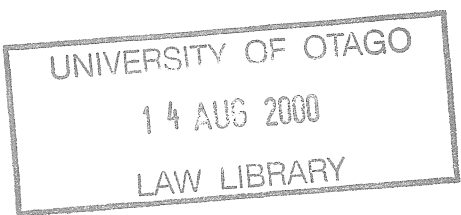


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No 40



House of Representatives

Supplementary Order Paper

Tuesday, 8 August 2000

Employment Relations Bill

Proposed amendments

Hon Max Bradford, in Committee, to move the following amendments:

Clause 1

To omit the word "Employment" (line 3 on page 5), and substitute the words "Union Payback and Labour".

Clause 2

To omit the expression "2 October 2000" (lines 5 to 6 on page 5), and substitute the expression "1 January 2003".

Clause 3

To omit paragraph (a) (lines 5 to 20 on page 6), and substitute the following paragraph:

- (a) to recognise the role of unions in—
 - (i) representing those employees wishing to be represented by a union registered under Part 4; and
 - (ii) being the sole provider of services to employees wishing to be covered by collective agreements under Part 5; and
 - (iii) supporting the Labour and Alliance parties in the 1999 General Election; and

To insert, after paragraph (a) (after line 20 on page 6), the following paragraphs:

- (aa) to require employers to negotiate through union third parties for collective bargaining purposes; and
- (ab) to remove the right under the Employment Contracts Act 1991 for employees to negotiate their own collective agreements, and to choose their own representative bargaining agents; and

- (ac) to give preferences to unions, and collective bargaining, over individually negotiated contracts of employment; and
- (ad) to give greater powers to the Employment Court and the Employment Relations Authority to interfere in New Zealand workplaces rather than encouraging the parties to resolve their own differences; and
- (ae) to promote mediation provided by the State; and

To omit from paragraph (b) the words “promote observance in New Zealand of the principles underlying” (lines 21 and 22 on page 6), and substitute the words “to ensure ratification by New Zealand of”.

Clause 4

To omit from the clause heading the word “employment” (line 26 on page 6), and substitute the words “good faith”.

To omit from subclause (1) the words “an employment” (line 28 on page 6), and substitute the words “a good faith”.

To omit subclause (1)(b) (lines 31 to 34 on page 6).

To omit from subclause (2) the word “employment” (line 35 on page 6), and substitute the words “good faith”.

To omit subclause (2)(aa) (lines 1 and 2 on page 7).

To insert, after subclause (2)(f) (after line 13 on page 7), the following paragraphs:

- (fa) a union and a member or members of the family of a member of a union who is affected by decisions made by a union:
- (fb) an employer and an employee employed by the employer:

To omit from subclause (3) the word “employment” (line 18 on page 7), and substitute the words “good faith”.

To omit subclause (4)(c) (lines 3 to 8 on page 8),

or, in the alternative, to omit from subclause (4)(c) the words “between an employer and its employees, including any union” (lines 4 and 5 on page 8), and substitute the words “, which is mutually agreed between the employer and the bargaining representative as requiring resolution, between an employer and its employees, including any union or bargaining agent”.

To omit subclause (4)(d) (lines 9 to 12 on page 8),

or, in the alternative, to omit from subclause (4)(d) the words “or transfer” (lines 11 to 12 on page 8).

To insert in subclause (4)(e), after the word “redundant” (line 13 on page 8), the words “, except where it is impossible for an employer to provide work for an employee”.

To insert in subclause (4)(f), after the word “union” (line 14 on page 8), the words “or bargaining agent”.

To insert in subclause (4)(g), after the word “union” (line 15 on page 8), the words “or bargaining agent”.

To omit subclause (5) (lines 18 and 19 on page 8).

Part 2

To omit from Part 2 the word “Authority” wherever it occurs, and substitute the word “Tribunal”.

Clause 5

To insert in the definition of “applicable collective agreement”, after the word “union” (line 26 on page 8), the words “under Part 5 or employees and bargaining representatives under Part 5A”.

To omit the definition of “Authority” (lines 29 and 30 on page 8).

To insert, in its appropriate alphabetical order in clause 5, the following definition:

bargaining representative means a union or representative of employees collectively under Part 5 or Part 5A

To add to the definition of “Chief Judge”, after the word “Court” (line 14 on page 9), the words “who must be a Judge of the District Court”.

