur in the terms of the amendment applied for—

the Court may in its discretion make the amendment without hearing the parties.

**“174D. Provision for unqualified preference in certain existing industrial agreements—**Where the term of any industrial agreement in force at the date of the commencement of this section extends beyond the expiration of a period of fifteen months after that date, any party to the agreement may apply to the Court for an order amending the agreement by inserting therein an unqualified preference provision, and on the making of any such application the provisions of section 174C of this Act shall apply as if the application had been made under that section and as if the agreement were an award.

**“174E. Requirements as to ballots taken on union membership—**(1) Where the evidence tendered by any union of workers for the purpose of satisfying the Court as to the matters specified in paragraph (b) of section 174B or paragraph (c) of subsection (1) of section 174C of this Act includes the result of a ballot, it shall be sufficient if the union proves that as far as was reasonably practicable in the circumstances the roll of persons entitled to vote, as supplied to the Registrar of Industrial Unions in accordance with subsection (2) of this section, contained the correct names and postal addresses of all adult workers who on the making of the award or of the amendment to the award or agreement would be bound by it, and produces to the Court a certificate from the Registrar showing that not less than fifty per cent of the valid votes recorded in the ballot were in favour of the workers becoming or remaining members of the union.

“(2) Every such ballot shall be conducted by the Registrar, or by some person being an officer of the Department of Labour designated by him in that behalf, on application made to him by the union of workers concerned. The union shall at its own expense supply the Registrar with a roll (being a roll which in the opinion of the Registrar, having regard to the circumstances, is reasonably complete) containing the correct names and postal addresses of persons entitled to vote, and as many additional copies of the roll as he may reasonably require for the purposes of the ballot:

“Provided that successive ballots of the adult workers subject to the same award or agreement or any superseding award or agreement affecting such workers shall not, unless the Court otherwise directs, be held more often than after the expiry of two years from the conclusion of the last previous ballot.

“(3) The expenses incurred by the Registrar in connection with the conduct of every such ballot shall be paid out of money to be appropriated by Parliament for the purpose.

“(4) Notwithstanding anything in the rules of the union, the Registrar or any person designated by him to conduct a ballot as aforesaid may take such action and give such directions as he considers necessary to prevent the occurrence of any irregularity in or in connection with the ballot.

“(5) Every person commits an offence against this Part of this Act, and shall be liable on summary conviction to a fine not exceeding fifty pounds, who—

“(a) Refuses or fails to comply with a direction of the Registrar or the designated person under this section:

“(b) Obstructs or hinders the Registrar or the designated person in the taking of any action under this section or any person in the carrying out of a direction given by the Registrar or the designated person under this section.

“174F. **Qualified preference to apply unless unqualified preference provision is made**—(1) If on any proceedings under section 174B or section 174C or section 174D of this Act the Court does not insert an unqualified preference provision in the award or industrial agreement, the Court shall, unless it sees good reason to the contrary, insert therein a qualified preference provision.

“(2) Where any award or industrial agreement in force at the date of the commencement of this section remains in force at the expiration of fifteen months after that date and has not been amended, before the expiration of the said period, by the insertion therein of an unqualified preference provision or a qualified preference provision, a qualified preference provision shall be deemed to be included therein.

“174G. **Enforcement of preference provisions**—(1) Where pursuant to this Act an unqualified preference provision is inserted in any award or industrial agreement, the following provisions shall apply:

“(a) Every worker to whom the unqualified preference provision applies shall be deemed to have committed a breach of the award or agreement if he fails to become a member of a union, in accordance with that provision, after having been requested to do

so by any officer or authorised representative of the union, or if, having become a member of the union, he fails to remain a member in accordance with that provision:

“(b) Every employer who is bound by the award or agreement shall be deemed to have committed a breach of the award or agreement if he continues to employ any worker, being a worker to whom that provision applies, after having been notified by any officer or authorised representative of the union that the worker has been so requested to become a member of the union and has failed to become a member in accordance with that provision, or that the worker, after having become a member of the union, has failed to remain a member in accordance with that provision.

