

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 12 September 1989

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL

Proposed Amendments

Hon. W. P. JEFFRIES, in Committee, to move the following amendments:

Clause 114: To add, as subclause (2), the following subclause:

(2) Section 2 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Subject to subsection (3) of this section, for the purposes of this Act, an award or agreement is subsequent to another award or agreement if—

“(a) It replaces that award or agreement, either wholly or partially; or

“(b) It replaces, either wholly or partially, any such replacement award or agreement or any replacement of such an award or agreement;—

and such a relationship shall continue to exist between awards or agreements and the replacement awards or agreements notwithstanding the number of replacement awards or agreements that have been negotiated or the period that has intervened; and an award or agreement precedes another award or agreement in corresponding circumstances.

“(3) For the purposes of Part III of this Act, an award may be subsequent to an agreement and an agreement may be subsequent to an award.”

New clauses 114A and 114B: To insert, after clause 114, the following clauses:

114A. Object of union membership provisions—Section 58 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) A union membership clause can be inserted—

“(i) In an award, only if not less than 50 percent of the valid votes recorded in a ballot of all workers bound by the award are in favour of the insertion of the union membership clause in the award; and

“(ii) In an agreement, only if the parties to the agreement so agree in any proceedings involving a

dispute of interest or, if those parties do not so agree, not less than 50 percent of the valid votes recorded in a ballot of all workers bound by the agreement are in favour of the insertion of the union membership clause in the agreement.”.

114b. Interpretation—Section 59 of the principal Act is hereby amended by inserting in paragraph (b) of the definition of the term “union membership clause”, after the words “or a composite agreement”, the words “or an award or agreement to which more than one union or an association of unions is a party”.

114c. New sections substituted—The principal Act is hereby amended by repealing sections 61 to 69, and substituting the following sections:

“61. Insertion of union membership clause in awards—A union membership clause may be inserted in an award only if not less than 50 percent of the valid votes recorded in a ballot of all workers bound or to be bound by the award are in favour of the insertion of the union membership clause in the award.

“61A. Insertion of union membership clause in agreements—(1) A union membership clause may be inserted in an agreement only if—

“(a) The parties to the agreement so agree in any proceedings involving a dispute of interest; or

“(b) Failing such agreement, not less than 50 percent of the valid votes recorded in a ballot of all workers bound or to be bound by the agreement are in favour of the insertion of the union membership clause in the agreement.

“(2) Every ballot conducted for the purposes of subsection (1) (b) of this section shall be initiated and conducted by the union party.

“(3) The parties to any proceedings involving a dispute of interest may not agree to the insertion of a union membership clause in an agreement if a union membership ballot has been conducted in relation to that agreement or either of the two awards or agreements which immediately preceded that agreement.

“61B. Awards and agreements not to contain union membership provisions other than union membership clause—No award or agreement shall contain a provision (other than a union membership clause inserted in accordance with the provisions of this Act) requiring any worker engaged or employed by an employer bound by the award or agreement to join any union.

“61c. Restriction on ballots—(1) A union shall not conduct a union membership ballot in relation to an award if such a ballot has been conducted in relation to that award or either of the two awards or agreements which immediately preceded that award.

“(2) A union shall not conduct a union membership ballot in relation to an agreement if such a ballot has been conducted in relation to that agreement or either of the two awards or agreements which immediately preceded that agreement.

“(3) A union shall not conduct a union membership ballot in relation to a composite award or composite agreement if such a ballot has been conducted in relation to—

- “(a) That composite award or that composite agreement; or
- “(b) The composite award or composite agreement which that composite award or composite agreement wholly replaced (if any); or
- “(c) The composite award or composite agreement that was wholly replaced by the composite award or composite agreement specified in **paragraph (b)** of this subsection (if any).

“62. **Conduct of ballots in relation to awards and agreements**—Where a ballot is to be held to determine whether a union membership clause is to be inserted in an award or agreement—

- “(a) That ballot shall be a ballot of all adult workers who will be required, on request of the union, to become members of the union if the clause is inserted in the award or agreement; and
- “(b) That ballot shall be conducted in accordance with the rules set out in the Fourth Schedule to this Act; and
- “(c) A union membership clause shall not be inserted in the award or agreement as a result of that ballot unless not less than 50 percent of the valid votes recorded in the ballot are in favour of the insertion of the union membership clause in the award or agreement.