To insert in the definition of “collective agreement”, after the word “agreement” (line 17 on page 9), the words “under Part 5 or Part 5A”.

To add to the definition of “collective agreement” (after line 21 on page 9) the following paragraph:

(d) 2 or more employees and their employer

To insert in the definition of “Court”, after the word “Court” (line 24 on page 9), the words “, which is to be division of the District Court,”.

To add to the definition of “coverage clause”, after paragraph (b) (after line 15 on page 10), the following words:

“but in either case, the provision must not specify or apply to the work or type of work or employees or types of employees covered by an existing collective agreement or individual employment agreement”

To omit from the definition of “Department” the words “that, with the authority of the Prime Minister, is for the time being responsible for the administration of that provision” (lines 19 to 21 on page 10), and substitute the words “nominated in this Act, and which is, for the time being, the Department of Labour”.

To add to the definition of “employer” (line 4 on page 11) the words “but does not include a person engaging a casual babysitter”.

To insert in paragraph (a) of the definition of “employment agreement”, after the word “of” (line 6 on page 11), the words “and not for”.

To omit paragraph (b) of the definition of “employment agreement” (lines 7 and 8 on page 11).

To insert in paragraph (c) of the definition of “employment agreement”, after the word “employment” where it first occurs (line 10 on page 11), the words “reduced to writing”.

To omit paragraph (b) of the definition of “homeworker” (lines 31 to 34 on page 11).

To add to the definition of “mediation services” (line 11 on page 12) the words “or any other services that are provided”.

Clause 6

To omit subclause (2) (lines 24 to 27 on page 14), and substitute the following subclause:

- (2) The status of an employee must be determined by mutual agreement between an employer and employee.

or, in the alternative, to omit from subclause (2) the words “or the Authority (as the case may be)”.

To omit subclause (3)(b) (lines 31 to 33 on page 14), and substitute the following paragraph:

- (b) must give primary consideration to any agreement between the parties describing the nature of their relationship.

To add to subclause (3) (after line 33 on page 14), the following paragraph:

- (c) can only consider applications to determine status prior to a contract being signed between the parties, and in the case of existing contracts within 30 days of the date on which this Act comes into force.

To add the following subclauses (after line 17 on page 15):

- (7) The effective date of employment determined under **subsection (5)** is the date of the order of the Court.
- (8) An order by the Court under **subsection (6)** does not oblige the other person who is to be determined to be the employer to employ the applicant and does not provide grounds for unjustified dismissal if the applicant is not employed.

Part 3

To omit from Part 3 the word “Authority” wherever it occurs, and substitute the word “Tribunal”.

Clause 8

To omit paragraph (a) (lines 4 to 7 on page 16), and substitute the following paragraph:

- (a) employees have no freedom to choose whether they join a union if they want a collective contract; and

To add the following paragraph (after line 12 on page 16):

- (c) for the purpose of advancing their collective employment interest, including agreeing to an enforceable collective agreement, employees will have the freedom to choose whether or not to be a member of a union.

Clause 9

To omit from the clause heading (line 14 on page 16) the word “Voluntary”. To insert, before the word “A” (line 15 on page 16), the words “Except in the case of all collective contracts (which require employees to join a union),”.

Clause 10

To insert in subclause (1), after the word “confer” (line 26 on page 16), the words “or impose”.

To add to subclause (1) (after line 32 on page 16) the following paragraph:

- (c) the requirement, directly or indirectly, to become a union member.

To add the following subclause (after line 36 on page 16):

- (3) Any union, or its officials, that threaten an employer who hires staff who are not union members is liable to a fine of up to \$10,000 or a direction to the Registrar of Unions to deregister a union imposed or given by the Tribunal.

Part 4

To omit from Part 4 the word “Authority” wherever it occurs, and substitute the word “Tribunal”.

Clause 13

To omit from paragraph (d) the words “reasonable access” (lines 35 to 36 on page 17), and substitute the words “unrestricted access for recruitment purposes”.