“(2) Notwithstanding anything in this Act or in any other enactment, neither the Department of Labour nor any Inspector of Awards or other officer of the Public Service shall be charged with the duty of seeing that any unqualified preference provision or qualified preference provision in, or deemed to be included in, any award or industrial agreement is duly observed, or of taking any action to recover any penalty in respect of the breach of any such provision.

“174H. **Right of workers to become members of unions—** Every person who, by virtue of his employment or intended employment, is within the class of which an industrial union of workers is constituted, and who is not of general bad character, shall be entitled to be admitted to membership of the union; and so far as the rules of any union are inconsistent with the provisions of this subsection they shall be null and void:

“Provided that nothing in this subsection shall apply so as to oblige any union to admit any person to its membership while its maximum membership is fixed by or in accordance with any Act or award or order of the Court if by the admission of that person the prescribed maximum membership of the union would be exceeded.”

**3. Exemption from union membership on conscientious grounds—**(1) Section 175 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Any person who objects on the grounds of conscientious belief to being a member of an industrial union may apply to the Registrar of Industrial Unions for a certificate of exemption from membership of any union covering the calling in which the applicant is for the time being employed. In this subsection, the expression ‘conscientious belief’ means any conscientious belief, whether or not the grounds of the belief are of a religious character, and whether or not the belief is or is not part of the doctrine of any religion.”

(2) The said section 175 is hereby further amended—

- (a) By inserting in subsection (3), after the words “notice of the time and place”, the words “to the applicant and”:
- (b) By omitting from subsection (4) the word “religious”, and substituting the word “conscientious”:
- (c) By inserting in subsection (4), after the words “the Registrar”, in the second place where those words occur, the words “or any duly authorised officer of the Public Service acting on his behalf”:
- (d) By omitting from subsection (4) the words “issue certificates”, and substituting the words “renew the certificate or issue further certificates”.

(3) Section 175B of the principal Act (as enacted by section 3 of the Industrial Conciliation and Arbitration Amendment Act 1958) is hereby amended by inserting in subsection (2), after the words “as long as the vacancy”, the words “or absence”.

(4) Section 175c of the principal Act (as enacted by section 3 of the Industrial Conciliation and Arbitration Amendment Act 1958) is hereby amended as follows:

- (a) By omitting from subsection (7) the words “to the Secretary of Labour or to such District Officer of the Department of Labour as the Secretary of Labour directs”, and substituting the words “to the Registrar of Industrial Unions”:
- (b) By omitting from subsection (8) the words “the Secretary of Labour”, and substituting the words “the Registrar”.

**4. Consequential amendments**—(1) Section 2 of the principal Act is hereby amended by adding to the definition of the expression “industrial matters”, in subsection (1), the words “or affecting or relating to the preferential employment, or the non-employment, of any person or class of

persons, whether a member or members of a union of workers or not, but not so as to prevent any employer from engaging any person who at the time of engagement is not a member of a union; and also includes all matters which by this or any other Act are declared or deemed to be industrial matters; but does not include any matter relating to the compulsory membership of a union of workers by a person, as a condition of his employment, before such employment commences”.

(2) Section 142 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) The fact that a union of workers intends to have a ballot conducted under section 174E of this Act, or that the result of any such ballot in course of being conducted is not available, shall not of itself be regarded as special circumstances for the purposes of this section.”

(3) Section 162 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(c) Amend the award in accordance with and for the purpose of giving effect to the provisions of Part IX of this Act relating to preference of employment to members of unions.”

(4) The said section 162 is hereby further amended—

(a) By inserting in subsection (2), after the words “paragraph (b)”, the words “or paragraph (c)”:

(b) By omitting from subsection (2) the words “not being an original party thereto”:

(c) By repealing subsection (4).

(5) Section 167 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (d), the following paragraph:

“(dd) Was a member of any union or of any society or other body that had applied to be registered as a union or was in process of formation for that purpose; or”.