ANALYSIS

1970, No. 33

An Act to amend the Industrial Conciliation and Arbitration Act 1954 [*17 October 1970*

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 Conciliation and Arbitration Amendment Act 1970, 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. Restrictions as to levies and subscriptions payable by members of unions—(1) Section 73 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended—

(a) By omitting from subsection (1) the words "fifty cents", and substituting the expression "$1":

(b) By omitting from subsection (3) the words "at a rate exceeding the rate of twenty cents a week", and substituting the words "at a weekly rate exceeding, in the case of any worker, an amount equal to 1 percent of the minimum weekly rate of wages applicable to him under the award or industrial agreement, or under the agreement under the said section 8, governing his conditions of employment,".

(2) Where the rules of any union or society to which subsection (3) of section 73 of the principal Act applies provide for a maximum subscription, the union or society at an annual general meeting may, by resolution of which due notice has been given, amend the rules to provide for a maximum subscription in accordance with that subsection as amended by paragraph (b) of subsection (1) of this section.

3. New sections substituted as to disputes committees—The principal Act is hereby amended by repealing sections 176 to 180 and the heading above those sections, and substituting the following heading and sections:

"Provisions for Disputes

"176. **Interpretation**—In sections 177 to 180 of this Act, unless the context otherwise requires,—

" 'Industrial dispute' means any dispute arising between one or more employers and one or more workers' unions:

" 'Instrument' means any award or industrial agreement, any agreement under section 8 of the Labour Disputes Investigation Act 1913, and any other collective agreement in the nature of an industrial agreement made between a workers' union and an employer or a body of employers:

" 'Workers' union', or 'union', means an industrial association or union of workers under this Act, or a branch of any such union, or a society of workers that is subject to the Labour Disputes Investigation Act 1913.

"177. **Insertion of disputes clause in awards and agreements**—(1) The clause set out in section 178 of this Act—

"(a) May be inserted in any instrument made after the commencement of this section, with or without any further provision not inconsistent with any provision of the clause; and if not so inserted shall be deemed to be inserted:

"(b) Shall be deemed to be inserted in every instrument made before the commencement of this section and for the time being in force, except to the extent that any of its provisions are already included in the instrument:

"(c) Shall prevail over any provision in any instrument that is inconsistent with any provision of the clause.

"(2) Notwithstanding anything in subsection (1) of this section, the Minister in his discretion may approve for the purposes of any instrument (whether made before or after the commencement of this section) any other clause agreed to by the parties and containing a procedure for the settlement of disputes; and any clause so approved, if it is not already in the instrument, shall—

"(a) Be inserted or, as the case may require, be deemed to be inserted in the instrument instead of the clause set out in section 178 of this Act; and

"(b) Have effect according to its tenor.

"178. **Clause to be inserted in instrument**—The following is the clause referred to in subsection (1) of section 177 of this Act:

"(1) The procedure set out in the succeeding provisions of this clause shall apply only to a dispute between the parties bound by this instrument, or any of them, concerning—

"(a) The interpretation of this instrument; or

"(b) Any matter (not being a personal grievance within the meaning of section 179 of this Act) related to matters dealt with in this instrument and not specifically and clearly disposed of by the terms of this instrument.

"(2) Either the workers' union or the employer or employers who are parties to any such dispute may invoke the procedure.

"(3) The union and the employer or employers who are parties to any such dispute shall refer the dispute to a committee consisting of an equal number of representatives appointed respectively by the union and the employer or employers concerned, together with a chairman who shall be—

"(a) Mutually agreed upon by the parties; or

"(b) If there is no such agreement, either a Conciliation Commissioner or a person appointed by him.

"(4) A decision reached by a majority of the committee shall be the decision of the committee; but if the members of the committee (other than the chairman) are equally divided in opinion, the chairman may either—

"(a) Make a decision, which shall then be the decision of the committee; or

"(b) Refer the dispute forthwith to the Court of Arbitration for settlement.

