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1985, No. 102

**An Act to amend the State Services Conditions of Employment Act 1977** *[18 June 1985]*

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 State Services Conditions of Employment Amendment Act 1985, and shall be read together with and deemed part of the State Services Conditions of Employment Act 1977 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1985.

**2. New sections substituted**—The principal Act is hereby amended by repealing sections 76 to 76M (as substituted by section 2 of the State Services Conditions of Employment Amendment Act (No. 2) 1983), and substituting the following heading and sections:

*“Union Membership Provisions*

“76. **Interpretation**—In this section and in sections 76A to 76F of this Act, unless the context otherwise requires,—

“ ‘Adult person’ means—

“(a) Any person of the age of 18 years or upwards:

“(b) Any person of any age who for the time being is in receipt of not less than the minimum rate of wages or salary payable to a person of the age of 18 years or upwards:

“ ‘Union membership clause’, in relation to any determination, means a clause which is included or is deemed to be included in the determination and which provides as follows:

“ ‘If any adult person (other than an apprentice or a person who holds a certificate of exemption from union membership issued under section 112O of the Industrial Relations Act 1973) who is not a member of an industrial union of workers which is registered under the Industrial Relations Act 1973 and which is bound by this determination is engaged or employed by any employer bound by this determination in any position or employment that is subject to the determination, the person shall become a member of the union within 14 days after that person’s engagement or, as the case may require, after this clause comes into force, and shall remain a member of the union so long as that person continues in the position or employment.’:

“ ‘Union Membership Exemption Tribunal’ means the Union Membership Exemption Tribunal established by section 105 of the Industrial Relations Act 1973.

“76A. **Preference to be obtained only by virtue of union membership clause**—(1) A union membership clause may be inserted in a determination only in accordance with the provisions of this Act.

“(2) Where a union membership clause is inserted in a determination in accordance with the provisions of this Act, that clause shall have effect according to its tenor.

“(3) Except for the preference conferred by a union membership clause that is inserted in a determination in accordance with the provisions of this Act, no person who is a member of any service organisation or any union, society, association, or other organisation of workers shall be entitled

to preference in obtaining employment by virtue of that person's membership of that service organisation or of that union, society, association, or other organisation of workers.

“(4) No determination shall contain a provision (other than a union membership clause inserted in accordance with the provisions of this Act) requiring any employee engaged or employed by an employer bound by the determination to join any service organisation.

**“76B. Insertion of union membership clause—**

(1) Where—

“(a) Any determination prescribes the salary or wages in respect of any position or employment; and

“(b) Any service organisation that negotiated the determination, either alone or in conjunction with other service organisations, was at the commencement of the State Services Conditions of Employment Amendment Act 1985 both a service organisation and a union of workers registered under the Industrial Relations Act 1973,—

a union membership clause shall be inserted or be deemed to be inserted in the determination and shall apply in respect of any employee who holds any such position or undertakes any such employment; but that clause shall not apply in respect of any employee, where 2 or more service organisations take part in the negotiations, if the salary or wages payable in respect of the position held or employment undertaken by that employee were negotiated by a service organisation that is not a union of workers registered under the Industrial Relations Act 1973.

“(2) Where a union membership clause is inserted or deemed to be inserted in a determination by subsection (1) of this section, that union membership clause shall have effect only so long as a union membership clause (as defined in section 98 of the Industrial Relations Act 1973) is inserted or deemed to be inserted in the awards and collective agreements (as defined in the Industrial Relations Act 1973) by which members of the union are bound.

**“76C. Explanatory note in relation to expiry of union membership clause—**Where a union membership clause is inserted, or deemed to be inserted, in a determination, the employing authority shall attach to the determination an explanatory note stating the date on which the clause will expire unless in a ballot, which is conducted after the insertion or deemed insertion of that clause and which is so conducted

pursuant to the rules included, or deemed to be included, by section 99 of the Industrial Relations Act 1973 in the rules of the union of workers, not less than 50 percent of the valid votes recorded are in favour of the union membership clause.

