

House of Representatives  
Supplementary Order Paper

Tuesday, 5 October 2004

Employment Relations Law Reform Bill

*Proposed amendments*

Hon Paul Swain, in Committee, to move the following amendments:

*Clause 12: new section 33*

To omit *subsection (2)* (lines 22 to 24 on page 9), and substitute the following subsection:

- “(2) For the purposes of **subsection (1)**, **genuine reason** does not include—
- “(a) opposition or objection in principle to bargaining for, or being a party to, a collective agreement; or
  - “(b) disagreement about including in a collective agreement a bargaining fee clause under **Part 6B**.”

*Clause 22*

To insert before *subclause (1)* (before line 3 on page 23) the following subclause:

- (1AA) Section 63 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) However, the employee’s terms and conditions of employment do not include any bargaining fee payable under **Part 6B**.”

*Clause 30*

To insert in the heading to this clause, after the expression “**6A**” (line 23 on page 26), the words “**and Part 6B**”.

To omit the word “Part” (line 25 on page 26) and substitute the word “Parts”.  
To insert, after *new Part 6A* (after line 1 on page 35), the following Part:

## **“Part 6B “Bargaining fees**

### **“69O Interpretation**

In this Part, unless the context otherwise requires,—

**“bargaining fee** means an amount payable by an employee to a union under a bargaining fee clause, whether payable as a lump sum or on a periodical basis

**“bargaining fee clause** means a provision in a collective agreement that, subject to this Part,—

**“(a)** applies to the employer’s employees who are not members of a union and who perform work that comes within the coverage clause of the collective agreement; and

**“(b)** requires those employees to pay a bargaining fee; and

**“(c)** provides that those employees’ terms and conditions of employment comprise the terms and conditions of employment specified in the collective agreement.

### **“69P Bargaining fee clause does not come into force unless agreed to by secret ballot**

**“(1)** A bargaining fee clause does not come into force unless the clause has been agreed to in a secret ballot held in accordance with this section.

**“(2)** The secret ballot must be—

**“(a)** held before the collective agreement comes into force; and

**“(b)** conducted jointly by the employer and union.

**“(3)** An employee is entitled to vote in a secret ballot if—

**“(a)** the work performed by the employee comes within the coverage clause in the collective agreement; and

**“(b)** the employee is—

**“(i)** not a member of any union; or

**“(ii)** a member only of the union that is a party to the collective agreement with the employer.

**“(4)** A bargaining fee clause is agreed to in a secret ballot if a majority of the employer’s employees who vote, vote in favour of the clause.

### **“69Q Employer to notify employees if bargaining fee clause agreed to**

**“(1)** If a bargaining fee clause is agreed to in a secret ballot, the employer must provide the employees referred to in **section 69R(a) to (c)** with a copy of the collective agreement that contains the bargaining fee clause and notify them in writing that—

**“(a)** their terms and conditions of employment will comprise the terms and conditions of employment specified in the

collective agreement (including the obligation to pay a bargaining fee) on and from the later of the following:

- “(i) the expiry of the period referred to in **paragraph (c)**;  
or
  - “(ii) the date on which the collective agreement comes into force; and
  - “(b) the bargaining fee will be deducted from their wages, specifying the amount of the bargaining fee; and
  - “(c) if an employee does not wish to pay the bargaining fee, the employee must notify the employer in writing within the period specified in the collective agreement for that purpose that the employee does not agree to pay the bargaining fee.
- “(2) If an employee notifies his or her employer that the employee does not agree to pay the bargaining fee,—
- “(a) the bargaining fee clause does not apply to the employee; and
  - “(b) the employee’s terms and conditions of employment remain the same until such time as varied by agreement with the employer.

“69R **Which employees bargaining fee clause applies to**

When a bargaining fee clause has been agreed to in a secret ballot and comes into force, the clause applies to an employee if—

- “(a) the work performed by the employee comes within the coverage clause of the collective agreement; and
- “(b) the employee is not a member of any union; and
- “(c) the employee was—
  - “(i) entitled to vote in the secret ballot that agreed to the clause; or
  - “(ii) employed in the period beginning immediately after the secret ballot was held and ending with the close of the day before the date on which the collective agreement came into force; and
- “(d) the employee has not notified his or her employer in writing, within the period specified under **section 69Q(1)(c)** that the employee does not agree to pay the bargaining fee.

“69S **Bargaining fee clause binding on employer and employee**

While a bargaining fee clause applies to an employee,—

- “(a) the clause is binding on the employee and his or her employer; and
- “(b) the employer must deduct the bargaining fee from the employee’s wages and pay it to the union concerned.

**“69T Amount of bargaining fee**

- “(1) A bargaining fee must not be greater than the union fee that an employee would be required to pay to the union if the employee were a member of the union.
- “(2) A bargaining fee has no effect to the extent (if any) that the bargaining fee does not comply with **subclause (1)**.

**“69U Expiry of bargaining fee clause**

A bargaining fee clause expires when the collective agreement that contains the clause expires.

**“69V Validity of bargaining fee clauses**

A bargaining fee clause, and anything done under it in accordance with this Part,—

- “(a) is not a breach of, or inconsistent with, this Act (in particular sections 8, 9, 11, and 68(2)(c)); and
- “(b) overrides the Wages Protection Act 1983.”

*New clause 34A*

To insert, after *clause 34* (after line 25 on page 35), the following clause:

**34A Unlawful strikes or lockouts**

Section 86(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

- “(da) relates to a bargaining fee clause or proposed bargaining fee clause under **Part 6B**; or”.

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### Explanatory note

This Supplementary Order Paper inserts a *new Part 6B* into the Employment Relations Act 2000 and consequentially amends a number of other sections in the Act.

The *new Part 6B* deals with bargaining fee clauses in collective agreements. A bargaining fee clause provides that an employer’s employees who are not members of a union and who perform work within the coverage clause of the collective agreement must pay a bargaining fee and provides that their terms and conditions of employment comprise the terms and conditions of employment specified in the collective agreement.

A bargaining fee clause does not come into force unless agreed to in a secret ballot of employees who perform work that comes within the coverage clause in the collective agreement and who are not members of any union or are members only of the union that is a party to the collective agreement.

If a bargaining fee clause is agreed to in the secret ballot, employees must be notified and given an opportunity to “opt out” and remain on their current terms and conditions of employment and not pay the bargaining fee.

This Supplementary Order Paper also amends the Employment Relations Act 2000 to clarify that—

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- a genuine reason for not concluding a collective agreement does not include disagreement about including in a collective agreement a bargaining fee clause (see the amendment to *clause 12*):
  - a new employee employed after a collective agreement containing a bargaining fee comes into force does not have to pay the bargaining fee (see the amendment to *clause 22*):
  - it is unlawful to strike or lock out if it relates to a bargaining fee clause or proposed bargaining fee clause (see *new clause 34A*).
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