

## HOUSE OF REPRESENTATIVES

## Supplementary Order Paper

Tuesday, 4 June 1985

## UNION MEMBERSHIP BILL

*Proposed Amendments*

The following amendments to be moved in Committee:

Hon. J. K. MCLAY to move:

*Clause 1:* To omit from subclause (2) the year "1985", and substitute the year "1988".

Mr TOWNSHEND to move:

*Clause 4:* To omit subclause (1).

*Clause 5: Proposed section 98A:* To omit this section and substitute the following:

**"98A. Prohibition on preference—**(1) No person who is a member of a union shall be entitled to preference in obtaining or retaining employment for any work by virtue of that person's membership of that union.

**"(2)** No award or collective agreement or agreement filed under section 141 of this Act shall contain a provision requiring any worker engaged or employed by an employer bound by the award or agreement to join any union.

*Proposed section 99 (1):*

To insert in paragraph (b) of subclause (1) of the rule relating to retention ballots, after the word "purpose" (at line 18 on page 8), the words "not earlier than 30 days following the giving or posting of written notice under paragraph (a) of this subclause".

Mr UPTON to move:

To insert, after subclause (2) of the rule (at line 39 on page 8), the following subclause:

**"(2A)** No person entitled to vote at a ballot held under this rule shall vote more than once or at more than one special meeting."

Mr TOWNSHEND to move:

To omit all the words in the last 3 lines of subclause (3) of the rule (lines 43 to 45 on page 8), and substitute the following:

**"shall be determined on whether the number of valid votes cast in favour of the insertion of a union membership clause in the secret ballot held at that meeting or those meetings exceeds 50 percent of the total union membership."**

To add to paragraph (d) (ii) of subclause (1) of the rule relating to restoration ballots and initial ballots (at line 20 on page 11) the words “not earlier than 30 days following the giving or posting of written notice under **subparagraph (i)** of this paragraph”.

To insert after paragraph (i) of subclause (1) of the rule (after line 23 on page 13), the following new paragraph:

“(ia) Where the union informs any applicant that in its opinion the applicant is not entitled to vote in the ballot, the applicant may, within 5 days, appeal to the Registrar, or the officer designated by the Registrar to supervise the conduct of the ballot, and the decision of the Registrar or such officer as to the entitlement of the applicant to vote shall be final.”

Mr UPTON to move:

To insert, after subclause (2) of the rule (at line 40 on page 8), the following subclause:

“(2A) No person entitled to vote at a ballot held under this rule shall vote more than once or at more than one special meeting.”

Mr TOWNSHEND to move:

To omit all the words in the last 3 lines of subclause (3) of the rule (lines 5 to 7 on page 14), and substitute the following:

“shall be determined on whether the number of valid votes cast in favour of the insertion of a union membership clause in the secret ballot held at that meeting or those meetings exceeds 50 percent of the number of ballot papers issued at such meeting or meetings.”

To add to the rule relating to blind, disabled, or illiterate voters (after line 6 on page 16) the following subclause:

“(3) Any person assisting a blind, disabled, or illiterate voter under this rule shall certify on the outside of the ballot paper that he or she has so assisted such voter, and shall also print legibly thereon his or her full name, residential address, occupation, and workplace.”

Mr UPTON to move:

*Proposed new section 99A:*

To insert, after the proposed section 99, the following section:

“99A. **Registrar may require postal ballot**—Where a union has given written notice under **section 102** of this Act of its intention to conduct a ballot under the rules included, or deemed to be included by, **section 99** of this Act in the rules of that union, the Registrar may, where—

“(a) The Registrar is so requested by the union; or

“(b) The Registrar is so requested by not less than 10 percent or 50 of the persons eligible to vote in that ballot (whichever is the smaller number),—

require that the ballot be a postal ballot conducted under the supervision of the Registrar, or of an officer of the Department of Labour designated by the Registrar for the purpose.

“(2) Where the Registrar requires under **subsection (1)** of this section that a postal ballot be held,—

“(a) He shall inform the union forthwith of his decision:

“(b) The rules relating to retention ballots and restoration ballots and initial ballots included, or deemed to be included, by **section 99** of this Act in the rules of the union shall, as and where applicable, be deemed to require the conduct of a postal ballot instead of a ballot of persons who are present at the special meeting or special meetings, and the majority view of the persons voting in the postal ballot shall be determined as if all persons eligible to vote had been present at a special meeting called in accordance with these rules:

“(c) The rules relating to special votes included, or deemed to be included, by **section 99** of this Act in the rules of the union shall not apply to the conduct of the ballot:

“(d) The Registrar, or person designated by the Registrar to supervise the ballot, may make rules and give directions in relation to the advertising of the postal ballot, the compilation of the rolls, the issuing of ballot papers, time limits for the return of ballot papers, the determination of the validity of votes, and generally to ensure the fair conduct of the ballot.

