ANALYSIS

1962, No. 52

An Act to amend the Industrial Conciliation and Arbitration Act 1954 [*5 December 1962*

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 1962, 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. Amendments of rules to be recorded by Registrar—Section 69 of the principal Act is hereby amended by inserting, before the word "Copies", at the beginning of the section, the word "Three".

3. Unions not to be registered under similar names—Section 75 of the principal Act is hereby amended by omitting the words "has been registered", and substituting the words "is for the time being registered".

4. Accounts to be kept by unions and other organisations—Section 78 of the principal Act (as substituted by section 7 of the Industrial and Conciliation and Arbitration Amendment Act 1960) is hereby amended by inserting in subsection (17), after paragraph (b), the following paragraph:

"(bb) Fails to keep books of account in accordance with subsection (1) of this section; or".

5. Annual return of officers, etc., of union—(1) Section 79 of the principal Act is hereby amended by inserting in subsection (1), after the words "auditors of the union", the words "the situation of the registered office of the union".

(2) The said section 79 is hereby further amended by repealing subsection (2), and substituting the following subsections:

"(2) Every return under this section shall be certified by the president or secretary of the union to be a full and correct return.

"(2A) Every person who certifies any such return to be a full and correct return, knowing it to be incomplete or incorrect in any material particular, commits an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds."

6. Amalgamation of unions—The principal Act is hereby amended by repealing section 84, and substituting the following section:

"84. (1) Any two or more unions connected with the same industry or related industries may amalgamate so as to form one union, and for that purpose may apply to the Registrar for the registration of the new union.

"(2) No such application shall be made during the progress of any conciliation or arbitration proceedings affecting any of the unions that are being amalgamated. 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.

"(3) The registration of the new union under this section shall not be prevented by the pendency of any conciliation or arbitration proceedings if the application for registration has

been made to the Registrar before the commencement of the proceedings.

"(4) The application for the registration of the proposed new union shall be made in writing, stating the name of the new union, and shall be executed, by each union that is a party to the amalgamation, in the manner prescribed by section 83 of this Act for the execution of instruments by a union.

"(5) The application shall be accompanied by—

"(a) A list of the officers of the proposed new union, with the locality in which they reside or exercise their calling:

"(b) Three copies of the rules of the proposed new union, providing for the matters specified in section 66 of this Act:

"(c) In respect of each union that is a party to the amalgamation, a copy of a resolution approving the amalgamation, passed by a majority of the total valid votes recorded at a ballot of the members of that union taken in accordance with its rules and with subsection (6) of this section.

"(6) The ballot referred to in paragraph (c) of subsection (5) of this section may be taken at a meeting or meetings specially called for the sole purpose of considering the question of the proposed amalgamation; or it may be a postal ballot, in which case the proposed amalgamation shall be the sole question on which the members are to vote.

"(7) Before registering the new union, the Registrar shall give not less than six weeks' notice in the *Gazette* of his intention to do so.

"(8) Subject to the provisions of this section, the provisions of this Act relating to the registration of any society as an industrial union shall apply, so far as they are applicable, to the registration of a new union under this section.

"(9) On the registration of the new union—

"(a) The registration of every union that is so amalgamated shall be deemed to be cancelled, and, subject to the provisions of subsections (10) and (11) of this section, the provisions of subsection (3) of section 85 of this Act shall apply:

"(b) Subject to the provisions of this Act, all property, rights, duties, and obligations whatsoever vested in or imposed on the unions that are amalgamated shall become vested in or imposed on the new union.

"(10) Where there is more than one award or industrial agreement in force relating to the industry or related industries with which the amalgamated unions were connected the Court, on the application of any party to any such award or agreement, may by order adjust the terms of the awards and industrial agreements. Every such order shall have effect as if it were a new award or industrial agreement.

"(11) Until an order is made under subsection (10) of this section, the amalgamation, and the consequent cancellation of the registration of the unions so amalgamated, shall not have any effect on any existing award or industrial agreement.

"(12) Where, instead of amalgamating in accordance with the foregoing provisions of this section, any two or more unions make an arrangement whereby one union amends its rules so as to include in its membership the members of the other union or unions, and the registration of the other union or unions is cancelled in accordance with section 85 of this Act, subsections (10) and (11) of this section shall apply, with all necessary modifications, as if the arrangement were an amalgamation of the unions that are parties to the arrangement."

7. Award applying to approved undertaking—The principal Act is hereby further amended by inserting, after section 110, the following section:

"110A. (1) The Minister may at any time, by notice in the *Gazette*, declare any undertaking or group of undertakings, whether then established or proposed to be established (in this section referred to as the undertaking), to be an approved undertaking for the purposes of this section.