"(5) Subject to the right of appeal conferred by subclause (6) of this clause, the decision of the committee shall be binding on the parties to the dispute.

"(6) Any party may appeal to the Court of Arbitration against a decision of the committee, or any part of that decision. The appellant shall—

"(a) Within 14 days after the date on which the decision of the committee has been made known to him, give to the other party written notice of his intention to appeal; and

"(b) Within 7 days after the date on which that notice has been given, lodge with the appropriate Clerk of Awards a written notice of appeal; and

"(c) Specify in each such notice the decision or the part of the decision to which the appeal relates.

"(7) The essence of this instrument being that, pending the settlement of the dispute, the work of the employer shall not on any account be impeded but shall at all times proceed as if no dispute had arisen, it is hereby provided that—

"(a) No worker employed by any employer who is a party to the dispute shall discontinue work, either totally or partially, because of the dispute:

"(b) While the provisions of this section are being observed, no such employer shall, by reason of the dispute, dismiss any worker directly involved in the dispute."

4. Settlement of personal grievances—The principal Act is hereby amended by inserting, after section 178 (as substituted by section 3 of this Act), the following heading and section:

"Personal Grievances

"179. (1) For the purposes of this section,—

" 'Personal grievance' means any grievance that a worker may have against his employer because of a claim that he has been wrongfully dismissed, or that other action by the employer (not being an action of a kind applicable generally to workers of the same class employed by the employer) affects his employment to his disadvantage:

" 'Standard procedure' means the standard procedure set out in subsection (2) of this section.

"(2) The standard procedure for the settlement of any personal grievance shall include the following:

"(a) Nothing in the standard procedure shall be construed to prevent the worker from first directly approaching his employer or his employer's manager about his personal grievance, the intent being that it is desirable, if the circumstances permit it, for the worker to do so:

"(b) As soon as practicable after the personal grievance arises, the worker shall notify the branch secretary or secretary or a duly authorised representative of his union, who, if he considers that there is some substance in the personal grievance, shall forthwith take the matter up with the employer or his representative:

"(c) If the matter is not settled by those means, it shall be referred—

"(i) To the tribunal or body specified in that behalf in the instrument governing the worker's conditions of employment, if that instrument so provides; or

"(ii) If that instrument does not provide for reference to any such tribunal or body, to an independent arbitrator mutually agreed upon by the parties:

"(d) If the matter is to be so referred to an independent arbitrator, and the parties cannot agree on an arbitrator, the Minister shall appoint one:

"(e) The reference may be made by the employer or his representative, or by the worker's union or its representative, or by both:

"(f) The tribunal or body or arbitrator to whom the matter is referred may, after inquiring fully into the matter and considering all representations made by or on behalf of the parties, make a decision or award by way of a final settlement, which shall be binding on all parties:

"(g) Subject to the provisions of this section and of any provisions in that behalf in the instrument governing the worker's conditions of employment, the tribunal or body or arbitrator may regulate its or his own procedure.

"(3) The standard procedure shall be deemed to be included in the instrument governing the worker's conditions of employment unless the parties to that instrument agree that it shall not.

"(4) Notwithstanding anything in subsection (3) of this section, if the standard procedure is not included in an instrument, and a dispute over a personal grievance has caused a partial or total discontinuance of employment, and normal means of reaching a settlement of the dispute have failed to do so, the Minister may, if he considers it desirable in the public interest, require the resumption of work pending the settlement of the dispute and declare that the standard procedure shall apply to the dispute. Thereupon the standard procedure shall be deemed, for the purposes of resolving that particular personal grievance, to be incorporated in the instrument governing the worker's conditions of employment and shall apply accordingly.

"(5) In the case of an alleged wrongful dismissal, any final settlement, decision, or award made under this section may, if it includes a finding that the worker was wrongfully dismissed, provide for any one or more of the following:

"(a) The reimbursement to him of a sum equal to the whole or any part of the wages lost by him:

"(b) His reinstatement in his former position or in a position not less advantageous to him:

"(c) At the option of the worker, after consultation with the duly authorised representative of his union, the payment to him of compensation by his employer."

