



## ANALYSIS

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1982, No. 180

**An Act to amend the Industrial Relations Act 1973**

[17 December 1982]

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 1982, and shall be read together with and deemed part of the Industrial Relations Act 1973 (hereinafter referred to as the principal Act).

**2. Remuneration and travelling allowances of assessors**—Section 73 (1) of the principal Act is hereby amended by omitting the words “remuneration by way of fees or allowances and”.

**3. New sections substituted**—The principal Act is hereby amended by repealing section 101D (as inserted by section 16 of the Industrial Relations Amendment Act (No. 2) 1976), and substituting the following sections:

“101CA. **Power of members to apply for ballot**—(1) Not less than the specified number of the financial members of a union of workers who are adult workers and who will, if an unqualified preference provision is inserted or continues to be inserted in any award or collective agreement (including an award or collective agreement to be made in substitution for any existing award or collective agreement) be bound to become or remain members of that union, may apply to the Registrar for a ballot of the adult workers who will, if an unqualified preference provision is inserted or continues to be inserted in the award or collective agreement, be bound to become or remain members of that union.

“(2) Every application under subsection (1) of this section shall be in the prescribed form.

“(3) Every application under subsection (1) of this section shall be accompanied by a statutory declaration by each applicant, which declaration—

“(a) Shall show—

“(i) The full name and full address of the declarant; and

“(ii) The full name and full address of the declarant’s employer; and

“(iii) The work performed by the declarant for the employer; and

“(iv) The activity carried on by the declarant’s employer; and

“(b) Shall show, or be accompanied by evidence, that the declarant is a financial member of the union.

“(4) If it appears to the Registrar—

“(a) That the application is in order; and

“(b) That he is not prevented by subsection (7) of this section from granting the application—

he shall decide to grant the application.

“(5) Where the Registrar makes a decision under subsection (4) of this section, he shall inform the union of workers to which the applicants belong of his decision but he shall not divulge the identity of the applicants.

“(6) An application under subsection (1) of this section may not be withdrawn.

“(7) An application under subsection (1) of this section shall not be granted in respect of any award or collective agreement if, during the 3 years preceding the date on which the application is received by the Registrar,—

“(a) A certificate showing the result of an earlier ballot conducted pursuant to section 100 or section 101A of this Act or to this section in respect of that award or collective agreement or the award or agreement it superseded was issued by the Registrar; or

“(b) A special meeting or the last of a series of special meetings of members of that union of workers was conducted (under the rule included or deemed to be included in the rules of that union of workers by section 175A (1) of this Act (as enacted by section 9 (1) of the Industrial Relations Amendment Act 1978 or by section 6 (1) of the Industrial Relations Amendment Act 1982)).

“(8) For the purposes of subsection (1) of this section, the term ‘specified number’ means—

“(a) Fifty; or

“(b) A number equal to 10 percent of the number of adult workers who will, if an unqualified preference provision is inserted in the award or collective agreement, be bound to become or remain members of the union,—

whichever is the less.

“(9) Section 101B of this Act shall apply for the purposes of this section as if for the words ‘section 101A’ wherever they appear in subsections (1), (8), (9), and (13), there were substituted, in each case, the words ‘section 101CA’.

“101CB. **Power of members to apply for special meetings**—(1) Not less than the specified number of the financial members of a union of workers may apply to the Registrar for a direction that, in relation to the insertion of an unqualified preference provision in each of the awards or collective agreements by which members of that union are bound from time to time, the procedure prescribed by the provision included or deemed to be included by section 175A (1) of this Act in the rules of the union be applied.

“(2) Every application under subsection (1) of this section shall be in the prescribed form.

“(3) Every application under subsection (1) of this section shall be accompanied by a statutory declaration by each applicant, which declaration—

“(a) Shall show the full name and full address of the declarant; and

“(b) Shall show, or be accompanied by evidence, that the declarant is a financial member of the union.

“(4) If it appears to the Registrar—

“(a) That the application is in order; and

“(b) That he is not prevented by subsection (7) of this section from granting the application—

he shall decide to grant the application.

“(5) Where the Registrar makes a decision under subsection (4) of this section, he shall inform the union of workers to which the applicants belong of his decision but he shall not divulge the identity of the applicants.

“(6) An application under subsection (1) of this section may not be withdrawn.

“(7) An application under subsection (1) of this section shall not be granted if, during the 3 years preceding the date on which the application is received by the Registrar, a special meeting or the last of a series of special meetings of members of that union of workers was conducted (under the rule included or deemed to be included in the rules of that union of workers by section 175A (1) of this Act (as enacted by section 9 (1) of the Industrial Relations Amendment Act 1978 or by section 6 (1) of the Industrial Relations Amendment Act 1982)).

“(8) For the purposes of subsection (1) of this section, the term ‘specified number’ means—

“(a) Two hundred; or

“(b) A number equal to 10 percent of the number of financial members of the union,—

whichever is the less.

“101CC. **Statement of number of financial members may be required**—(1) The Registrar may at any time require any union of workers to furnish to him within 14 days—

“(a) In relation to any application under section 101CA (1) of this Act, a statement of the number of adult workers who, as at the date of the making to him of the application, will, if an unqualified preference provision is inserted in the award or collective agreement, be bound to become or remain members of the union; or

“(b) In relation to any application under section 101CB (1) of this Act, a statement of the number of financial members of the union as at the date of the making to him of the application.