“63. **Conduct of ballots in relation to composite awards or composite agreements**—Where a ballot is required to determine whether a union membership clause is to be inserted in a composite award or composite agreement or an award or agreement to which more than one union or an association of unions is a party—

- “(a) That ballot shall be conducted jointly by the unions who are parties to it in respect of all the adult workers whom the relevant award or agreement covers or purports to cover and who will be required, on request of one or other of those unions (depending on which of the unions has membership coverage in respect of each of those workers) to become a member of that union if the clause is inserted in the relevant award or agreement; and
- “(b) That ballot shall be conducted in accordance with the rules set out in the Fourth Schedule to this Act except that the functions imposed by rule 1 of that Schedule on the committee of management shall be performed instead by a joint committee constituted for the purpose by the unions; and
- “(c) A union membership clause shall not be inserted in the relevant award or agreement as a result of that ballot unless not less than 50 percent of the valid votes recorded in the ballot are in favour of the insertion of the union membership clause in the relevant award or agreement.

“64. **Obligatory rules concerning union membership ballots**—The rules of every union shall include, or, in the case of the rules of a union that is registered at the commencement

of this section, shall be deemed to include, the rules relating to union membership ballots set out in the Fourth Schedule to this Act (which shall not be amended by the union and which shall prevail over any other provision of the rules).

“65. **Notice of ballot**—Where a union or more than one union, as the case may be, intends to conduct a union membership ballot pursuant to its rules, the committee of management of the union or the joint committee—

“(a) Shall, as soon as possible after forming that intention and before conducting the membership ballot, give to the Commission written notice of that intention; and

“(b) Shall,—

“(i) At least 30 days before the day on which the special meeting or the first of the series of special meetings required is held, give or post to the Registrar of Unions written notice of that intention in the prescribed form, which notice shall state, among other things, the date, time, and place of each special meeting; or

“(ii) In the case of a postal ballot, give or post to the Registrar of Unions written notice of that intention in the prescribed form, at least 30 days before the date on which all votes have to be received by the Returning Officer, which notices shall state, among other things, that date.

“66. **Conduct of ballot**—(1) Every union membership ballot conducted pursuant to the rules of any union shall be conducted by the union, or, where there is more than one union, jointly by the unions, under the supervision of the Registrar of Unions, or of some person, being an employee of the Department of Labour, designated by the Registrar to supervise that ballot.

“(2) The ballot paper shall be in the prescribed form.

“(3) The Returning Officer shall, at the conclusion of the special meeting or, where there is a series of special meetings, at the conclusion of that series, or at the conclusion of a postal ballot, prepare and make available to the Registrar and to any voter or other interested person, a record showing—

“(a) The number of votes in favour of the union membership clause:

“(b) The number of votes against the union membership clause:

“(c) The number of informal votes.

“(4) The expenses incurred by the Registrar or designated person in connection with the conduct of every such ballot shall be paid out of money to be appropriated by Parliament for the purpose.

“(5) Notwithstanding anything in the rules of the union or unions, the Registrar or designated person may take such action and give such directions as the Registrar or designated person considers necessary to prevent the occurrence of any irregularity in or in connection with the ballot.

“(6) In this section the term ‘designated person’ means any person designated under subsection (1) of this section to supervise the ballot on behalf of the Registrar.

“66A. **When ballot may be held**—(1) Where a ballot is required to determine whether a union membership clause is to

be inserted in an award or agreement, that ballot, subject to subsection (2) of this section,—

“(a) Shall not be commenced until after the determination or settlement of the relevant dispute of interest; and

“(b) Shall, within 3 months after the registration of the award or agreement, be conducted to the stage where the results of the ballot have been made available to the Registrar in accordance with section 66 (3) of this Act.

“(2) Where the Registrar is satisfied that there is good reason why the ballot is unable to be conducted within the time limit prescribed under subsection (1) of this section, the Registrar may extend the time within which the ballot is required to be conducted.

“66B. **Registration of award or agreement pending outcome of ballot**—(1) The Commission may register the award or agreement pending the outcome of a union membership ballot in relation to the award or agreement.

“(2) Where the Commission registers an award or agreement pending the outcome of a ballot, the Commission shall insert a provision relating to union membership in the award or agreement which is the same as the provision relating to union membership contained in the award or agreement which immediately preceded that award or agreement, and that provision shall have effect pending the implementation, in accordance with section 68 of this Act, of the result of the ballot.

“(3) Where a composite award or composite agreement that has not been preceded by another composite award or composite agreement is registered by the Commission pending the outcome of a ballot, the provisions relating to union membership which were contained in the award or agreement by which workers covered by the composite award or composite agreement were bound shall, whether the previous award or agreement is replaced either wholly or partially by the composite award or composite agreement, continue to have effect and to bind those workers until the implementation, in accordance with section 68 of this Act, of the result of the ballot.

“67. **Result of ballot**—(1) The Registrar shall issue a certificate in the prescribed form showing the result of the ballot, and shall supply one copy of the certificate to the Commission and another to the union.

“(2) Every such certificate shall be conclusive evidence of the result of the ballot.