"(2) Before giving any approval under subsection (1) of this section, the Minister shall consult, on the proposal to approve the undertaking, with every union and association which, at the time of consultation, is an original party to any award, or a party to any industrial agreement, applying to the undertaking.

"(3) Where the Minister has under consideration a proposal to approve under this section any undertaking that is not then established, the consultation under subsection (2) of this section shall be with—

"(a) Every union and association which, if the undertaking were established at the time of consultation, would probably be an original party to any award, or a

party to any industrial agreement, applying to the undertaking; and

"(b) The national organisation of employers which is most representative of employers in New Zealand and is formed for the purpose of protecting or furthering the interests of employers in connection with conditions of employment; and

"(c) The national organisation of workers which is most representative of workers in New Zealand and is formed for the purpose of protecting or furthering the interests of workers in connection with conditions of employment.

"(4) Notwithstanding anything to the contrary in this Act or in any award or industrial agreement, where the undertaking is declared to be an approved undertaking for the purposes of this section, any employer in respect of the undertaking or any union or association consulted under subsection (2) or subsection (3) of this section may make application to the Court for a declaration that the approved undertaking or any part of it, whether defined by reference to the classes of workers therein or otherwise howsoever, is a particular industry for the purposes of this Act.

"(5) On the hearing of any such application, any employer, union, or association entitled to make such an application may appear and be heard as a party to the proceedings.

"(6) On any such application the Court, in its discretion, may refuse to make a declaration or may make such declaration as it thinks fit, whether in terms of the application or otherwise.

"(7) Where on any such application the Court declares the undertaking or any part of it to be a particular industry, an industrial agreement may from time to time be entered into under this Act in respect of that particular industry. For the purposes of this subsection, the following provisions shall apply:

"(a) Unless an award has been made pursuant to subsection (8) of this section, the first such agreement shall, in respect of all persons in that particular industry bound by the agreement, supersede any awards or industrial agreements then in force as from the date of the coming into force of the first-mentioned agreement:

"(b) Where any specified class of workers employed in the approved undertaking is not included by the Court in its declaration in respect of that particular industry, any union, association, or employer bound by any industrial agreement made pursuant to this section, or any union or association representing that class of workers, may at any time while the agreement is in force apply to the Court for an order that the class of workers be so included; and the Court, in its discretion, may refuse to make an order or may make such an order accordingly, subject to such conditions as the Court thinks fit. Where such an order is made, any like new industrial agreement made in respect of that particular industry may include the specified class of workers, and if so shall, as from the date of the coming into force of the new agreement, supersede, in relation to that particular industry, any award or other industrial agreement applying to that class of workers:

"(c) On the hearing of any application made under paragraph (b) of this subsection, any union, association, or employer entitled to make such an application may appear and be heard as a party to the proceedings:

"(d) Notwithstanding the expiration of the term of the agreement, any industrial agreement made pursuant to this subsection shall, except to the extent that it has been cancelled in relation to any union bound by it, continue in force until a like new industrial agreement duly entered into, or a new award duly made pursuant to subsection (8) of this section, has come into force.

"(8) Notwithstanding anything in subsection (7) of this section, where on any application under subsection (4) of this section the Court declares the undertaking or any part of it to be a particular industry, any industrial dispute relating to that particular industry may be referred to a Council of Conciliation in accordance with the provisions of this Act. In any such case the following provisions shall apply:

"(a) Notwithstanding anything in this Act, the first application relating to that particular industry for reference of an industrial dispute to a Council may be made at any time after the making of the declaration:

"(b) In the case of any dispute to which this subsection relates, the Commissioner may, whether the hearing is commenced or not, increase to such number as he considers desirable for the purpose of further assisting in the settlement of the dispute the number of assessors that may be appointed on either the recommendation of the applicants or the recommendation of the respondents, and assessors to the number so fixed by the Commissioner shall be appointed accordingly:

"(c) Notwithstanding anything in subsection (8) of section 124 of this Act, in all matters arising before a Council in any such dispute, other than matters requiring agreement by all the assessors, the decision of a majority of an equal number of assessors for the applicants and assessors for the respondents present at a meeting of the Council shall be deemed to be the decision of the Council, but if the assessors voting on any such matter are equally divided in opinion the Commissioner shall have a casting vote, and the decision of the Council shall be determined accordingly:

"(d) Unless an industrial agreement has been entered into pursuant to subsection (7) of this section, any award made in the first dispute relating to that particular industry that is referred to a Council under this section after the making of the declaration shall, in respect of all persons in that particular industry bound by the award, supersede any awards or industrial agreements then in force as from the date of the coming into force of the first-mentioned award:

"(e) Where any specified class of workers employed in the approved undertaking is not included by the Court in its declaration in respect of that particular industry, any union, association, or employer bound by any award made pursuant to this section, or any union or association representing that class of workers, may at any time while the award is in force apply to the Court for an order that the class of workers be so included; and the Court, in its discretion, may refuse to make an order or may make such an order accordingly, subject to such conditions as the Court thinks fit. Where such an order is made, any like new award

made in respect of that particular industry shall, as from the date of the coming into force of the new award, include the specified class of workers and supersede, in relation to that particular industry, any other award or industrial agreement applying to that class of workers:

"(f) On the hearing of any application made under paragraph (e) of this subsection, any union, association, or employer entitled to make such an application may appear and be heard as a party to the proceedings:

"(g) Subject to the provisions of paragraph (h) of this subsection, and notwithstanding the expiration of the currency of the award, any award made pursuant to the provisions of this section shall, except to the extent that it has been cancelled in relation to any union bound by it, continue in force until a like new award duly made, or an industrial agreement duly entered into pursuant to subsection (7) of this section, has come into force:

"(h) At any time before the expiration of the currency of any award made pursuant to this section, any union, association, or employer bound by the award may apply to the Court for an order that the award shall cease to be in force, or shall cease to apply in respect of any specified class of workers, as from a date not earlier than the date of expiration of its currency, and the Court, in its discretion, may refuse to make an order or may make such an order accordingly, subject to such conditions as the Court thinks fit, including a condition that any specified class of workers and their employers shall be bound by the appropriate award binding similar classes of workers."

8. Rights of entry of union officials—Section 173 of the principal Act is hereby amended by inserting in subsection (1), after the words "to interview any workers", the words "or to collect any fees, subscriptions, levies, or other charges payable to the union by any workers".

9. Exemption from union membership on conscientious grounds—(1) Section 175 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

"(3A) Pending the determination by the Committee of any application made under this section, the applicant shall not be required to belong to the union to which the application relates.

"(3B) If, after hearing any such application, the Committee is not satisfied that the applicant's conscientious objections are genuine, the applicant shall, in respect of the period between the date of the making of the application and the date of the Committee's determination, be liable to pay to the union such fees and subscriptions as he would have had to pay if he had been a member of the union for that period."

(2) The said section 175 is hereby further amended by inserting, after subsection (4), the following subsection:

"(4A) Every certificate issued under this section shall be deemed to have come into force on the date of the making of the application for the certificate or, in the case of any further certificate issued by the Registrar for a subsequent period under subsection (4) of this section, on the date specified in the certificate."

10. Recovery of penalties—Section 194 of the principal Act is hereby amended—

(a) By inserting, after the words "Inspector of Awards", the words "or of an industrial association or industrial union which is a party to the award or industrial agreement,":

(b) By adding the following proviso:

"Provided that no action brought pursuant to this section at the suit of an industrial association or union shall be commenced until after the expiration of seven days from the day on which written notice of intention to commence the action has been given to the Minister by the association or union."

11. Special penalties with respect to strikes and lockouts in certain specified industries—Section 196 of the principal Act is hereby amended by adding to subsection (3) the following paragraphs:

"(h) The operation of any air transport service, being any service by aircraft for the public carriage of passengers or goods for hire or reward (but excluding an air topdressing service):

"(i) Subject to subsection (6) of section 40 of the Fire Services Act 1949, the work of any fire brigade within the meaning of that Act."

12. Cancellation of registration of union—(1) Section 198 of the principal Act is hereby amended by adding to subsection (1) the words "or cancel the membership of any specified class of members of the union".

(2) The said section 198 is hereby further amended by inserting, after subsection (4), the following subsection:

"(4A) Upon the cancellation under this section of the membership of any specified class of members of any union, the following provisions shall apply:

"(a) The membership rule of the union shall be deemed to be amended so as to exclude members of that class from membership of the union or, where the notice is limited to a specified locality, to exclude them from membership in respect of that locality; and members of that class shall thereupon cease to be members accordingly; and

"(b) No award or industrial agreement, so far as it relates to that union, shall apply to members of that class or, where the notice is limited to a specified locality, to members of that class in respect of that locality or any part thereof; and

"(c) Until the Minister consents thereto, members of that class shall not be eligible to belong to any union registered in respect of the industry or, where the notice is limited to a specified locality, to any such union in respect of that locality."

13. Court may delegate functions to additional Judge—Section 37 of the principal Act is hereby amended—

(a) By inserting in subsection (1), after the words "delegate to any", the words "additional Judge or":

(b) By inserting in subsection (4), after the words "is made by", the words "an additional Judge or by".

14. Extension of term of office of present Judge of Court—Notwithstanding the provisions of subsection (5) of section 18 of the principal Act, the person who at the passing of this Act holds the office of the Judge of the Court of Arbitration may continue to hold that office for a period expiring not later than the twelfth day of April, nineteen hundred and sixty-five.

This Act is administered in the Department of Labour.