“(3) Where a postal ballot is held under this section, all references in **sections 98 to 102H** of this Act to a ballot conducted under or provided for in the rules included, or deemed to be included, by **section 99** of this Act in the rules of a union shall be deemed, as and where applicable and with all necessary modifications, to be references to the postal ballot carried out under this section in substitution for such ballot.

Mr MCKINNON to move:

*Proposed section 100:*

To omit paragraph (a) of subsection (1) (at lines 23 to 31 on page 16), and substitute the following:

“(a) The Registrar of Industrial Unions certifies that the number of valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by **section 99** of this Act in the rules of the union of workers in favour of the insertion of a union membership clause in each of the awards and collective agreements by which members of the union are bound from time to time exceeds 50 percent of the total union membership; and”.

To omit paragraph (a) of subsection (2) (lines 2 to 10 on page 17), and substitute the following:

“(a) The Registrar of Industrial Unions certifies that the number of valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by **section 99** of this Act in the rules of the union of workers in favour of the insertion of a union membership clause in each of the awards and collective agreements by which members of the union are bound from time to time does not exceed 50 percent of the total union membership; and”.

*Proposed section 100A:*

To omit paragraph (a) of subsection (1) (lines 31 to 39 on page 17), and substitute the following:

“(a) The Registrar of Industrial Unions certifies that the number of valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by **section 99** of this Act in the rules of the union of workers in favour of the insertion of a union membership clause in each of the awards and collective agreements by which members of the union are bound from time to time exceeds 50 percent of the number of ballot papers issued in respect of such ballot; and”.

To omit from subsection (1) all the words in lines 1 to 6, on page 18, and substitute the following:

“such a clause shall,—

“(c) Where no application for an inquiry has been lodged with the Registrar under **section 102D** of this Act, as from the beginning of the 31st day after the date of that certificate; or

“(d) Where such an application for an inquiry has been lodged, and the Registrar refuses the application under **section 102E (1) (b)** of this Act, as from the beginning of the 14th day after the date on which the Registrar informs the applicants of such refusal; or

“(e) Where such an application for an inquiry has been lodged, and the Registrar does not refuse the application under **section 102E (1) (b)** of this Act, from such date as the Court may by order specify in the course of or following the completion of the inquiry,—

and thereafter throughout the balance of the period of 3 years beginning with the date of the certificate, be inserted by the Arbitration Court in each of the awards or collective agreements by which members of the union are bound from time to time.”

To omit paragraph (a) of subsection (2) (lines 8 to 16 on page 18), and substitute the following:

“(a) The Registrar of Industrial Unions certifies that the number of valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by **section 99** of this Act in the rules of the union of workers in favour of the insertion of a union membership clause in each of the awards and collective agreements by which members of the union are bound from time to time does not exceed 50 percent of the number of ballot papers issued in respect of such ballot; and”.

*Proposed section 101A:*

To omit the words “not less than 50 percent of the valid votes recorded are in favour of the union membership clause” (at lines 10 and 11 on page 19), and substitute the words “the number of valid

votes recorded in favour of the union membership clause exceeds 50 percent of the total membership of the union”.

*Proposed section 101c:*

To omit from subsection (1) the words “50 percent or more” (at line 24 on page 19), and substitute the words “more than 50 percent”.

To omit subsection (2).

*Proposed section 102A:*

To add to subsection (2A) the following paragraph:

“(d) The number of ballot papers issued.”

To insert in subsection (4), after the word “paid” (at line 36 on page 22), the words “as to one half by the union and as to the other half”.

Mr McCCLAY to move:

*Proposed section 102c:*

To insert in paragraph (b) of subsection (2), after the word “section” (at line 7 on page 24), the expression “99A or section”.

To insert in paragraph (c) of subsection (2) after the word “section” (at line 10 on page 24), the expression “99A or section”.

To insert in paragraph (d) of subsection (2), after the word “worker” (at line 14 on page 24), the words “or any member of a worker’s family or any other person”.

*Proposed section 102c:*

To insert, after subsection (2), the following new subsection:

“(2A) The Court may, in its discretion, in the course of or at the completion of an inquiry into the conduct of a restoration or initial ballot whose result would require the insertion of a union membership clause into each of the awards and collective agreements by which the members of the union are then bound, make an order amending any such award or collective agreement by inserting in it a union membership clause, either forthwith or on a date to be specified in the order, which order shall have effect notwithstanding anything in section 97 of this Act.”

Mr BANKS to move:

*Proposed section 102H:*

To omit from subsection (1) (at lines 13 and 14 on page 28) the words “who is able to do so”.