Clause 14

To insert in subclause (2), after paragraph (b) (after line 11 on page 18), the following paragraph:

- (ba) a statement of the number of members of the society as at the date of the application; and

Clause 15

To add to subclause (1)(d) (after line 31 on page 18) the following subparagraph:

- (v) express in allowing employees to join who wish to do so and whose contract of work is covered by the union’s coverage rules; and

To insert, after subclause (1)(d) (after line 31 on page 18), the following paragraph:

- (da) the society’s rules provide for—
 - (i) the election of officers; and
 - (ii) automatic membership on application by an employee covered by the society’s membership rule; and
 - (iii) expulsion of a member from the society in defined circumstances, and a process for challenging an expulsion; and
 - (iv) the ratification of collective agreements (including variations of them) by majority decision of its members who will be bound by them; and

To insert, after subclause (1) (after line 13 on page 19), the following subclause:

- (1A) For the purposes of **subsection (1)(d)(ii)**, whether a society's rules are democratic is to be determined having regard to the form of government of the society and any other relevant considerations.

Clause 16

To insert, after subclause (1) (after line 1 on page 20), the following subclause:

- (1A) The Registrar of Unions registers a society as a union by entering in the register of unions—
 - (a) the name of the union:
 - (b) the date of the union's registration:
 - (c) the number of the union's members:
 - (d) the rules of the union.

To insert, after subclause (3) (after line 10 on page 20), the following subclause:

- (3A) Within 30 days of registration, the Registrar of Unions must publish in the *Gazette* the certificate of registration and the union's rules.

New Clause 16A

To insert, after clause 16 (after line 15 on page 20), the following clause:

16A Alteration of rules

- (1) An alteration of a union's rules has no effect unless the requirements of this section are complied with.
- (2) Before the alteration is made in accordance with the union's rules, the alteration must be given to the Registrar of Unions.
- (3) The Registrar must consider whether the union's rules would, after the alteration is made, continue to comply with **section 15(1)(d) and (e)**.
- (4) The Registrar must notify, in writing, the union concerned immediately after the Registrar has made a decision under **subsection (3)**.
- (5) The union may proceed to alter its rules only if the Registrar notifies it that its rules would, after the alteration is made, continue to comply with **section 15(1)(d) and (e)**.
- (6) The union must, immediately after the Registrar of Incorporated Societies has registered the alteration, deliver to the Registrar of Unions a copy of the alteration as registered.
- (7) The Registrar must register the copy of the alteration in the register of unions.
- (8) The alteration takes effect from the date on which it is registered in the register of unions.

- (9) This section is in addition to the provisions of the Incorporated Societies Act 1908 relating to the alteration of an incorporated society's rules, but those provisions apply subject to this section.

Clause 18

To omit from subclause (1) the expression "1 June" (line 11 on page 21), and substitute the expression "30 June".

To omit from subclause (1) the expression "1 March" (line 12 on page 21), and substitute the expression "31 March".

To add the following subclauses (after line 12 on page 21):

- (1A) The annual return of every union must include a schedule of all donations, financial or in kind, made to political parties, candidates for election to Parliament, and Members of Parliament in the last year.
- (1B) No later than 30 June each year, the Registrar of Unions must table the annual returns of members in Parliament, together with details of unions which have notified returns and a report on the activities of the office of Registrar in the previous 12 months.

Clause 19

To add to subclause (1) (after line 23 on page 21) the following paragraph:

- (c) the Minister directs the Registrar to cancel the union's registration, which direction must be tabled in Parliament within 10 days of the direction being given to the Registrar.

To omit subclause (2) (lines 24 to 26 on page 21), or, in the alternative, to add to subclause (2), after the expression "**section 15(1)**" (line 26 on page 21), the words "or has breached the duty to act in good faith in relation to its members, other employees, or employers".

New Clause 19A

To insert, after clause 19 (after line 26 on page 21), the following clause:

19A Primary responsibilities of union

The primary responsibilities of a union are—

- (a) to act in good faith in its dealings with or in relation to its members:
- (b) to act in good faith in its dealings with employers or other unions on behalf of its members:
- (c) to comply with its rules.

Clause 21

To insert in the clause heading, after the word "members'" (line 10 on page 22), the word "collective".

To add to subclause (3), after the expression "**section 247**" (line 20 on page 22), the words ", whether or not the employee is a member of the union".

Clause 22

To omit subclauses (1)(b) and (c) (line 30 on page 22 and line 1 on page 23).

To omit subclause (3)(b) (lines 8 and 9 on page 23),

or, in the alternative, to add to subclause (3)(b), after the word “members” (line 9 on page 23), the words “subject to the requirements of the Health and Safety in Employment Act 1992, and in particular recognising that the responsibility for health and safety in employment resides with employees, employers, and the state”.

