

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, the 25th Day of November 1976

COMMERCE AMENDMENT BILL

Proposed Amendments

(The amendments shown on this Supplementary Order Paper supersede those shown on Supplementary Order Paper No. 38.)

HON. MR ADAMS-SCHNEIDER, in Committee, to move the following amendments:

Clause 2: To insert in line 9 on page 3, after the word “practices,”, the words “to prevent strikes and lockouts against the public interest.”

Clause 4A: To insert, after *clause 4*, the following new clause:

4A. Deputy Chairman and acting Chairman—(1) The principal Act is hereby amended by inserting, after section 3, the following section:

“3A. (1) In any case in which the Chairman becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chairman, or if the Chairman deems it not proper or desirable that he should adjudicate on any specified matter, the Deputy Chairman shall have and may exercise all the powers, functions, and duties of the Chairman.

“(2) In any case in which the Chairman or the Deputy Chairman becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the Chairman or the Deputy Chairman deems it not proper or desirable that he should adjudicate on any specified matter, the Minister may by writing appoint an ordinary member or members of the Commission to act for the Chairman and, as the case may require, the Deputy Chairman for the period or purpose stated in the appointment:

“Provided that no appointment shall be made of any ordinary member to act as the Chairman if the Deputy Chairman may act in place of the Chairman for that period or for the purpose to be stated in the appointment.

“(3) Any member of the Commission appointed to act for the Chairman or the Deputy Chairman under subsection (2) of this section shall, while he acts as such, be deemed to be the Chairman or, as the case may require, the Deputy Chairman and shall have and may exercise all the powers, functions, and duties of that office for the period or for the purpose stated in the appointment.

“(4) No appointment of a member of the Commission to the office of Chairman or Deputy Chairman and no acts done by him as such, and no act done by the Commission while any member is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.”

(2) Section 3 (4) of the principal Act is hereby consequentially repealed.

Clause 32A: To insert, after *clause 32*, the following new clause:

32A. New Part IVA inserted—The principal Act is hereby amended by inserting, after Part IV, the following Part:

“PART IVA

“STRIKES AND LOCKOUTS CONTRARY TO THE PUBLIC INTEREST

“119A. Interpretation—(1) In this Part of this Act, ‘union’ means—

“(a) An industrial union registered or deemed to be registered under the Industrial Relations Act 1973; or

“(b) An organisation of employees or employers (whether incorporated or not) that is not registered or deemed to be registered as an industrial union under the Industrial Relations Act 1973.

“(2) For the avoidance of doubt, but subject to subsection (3) of this section, it is hereby declared that this Part of this Act applies to persons employed in any branch of the State services as defined in section 2 of the State Services Remuneration and Conditions of Employment Act 1969.

“(3) Nothing in this Part of this Act shall apply to members of the Armed Forces or to members of the Police of New Zealand.

“(4) Subject to subsections (1) to (3) of this section, expressions used in this Part of this Act which are defined in the Industrial Relations Act 1973 have the meanings so defined.

“(5) Nothing in sections 2 and 2A or in Part V of this Act shall apply in respect of this Part of this Act.

“119B. Offence to strike or lockout in respect of non-industrial matter—(1) Every person commits an offence who is a party to, or incites, instigates, aids, or abets—

“(a) A strike or lockout concerning a matter—

“(i) Which is not an industrial matter; or

“(ii) Which the employers and workers involved in the strike or lockout or their respective unions do not have the power to settle by agreement between them; or

“(b) A strike or lockout that is intended to coerce the New Zealand Government (in a capacity other than that of employer) either directly or by inflicting inconvenience upon the community or any section of the community.

“(2) Every person who commits an offence against subsection (1) of this section shall be liable on summary conviction—

“(a) If a worker or other person to whom the following paragraphs of this subsection do not apply, to a fine not exceeding \$150:

“(b) If an officer or member of the committee of management of any union or association, or of the branch (if any) concerned, to a fine not exceeding \$700:

“(c) If a person acting on behalf of an employer, to a fine not exceeding \$700:

“(d) If a union, association, or employer, to a fine not exceeding \$1,500.