To omit from subsection (1) (at lines 19 and 20 on page 28) the words “one year after the completion of the ballot”, and substitute the words “3 years after the completion of the ballot or until the completion of the next succeeding ballot conducted under the rules included, or deemed to be included, by section 99 of this Act in the rules of the union, whichever is the longer.”

*Proposed section 103:*

To insert at the beginning of subsection (1) the words “Subject to section 112K of this Act,”.

Mr EAST to move:

To add to paragraph (b) of subsection (1) (after line 6 on page 29) the following proviso:

“Provided that no employer shall be deemed to have committed a breach of the award or agreement if such notification by any such officer or authorised representative of the union is not correct in fact.

Mr STOREY to move:

*Clause 6: Proposed section 105:*

To insert in subsection (1), after the word “Membership”, the words “and Employer”.

*Proposed section 106:*

To add to subsection (1) the words “or of exemption of employers from any provision of this Act or of any award or collective agreement that requires them to employ or continue to employ any worker who is a member of a union, or to refrain or cease from employing any worker who is not a member of a union.”

Mr EAST to move:

*Proposed section 107:*

To add to subsection (1) the words “, which Chairman shall be a barrister and solicitor of not less than 7 years’ standing”.

To insert in subsection (2), after the word “shall” at line 6 on page 30, the words “, after consultation with the Federation of Labour, the New Zealand Employers Federation (Inc), and the Law Society as to their suitability,”.

*Proposed section 108:*

To add to subsection (1) the words “As far as practicable the terms specified in each appointment shall be such as to ensure that not more than one member retires in each year.”

Mr GRAY to move:

*Proposed section 112B:*

To omit the words “Union Membership” (at line 26 on page 32).

To add the following subsection:

“(2) Any employer who is required by any provision of this Act or of any award or collective agreement to employ or continue to employ any worker who is a member of a union, or to refrain or cease from employing any worker who is not a member of a union, may apply to the Secretary of the Tribunal for a certificate of exemption from such provision.”

Hon. G. F. GAIR to move:

*Proposed section 112c:*

To omit this section and substitute the following:

“112c. **Grounds for exemption**—(1) An application for a certificate of exemption may be made only on one or more of the following grounds:

“(a) Where the applicant is a worker, that—

“(i) The applicant genuinely objects on the grounds of conscience or other deeply held personal, religious, or ethical conviction to becoming or remaining a member of any union whatsoever or of a particular union; or

“(ii) The applicant is a relative of the employer by blood relationship, marriage, or adoption:

“(b) Where the applicant is an employer, that the applicant’s responsibilities as an employer in complying with any provision of this Act or of any award or collective agreement concerning a union membership clause conflict with his conscience or other deeply held personal, religious, or ethical conviction.

“(2) For the purposes of determining whether an applicant is a relative of an employer under subsection (1) (a) (ii) of this section,—

“(a) Persons are connected by blood relationship if within the fourth degree of relationship:

“(b) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other:

“(c) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.”

*Proposed section 112F:*

To add the following words:

“or, where the applicant is an employer, to—

“(a) Every union whose membership includes workers employed by the applicant; and

“(b) The Employers Federation.”

*Proposed section 112G:*

To add the words “and to the applicant”.

*Proposed section 112H:*

To omit the word “may” (at line 17 on page 33) and substitute the word “shall”.

*Proposed section 112I:*

To omit from subsection (1) the word “or” (at line 22 on page 33) and also paragraph (b).

To omit from subsection (1) all the words in line 32 on page 33, and substitute the words “application was referred under section 112F of this Act.”

Mr PETERS to move:

*Proposed section 112K:*

To omit this section and substitute the following:

“112K. **Exemption - pending determination of application**—Pending the determination by the Tribunal of any application made under section 112B of this Act and, where there is an application for a rehearing or an appeal has been lodged, pending the determination of any such rehearing or appeal, the applicant shall not be required to belong to any union, or to employ or continue to employ any person who is a member of a union, or to refrain from or cease employing any person who is not a member of a union.”

*Proposed section 112L:*

To omit all the words in lines 21 to 23 on page 34, and substitute the following:

“fulfils the requirements of any relevant ground of exemption specified in **section 112c** of this Act.”

*Proposed section 112N:*

To add the following paragraph:

“(d) In the case of an applicant who is an employer, to the New Zealand Employers Federation (Inc).”

Mr R. F. H. MAXWELL to move:

*Proposed section 112o:*

To insert in subsection (1), after the word “membership”, the word “requirements”.

To insert in subsection (2), after the word “person” in line 5 on page 35, the words “, such person being a worker,”.

To add the following subsection:

“(3) A certificate of exemption issued to any employer shall detail the provisions of any enactment, award, or collective agreement from which that employer shall be exempt.”