To omit subclause (4)(b) (line 28 on page 23),

or, in the alternative, to add to subclause (4)(b), after the word “members” (line 28 on page 23), the words “; provided that any employee is only asked once to join the union and is not harassed on multiple occasions to join”.

To omit subclause (4)(c) (lines 29 and 30 on page 23),

or, in the alternative, to omit from subclause (4)(c) the words “any employee” (line 30 on page 23), and substitute the words “the union’s members”.

Clause 22A

To omit from subclause (1)(a) the words “the representative believes, on reasonable grounds, that” (lines 3 and 4 on page 24).

To omit subclause (1)(b) (lines 7 to 10 on page 24),

or, in the alternative, to omit from subclause (1)(b) the words “membership rule covers an employee who is working or normally works in the workplace” (lines 9 and 10 on page 24), and substitute the words “coverage rule (which must be shown to the employer) covers an employee who is working or normally works in the workplace and such entry under this clause may take place no more than once a month per workplace”.

To insert in subclause (2)(b), after the word “workplace” (line 17 on page 24), the words “and only during normal business hours”.

To add to subclause (2), after paragraph (c) (after line 22 on page 24), the following paragraph:

- (d) must give 24 hours notice to the employer of his or her proposed entry to a workplace.

To insert in subclause (3), after the words “initial entry and,” (line 24 on page 24), the words “having regard to **subsection (4)** and”.

To add to subclause (3), after paragraph (b) (after line 32 on page 24), the following paragraph:

- (c) not be a person who has, within the last 10 years, been convicted, whether in or outside New Zealand, of an offence punishable by a term of imprisonment of 5 years or more.

To insert, after subclause (3) (after line 32 on page 24), the following subclause:

- (3A) An employer may require a representative exercising a right of entry under **subsection (3)** to wait while the employer checks the authenticity of the union with the Registrar of Unions and the authenticity of the person claiming to be the representative with the union.

To omit from subclause (4) all the words after “in the workplace” (line 37 on page 24 to line 3 on page 25), and insert the words “a written request, which must not be unreasonably withheld, for the employer to allow access, the request to contain details of—

- (a) the identity of the person who entered the premises; and
- (b) the union of which the person is a representative; and
- (c) the date and time of entry; and
- (d) the purpose or purposes of the entry; and
- (e) a signature and contact details including postal address, cellphone number and e-mail address where the employer can make contact with the representative.”

Clause 23

To add to subclause (1), after paragraph (b) (after line 10 on page 25), the following paragraph:

- (c) the health and safety of any employee or the safe operation of an employer’s business.

To add the following subclause (after line 20 on page 25):

- (4) For the purpose of **subsection (1)(c)**, a certificate is given by an inspector under the Health and Safety in Employment Act 1992 or by an employer who must notify an inspector forthwith of the circumstances surrounding the denial of access.

Clause 25

To add the following paragraph (after line 27 on page 27):

- (d) enters a workplace claiming to be authorised under **section 22A** but is not authorised.

Clause 26

To omit clause 26 (line 29 on page 27 to line 30 on page 28), or, in the alternative, to insert in subclause (1), after the word “attend” (line 32 on page 27), the words “on leave without pay”, and to omit from subclause (1)(b) the words “2 union meetings” (line 1 on page 28), and substitute the words “1 union meeting if an applicable collective contract has expired or is within 60 days of expiry”, and to omit from subclause (2) the words “14 days’ notice of the date and time of any union meeting to which **subsection (1)** applies” (line 4 on page 28), and substitute the words “28 days’ notice of the date and time of any union meeting to which **subsection (1)** applies and the expected time the meeting will take”. and to omit subclause (5) (lines 20 to 23 on page 28), and to insert in subclause (6), after the word “section” (line 29 on page 28), the words “, and every union that fails to meet the requirements under this section,”.

New Clause 27A

To insert, after clause 27 (after line 11 on page 29), the following clause:

27A Keeping and inspection of register of unions

The Registrar of Unions must keep a register of unions, which must include the constitution, rules, and latest membership return of every union, and must publish details of the register on the Internet at no cost to the public.

Clause 29

To omit from the clause heading the word “Authority” (line 29 on page 29), and substitute the word “Court”.

To omit from subclause (1) the word “Authority” (line 30 on page 29), and substitute the word “Court”.

Clause 30

To insert in paragraph (e), after the word “is” (line 23 on page 30), the words “or may be”.

To add the following paragraph (after line 25 on page 30):

- (g) the Minister or the Minister’s appointee.
-