5. Industrial Mediation Service—The principal Act is hereby further amended by inserting, after section 179 (as inserted by section 4 of this Act), the following heading and section:

"Industrial Mediation Service

"180. (1) There shall be established a service to be known as the Industrial Mediation Service.

"(2) The service shall consist of mediators, who shall be appointed by the Governor-General on the recommendation of the Minister after consultation with the national organisation of employers, and the national organisation of workers, that are most representative of employers and of workers in New Zealand and are formed for the purposes of protecting or furthering the interests of employers and of workers in connection with conditions of employment.

"(3) The general functions of a mediator shall be to assist employers, unions, and workers to carry out their responsibilities to establish and maintain harmonious industrial relations.

"(4) In the exercise of his office, a mediator shall have the following functions and powers:

"(a) To use his best endeavours to prevent industrial disputes:

"(b) When he or any employer or union considers that an industrial dispute is likely to arise, to offer his services to the parties to assist in preventing the dispute:

"(c) When an industrial dispute arises, to offer his services to the parties to assist them in bringing about a settlement of the dispute:

"(d) In giving such assistance, to inquire fully into the dispute and all matters affecting its merits, and to make such suggestions and recommendations and do all such things as he thinks right and proper for inducing the parties to come to a fair and amicable settlement:

"(e) Where the parties to an industrial dispute agree, to decide such matters as they may refer to him for decision:

"(f) To maintain a close and continuous liaison with the parties in industry, and to carry out such studies and surveys as will enable him to exercise his functions:

"(g) To exercise such other functions as are conferred on him by this or any other Act.

"(5) A mediator shall not have any functions under this section in relation to an industrial dispute during the progress of any conciliation or arbitration proceedings in respect of the dispute. The question whether any such proceedings are in progress shall be determined in accordance with subsections (5) and (6) of section 85 of this Act, and those subsections shall apply accordingly.

"(6) The service shall operate independently of any Government department.

"(7) Every mediator shall be appointed for a term of 3 years, but shall be eligible for reappointment from time to time and may at any time be removed from office by the Governor-General in Council.

"(8) Notwithstanding anything in subsection (2) or subsection (7) of this section, the Minister may, when he considers it desirable, appoint a person to be a mediator to act in a temporary capacity—

"(a) For a specified period not exceeding 12 months; or

"(b) In connection with any dispute that has arisen.

"(9) Any mediator may exercise his functions within any part of New Zealand.

"(10) There shall be paid, out of money appropriated by Parliament for the purpose, to every mediator appointed under this section remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if every such mediator were a member of a statutory Board within the meaning of that Act."

6. Temporary power to alter date of expiration of currency of award—(1) Notwithstanding anything in the principal Act, the Court may at any time during the currency of an award, and in accordance with this section, amend the award by altering the date of the expiration of its currency, so that

it will expire or be deemed to have expired on a date fixed by the Court, being either the date on which the amendment is made or any earlier or later date.

(2) The power conferred on the Court by this section may be exercised on written application made to the Court by the duly authorised agents of the parties to the industrial dispute that was settled by the award.

(3) Every application made under this section shall—

(a) State the date of the expiration of the currency of the award that the applicants wish to have substituted for the existing date of expiration; and

(b) State that substantial agreement has been reached between the representatives of the parties bound by the award concerning the wage rates or other conditions to be incorporated in the new award that is to supersede the existing award.

(4) The Court may exercise the power conferred on it by this section without a hearing.

(5) This section shall continue in force until the close of the 31st day of March 1971, and shall then expire:

Provided that the Governor-General may from time to time, by Order in Council, declare that this section shall continue in force for any period ending not later than the close of the 30th day of June 1971, and every such order shall have effect according to its tenor.

This Act is administered in the Department of Labour.