*Proposed new section 112oA:*

To insert, after the proposed section 112O, the following new section:

“112oA. **Effect of employer exemption on workers employed by that employer**—Notwithstanding anything in the provisions of any enactment, award, or collective agreement detailed in a certificate of exemption issued under **section 112o** of this Act, no worker who is employed by the employer to whom the certificate has been issued shall be required under such provisions to become or remain a member of any union in respect of his employment with that employer.”

Dr LOCKWOOD SMITH to move:

*New clause 6A:* To insert, after clause 6, the following new clause:

**6A. Miscellaneous exemptions**—The principal Act is hereby amended by inserting, after **section 112a** (as inserted by **section 6** of the **Union Membership Act 1985**), the following section:

“112R. (1) Notwithstanding anything in this Act or in any union membership clause within the meaning of **section 98** of this Act, no person shall be obliged for the purposes of any employment in respect of which an award or collective agreement is in force to become or remain a member of any union of workers if—

“(a) The earnings of that person by way of commission in that employment amount, over any year of employment or proposed employment, to more than one half of the earnings of that person in that employment; or

“(b) That person works not more than 34 hours per week, on a regular basis, for salary or wages; or

“(c) That person is a shareholder in the body corporate which employs that person, and has a shareholding of not less than 2 percent of the total value of the shares of the body corporate which carry a voting entitlement; or

“(d) That person is, and employment duties require that person to be, the holder of a qualification specified in Schedule 1A to this Act.”

*Clause 7:* To omit from paragraph (c) of the proposed section 113 the expression “6 months” (at line 24 on page 36), and substitute the expression “12 months”.

To omit from paragraph (c) the expression “14 days” (at line 26 on page 36), and substitute the expression “14 clear working days”.

*Clause 9:* To omit subclause (1).

Mr TOWNSHEND to move:

*Clause 10:* To omit from the proposed section 146A (1) (a) the words “Other than by the lawful insertion in any award or collective agreement of a union membership clause within the meaning of section 98 of this Act,”.

Mr EAST to move:

To insert, after subsection (2) of the proposed section 146A, the following subsection:

“(2A) Without limiting the meaning of the term ‘undue influence’ in subsections (1) and (2) of this section, it is hereby declared that, for the purposes of those subsections, a person or body exerts undue influence on any worker or person if that person or body—

“(a) Threatens the worker or person, or any relative of the worker or person, with violence, or with any loss or detriment; or

“(b) Indulges in an intimidatory course of action towards the worker or person, or any relative of the worker or person; or

“(c) Directly or indirectly causes the worker or person, or any relative of the worker or person, to suffer any loss or detriment.”

Mr TOWNSHEND to move:

*Clause 13:* To add to the proposed new subsections of section 182 the following subsection:

“(1B) No person under the age of 18 years shall be required to pay the full amount of any subscription to a union unless that person is receiving the adult wage under the award by which that person is covered, and every union shall, notwithstanding anything in its rules, effect a reduction in the rate of subscription to the effect that any person under the age of eighteen shall pay that proportion of the subscription that their current wage bears to the relevant adult wage for the job.”

To add the following subclause:

(2) Section 182 of the principal Act is hereby further amended by inserting, in the place of the subsection (4) repealed by

section 14 (1) of the Industrial Relations Amendment Act 1983, the following subsection:

“(4) It shall not be competent for any union of workers, or for a society of workers bound by an agreement under section 141 of this Act, to provide in its rules for the payment by its members of subscriptions at a weekly rate exceeding, in the case of any worker, an amount equal to 1 percent of the minimum weekly rate of wages applicable to the worker under the award or collective agreement, or under the agreement under the said section 141, governing his conditions of employment, unless the rules, so far as they relate to the subscriptions payable by members, have been adopted by a majority of the valid votes cast at a secret ballot of financial members of the union or society, being either a postal ballot or a ballot conducted in such other manner as may be approved by the Registrar.”

*Clause 14:* To omit from the proposed subsection (2) of section 219 the word “forthwith”, and substitute the words “within five working days”.

*Clause 17:* To omit this clause.

Mr MCLEAN to move:

*Clause 18:* To insert, after subclause (4A), the following subclause:

“(4B) Where, pursuant to this section, an award or collective agreement is deemed to contain or has inserted in it a union membership clause, any worker who is bound by that award or collective agreement may pay to any charitable organisation recognized by the Registrar an amount equivalent to the union subscription that worker would be otherwise bound to pay, and in any such case—

“(a) The worker shall not be required to pay such union subscription to the union; and

“(b) Employment of the worker in any position or occupation shall be permitted as if the worker were a financial member of the union to which the worker would, but for this subsection, be required to pay a union subscription.