“(3) Every person who is a party to, or incites, instigates, aids, or abets a strike or lockout of the kinds mentioned in subsection (1) of this section shall, in addition to any fine to which he may be liable under that subsection, be liable at the suit of any person suffering any loss or damage thereby or apprehending the suffering of any loss or damage thereby to any or all of the remedies available in civil proceedings in tort, and to the same extent as if the strike or lockout were a tort independently of this section:

“Provided that no award of damages shall be made except against a union or association or body corporate or employer.

“(4) If in any action under subsection (3) of this section the full amount of any damages or costs awarded against any union or association or body corporate is not fully satisfied within 2 months after the date of judgment, all persons who were members of the union or association or body corporate, at the commencement of the strike or lockout in respect of which the judgment was given, shall (unless an order staying execution has been duly made in accordance with rules of court) be jointly and severally liable on the judgment in the same manner as if it had been obtained against them personally, and all proceedings in execution or otherwise in pursuance of the judgment to the extent that it remains unsatisfied may be taken against them or any of them accordingly, except that no person shall be liable under this subsection for a larger sum than \$200 in respect of any one judgment.

“119c. Failure to resume work where public interest affected—(1) Where the Industrial Court is satisfied that—

“(a) The economy of New Zealand, including in particular its export trade, is substantially affected, or there is every likelihood that it will be substantially affected in the immediate future, by a strike or lockout; or

“(b) The economy of a particular industry or particular industries is seriously affected, or it is clearly evident that it will be seriously affected in the immediate future, by a strike or lockout; or

“(c) The life, safety, or health of members of the community is endangered by a strike or lockout—

it shall order a resumption of full work or, as the case may require, of the operation of any undertaking, and (where appropriate) shall at the same time determine the procedure for the settlement of the issue of the strike or lockout and order the taking of any necessary measures for the safety and health of the workers concerned directly or indirectly in the dispute.

“(2) Where in the case of a strike the issue is one of safety or health the Industrial Court, before making an order for the resumption of work under subsection (1) of this section, shall ensure that a competent authority has investigated the issue and has certified that it no longer exists.

“(3) Without prejudice to subsection (1) of this section, in the case of a rolling strike the Industrial Court may order the cessation of any further strike action in furtherance of the rolling strike. Any such order shall be deemed to be an order for the resumption of work pursuant to subsection (1) of this section. For the purposes of this subsection the expression ‘rolling strike’ means the action of a number of workers, acting in concert or pursuant to a common understanding, in striking in relay.

“(4) For the purposes of this section, the resumption of a strike or lockout in respect of which an order for the resumption of work or the operation of an undertaking has been made shall be a failure to observe the order.

“(5) An order for the resumption of work or the operation of an undertaking under subsection (1) of this section may be applied for by—

“(a) Any Minister of the Crown on the grounds set out in paragraph (a) or paragraph (c) of subsection (1) of this section; or

“(b) Any person who proves to the Court that he is directly affected by the strike or lockout; or

“(c) Any organisation representing any person referred to in paragraph (b) of this subsection.

“(6) An application under subsection (5) of this section shall be made and dealt with in accordance with the practice of the Industrial Court and in accordance with any rules or regulations governing the procedure of that Court.

“(7) Every employer or worker commits an offence who fails to comply with an order made under this section for the resumption of work or the operation of an undertaking and shall be liable on summary conviction—

“(a) In the case of an employer, to a fine not exceeding \$1,500:

“(b) In the case of a worker, to a fine not exceeding \$150.