“(2) If default is made in complying with any requirement under this section in relation to an application under section 101CA (1) or section 101CB (1) of this Act, the Registrar may

treat the number of members who made the application under that section as if it were the 'specified number' for the purposes of that section.

“(3) Every person who knowingly and wilfully makes or orders to be made any false entry in or any omission from any statement prepared pursuant to this section commits an offence and shall be liable on summary conviction to a fine not exceeding \$100 for each such offence.

“101CD. **Failure by union to supply list required for purposes of ballot under section 101CA**—(1) Where any union fails to comply with subsection (3) of section 101B of this Act (as applied by section 101CA (9) of this Act), the Registrar or designated person shall give written particulars of that failure to the Court which shall, if it is satisfied, after giving the union an opportunity to be heard, that there has been a wilful and substantial failure on the part of the union to comply with that subsection, and notwithstanding anything in sections 99 to 101 of this Act,—

“(a) Refuse to insert an unqualified preference provision in the relevant award or collective agreement (or in any award or collective agreement made in substitution for the relevant award or collective agreement) until that failure is remedied; and

“(b) If an unqualified preference provision is already inserted in the relevant award or collective agreement, amend that award or collective agreement by deleting that provision from it.

“(2) Paragraph (b) of subsection (1) of this section shall apply notwithstanding the provisions of section 97 of this Act.

“101D. **Implementation of ballot**—(1) Notwithstanding anything in sections 99 to 101 of this Act, but subject to subsection (3) of this section, where not less than 50 percent of the valid votes recorded in any ballot conducted pursuant to section 101A or section 101CA or section 101CB of this Act are in favour of the insertion in any award or collective agreement of an unqualified preference provision, the Court shall insert or shall continue to insert such a provision in that award or collective agreement (and in any award or collective agreement made in substitution for that award or collective agreement), at the time of its making or registration or by way of amendment, as the case may require, without requiring further evidence as to the matters specified in paragraph (b) of section 99 of this Act, unless that percentage of valid votes

in favour of the insertion of an unqualified preference provision is not attained in any subsequent ballot conducted pursuant to section 101A or section 101CA of this Act.

“(2) Notwithstanding anything in sections 99 and 100 of this Act, but subject to subsection (3) of this section, where less than 50 percent of the valid votes recorded in any ballot conducted pursuant to section 101A or section 101CA or section 101CB of this Act are in favour of the insertion in any award or collective agreement of an unqualified preference provision,—

“(a) The Court shall not insert such a provision in that award or collective agreement (or in any award or collective agreement made in substitution for that award or collective agreement) unless that percentage of valid votes in favour of the insertion of an unqualified preference provision is attained or exceeded in any subsequent ballot conducted pursuant to section 101A or section 101CA or section 101CB of this Act; and

“(b) Where such a provision is already inserted in that award or collective agreement at the time of the delivery to the Court of the copy of the certificate required to be delivered to the Court pursuant to section 101B (10) of this Act, that provision shall cease to have effect on the day following the delivery of that certificate and the Court shall amend the provision or collective agreement by deleting that provision from it.

“(3) The result of a ballot conducted under section 101CA of this Act shall not be overridden, during the 3 years following the date of the certificate showing the result of that ballot, by the result of a ballot conducted under section 101CB of this Act.

“(4) This section shall apply notwithstanding the provisions of section 97 of this Act.”

**4. Offences in relation to ballots**—Section 101E of the principal Act (as inserted by section 16 of the Industrial Relations Amendment Act (No. 2) 1976) is hereby amended by inserting, after the expression “section 101A” wherever it appears, the expression “or section 101CA”.

**5. Applications for inquiries**—The principal Act is hereby amended by repealing section 101F (as inserted by section 7 of the Industrial Relations Amendment Act 1978), and substituting the following section:

“101F. (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, 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 members of the union to show whether a majority of them were in favour of the insertion of an unqualified preference provision in each of the awards or collective agreements by which members of the union are bound from time to time; 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 101 or section 101A or section 101CA or section 101CB 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.”

**6. Obligatory rule concerning unqualified preference provisions—**(1) The principal Act is hereby amended by repealing section 175A (as inserted by section 9 (1) of the Industrial Relations Amendment Act 1978), and substituting 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) Where the union is directed by the Registrar of Industrial Unions to apply, in relation to the insertion of an unqualified preference provision in each of the awards or collective agreements by which members of that union are bound from time to time, the procedure prescribed by this rule, the committee of management of the union shall ensure—

“(a) That written notice of the intention to seek, or agree to, the insertion of such a provision in each of the awards or collective agreements by which members of the union are bound from time to time is given or posted to each financial member of the union; and

“(b) 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

“(c) A secret ballot or secret ballots of the financial members of the union present at the special meeting or special meetings (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) are held for the purpose of determining whether a majority 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 each of the awards or collective agreements by which members of the union are bound from time to time.

“(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 each of the awards or collective agreements by which members of the union are bound from time to time.

“(3) For the purposes of subclause (1) (c) of this rule, the view of the majority of members of the union present at the special meeting or special meetings of the union shall be



represented by the majority of the valid votes cast in the secret ballot or secret ballots held at that meeting or those meetings.’

“(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 March 1983.

**7. Revocation of existing obligatory rule concerning unqualified preference**—The provision included, or deemed to be included, by subsection (1) of section 175A of the principal Act (as enacted by section 9 (1) of the Industrial Relations Amendment Act 1978) in the rules of every union of workers is hereby consequentially revoked.

**8. Repeal**—Section 9 of the Industrial Relations Amendment Act 1978 is hereby consequentially repealed.