**“76D. Insertion of union membership clause in determination negotiated by 2 or more service organisations—Where—**

- “(a) Two or more service organisations negotiate a determination; and
  - “(b) Under section 76B of this Act, a union membership clause is inserted, or deemed to be inserted, in that determination; but
  - “(c) Not all of the service organisations that negotiate the determination are entitled to have a union membership clause inserted in the determination,—
- the explanatory note required by section 76C of this Act shall state, in addition to the matters required by that section, the positions or employment in respect of which the union membership clause does not apply.

**“76E. Enforcement of union membership clauses—**

(1) Where pursuant to this Act a union membership clause is inserted in a determination, the following provisions shall apply:

- “(a) Every employee to whom the union membership clause applies shall be liable to a penalty not exceeding \$50 if that person fails to become a member of the union in accordance with that clause, 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, that person fails to remain a member in accordance with that clause:
- “(b) The employer or employing authority shall be liable to a penalty not exceeding \$500 if the employer or employing authority continues to employ any person, being a person to whom that clause applies, after having been notified by any officer or authorised representative of the union that the person has been so requested to become a member of the union and has failed to become a member in accordance with that clause, or that the person, after having become a member of the union, has failed to remain a member in accordance with that clause.

“(2) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(5) An action for the recovery of a penalty under this section may be brought only by the union.

“(6) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“76F. **Application for exemption**—(1) Any person who is required by a union membership clause to become or to remain a member of a service organisation that is an industrial union may apply to the Secretary of the Union Membership Exemption Tribunal for a certificate of exemption from union membership.

“(2) The Union Membership Exemption Tribunal shall have, in addition to its other functions, the function of considering and determining every application made under subsection (1) of this section and the provisions of sections 111, 112c to 112i, and 112k to 112q of the Industrial Relations Act 1973 shall apply accordingly with such modifications as are necessary.

“76G. **Intervention by other service organisations or unions or central organisation of workers**—(1) Where any other service organisation or union or the central organisation of workers considers that it has an interest in the hearing of an application under section 76F (1) of this Act, it may apply to the Secretary of the Union Membership Exemption Tribunal for the service organisation’s or union’s or central organisation’s secretary or any other person appointed in that behalf to also be present and be heard at the hearing.

“(2) The Secretary of the Union Membership Exemption Tribunal shall refer every application under this section to the Union Membership Exemption Tribunal, which shall determine, before the hearing, whether or not the service

organisation or union or the central organisation of workers has such an interest in the hearing as would justify the service organisation's or union's or central organisation's secretary or any other person so appointed being entitled to be present and to be heard.

**“76H. Discrimination—**(1) It shall be unlawful for any employer or employing authority—

“(a) Other than by the lawful insertion in any determination of a union membership clause within the meaning of section 76 of this Act, to make membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

“(b) To make non-membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

“(c) To exert undue influence on any employee with intent to induce that employee—

“(i) To become or remain a member of a service organisation; or

“(ii) To cease to be a member of a service organisation; or

“(iii) Not to become a member of a service organisation; or

“(iv) On account of the fact that that employee is, or, as the case may be, is not, a member of a service organisation, to resign from any position or to leave any employment.

“(2) No service organisation and no officer or other person acting on behalf of any service organisation (whether lawfully authorised to do so or not) shall exert undue influence on any person with intent to induce that person—

“(a) To join a service organisation; or

“(b) On account of the fact that that person is not a member of a service organisation, to resign any position or to leave any employment.

“(3) Every person who contravenes subsection (1) or subsection (2) of this section shall be liable,—

“(a) If an officer of a service organisation or person acting on behalf of a service organisation (whether lawfully authorised to do so or not), to a penalty not exceeding \$500;

“(b) If a service organisation, to a fine not exceeding \$1,500;

“(c) If an employer or employing authority, to a penalty not exceeding \$1,500.

“(4) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(5) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(6) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 and 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

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

“(8) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(9) Nothing in this section renders unlawful the enforcement of a union membership clause that is included, or deemed to be included, in any determination.”

**3. Repeal**—The State Services Conditions of Employment Amendment Act (No. 2) 1983 is hereby consequentially repealed.