“68. **Effect of ballot**—(1) Where, as the result of any ballot conducted pursuant to the rules of a union and in accordance with this Act, a union membership clause is required to be inserted in any award or agreement, the Commission shall, where necessary, amend the award or agreement by inserting in it a union membership clause and any provision relating to union membership inserted in the award or agreement pursuant to section 66B (2) of this Act shall cease to have effect.

“(2) Where, as the result of any ballot in relation to an award or agreement, a union membership clause cannot be inserted in the award or agreement, or where a ballot is not conducted within the time prescribed by section 66A of this Act, the Commission shall, where necessary, amend the award or agreement by deleting any union membership clause inserted by the Commission pursuant to section 66B (2) of this Act.

“69. Life of union membership clause—(1) Where a union membership clause is inserted in an agreement by agreement between the parties, that clause shall remain in force for the same period as the agreement.

“(2) Where a union membership clause is inserted in an award or agreement as a result of a ballot conducted in accordance with the rules set out in the Fourth Schedule to this Act, that clause shall, as a result of that ballot, also be inserted in—

“(a) The award or agreement that is subsequent to the award or agreement in which the clause was inserted; and

“(b) The award or agreement that is subsequent to the award or agreement specified in **paragraph (a)** of this subsection.

“(3) This section is subject to section 106 of this Act relating to change of union coverage.

“69A. Life of union membership clause in relation to composite award or composite agreement—(1) Subject to subsection (2) of this section, where a composite award or composite agreement replaces either wholly or partially, awards or agreements each of which contains a union membership clause inserted as a result of a ballot, a union membership clause shall be inserted in that composite award or composite agreement.

“(2) Where any of the awards or agreements replaced by the composite award or composite agreement contained a union membership clause that was inserted pursuant to **section 69 (2) (b)** of this Act (whether before or after the commencement of this section), that clause shall not be automatically inserted in that composite award or composite agreement.

“(3) Where a composite award or composite agreement replaces, either wholly or partially, any award or agreement that does not contain a union membership clause, a union membership clause shall not be inserted in that composite award or composite agreement except as the result of a ballot held in accordance with this Act.

“(4) Where a union membership clause is inserted in a composite award or composite agreement pursuant to **subsection (1)** of this section, the following provisions shall apply in determining whether such a clause shall be inserted in subsequent composite awards or composite agreements:

“(a) If any of the awards or agreements replaced by the composite award or composite agreement contained a union membership clause that was inserted pursuant to **section 69 (2) (b)** of this Act (whether before or after the commencement of this section), that clause shall not be automatically inserted in any subsequent composite award or composite agreement; or

“(b) If, in the case of any composite award or composite agreement to which **paragraph (a)** of this subsection does not apply, any of the awards or agreements replaced by the composite award or composite agreement contained a union membership clause that was inserted pursuant to **section 69 (2) (a)** of this Act (whether before or after the commencement of this section), that union membership clause shall be

inserted in the composite award or composite agreement subsequent to the composite award or composite agreement referred to in subsection (1) of this section; or

“(c) If neither paragraph (a) nor paragraph (b) of this subsection applies in respect of a composite award or composite agreement in which a union membership clause is inserted pursuant to subsection (1) of this section, a union membership clause shall be inserted in—

“(i) The composite award or composite agreement that is subsequent to the composite award or composite agreement specified in subsection (1) of this section; and

“(ii) The composite award or composite agreement that is subsequent to the composite award or composite agreement specified in subparagraph (i) of this paragraph.

“(5) This section is subject to section 106 of this Act relating to change of union coverage.”

New clause 119A: To insert, after clause 119 on page 74, the following clause:

119A. Publication of awards—The principal Act is hereby amended by repealing section 185, and substituting the following section:

“185. (1) Subject to subsection (2) of this section, the Commission shall arrange for the printing and publication of registered awards.

“(2) The Commission shall not be required under this section to insert or publish any amendment to an award relating to the insertion or deletion of a union membership clause pursuant to section 68 of this Act.”

New clause 121A: To insert, after clause 121 on page 74, the following clause:

121A. Transitional provisions—(1) For the avoidance of doubt, any ballot conducted before the commencement of this section under sections 61 to 69 of the principal Act shall in all respects have effect as if it were a ballot conducted under sections 61 to 69A of the principal Act (as substituted by section 114B of this Act).

(2) Where, before the commencement of this section, a ballot was initiated on or before the 8th day of September 1989 by notice under section 65 of the principal Act, that ballot shall be conducted under sections 61 to 69 of the principal Act as those sections were originally enacted, and any such ballot shall have effect in all respects as if it was a ballot conducted under sections 61 to 69A of the principal Act.

EXPLANATORY NOTE

The proposed amendments alter the provisions of the Labour Relations Act 1987 relating to the insertion of union membership clauses in awards and agreements.