“(8) Where an order for the resumption of work or the operation of an undertaking made by the Industrial Court under this section is not complied with by any workers or employers—

“(a) Every union to which the workers or employers belong shall be deemed to have committed an offence against this section and shall be liable on summary conviction to a fine not exceeding \$1,500 if it is proved that any officer or member of the committee of management of the union—

“(i) Advocated or suggested or connived at non-compliance with the order; or

“(ii) Wilfully failed to inform any worker or employer who was bound by the order that failure to comply with it would constitute an offence; or

“(iii) Incited, instigated, aided, or abetted any worker or employer in the commission of an offence against this section; and

“(b) Every person, being an officer or member of the committee of management of any union to which the workers or employers belong or a person acting on behalf of any such employer, shall be deemed to have committed an offence against this section and shall be liable on summary conviction to a fine not exceeding \$700 if it is proved that he committed any act mentioned in sub-paragraphs (i) to (iii) of paragraph (a) of this subsection.

“(9) In this section ‘Industrial Court’ means the Industrial Court constituted under the Industrial Relations Act 1973.

“(10) Nothing in section 125 or section 125A of the Industrial Relations Act 1973 shall affect any liability under this section, save that when a judgment or conviction has been obtained against any person under this section no further proceedings shall be taken or continued against him under section 125 or section 125A of the Industrial Relations Act 1973 in respect of the same act.

“119D. **Application of this Part to Crown corporations—** Every body corporate which is an instrument of the Crown in respect of the Government of New Zealand or which is a Government Department or a permanent head of a Government Department shall be a person to whom this Part of this Act (other than paragraph (b) of subsection (1) and subsection (4) of section 119B) applies and against whom a prosecution may be brought in respect of an offence against section 119B (1) (a) or section 119C (7) of this Act.

“119E. **Application of this Part to Crown generally—**
 (1) Any person who is directly affected by any act or omission of the Crown which, if done by a person to whom this Part of this Act applies would constitute an offence against section 119B (1) (a) of this Act, or any organisation representing any person so affected, may apply to the Industrial Court for a declaration that the Crown has acted in contravention of section 119B (1) (a) of this Act, and, for the purposes of any such application, the Crown shall be deemed to be a person to whom this Part of this Act applies.

“(2) Any person who is directly affected by any act or omission of the Crown which, if done by a person to whom this Part of this Act applies would constitute a lockout, or any organisation representing any person so affected, may apply to the Industrial Court for an order under section 119C of this Act for the resumption of the operation of the undertaking of the Crown affected by the lockout, on the grounds set out in section 119C (1) of this Act, and, for the purposes of any such application, the Crown shall be deemed to be a person to whom this Part of this Act applies.

“(3) Where an order for the resumption of the operation of an undertaking of the Crown made by the Industrial Court under section 119C of this Act (as applied by subsection (2) of this section) is not complied with by the Crown, any person who is directly affected by that non-compliance or

any organisation representing any such person may apply to the Industrial Court for a declaration that the Crown has failed to comply with the order, and, for the purposes of that application, the Crown shall be deemed to be an employer to whom this Part of this Act applies.

“(4) The Crown shall be liable, at the suit of any person suffering loss or damage caused by any act or omission of the Crown which if done by a person to whom this Part of this Act applies would constitute an offence against section 119B (1) (a) of this Act, to all those liabilities in tort to which it would be subject if that act or omission were a tort independently of this section.

“(5) An application under subsection (1) or subsection (3) of this section shall be made and dealt with in accordance with the practice of the Industrial Court and in accordance with any rules or regulations governing the procedure of that Court.”

Clause 33A: To insert, after *clause 33*, the following new clause:

33A. **Publication of information**—Section 130 (2) of the principal Act is hereby amended by inserting, after the word “Minister,”, the words “or shall, at the direction of the Minister,”.

EXPLANATORY NOTE

Clause 2: The proposed amendment alters the Title to the principal Act to take account of the substance of the new Part IVA proposed to be inserted by this Supplementary Order Paper.

Clause 4A: This proposed new clause inserts a new section which deals with the powers of the Deputy Chairman, and provides for the appointment of an acting Chairman in certain circumstances.

Clause 32A: This proposed new clause inserts a new Part IVA. The new Part (which deals with strikes and lockouts contrary to the public interest) contains the sections 124B and 124D which were recommended by the Labour Committee for omission from the Industrial Relations Amendment Bill (No. 3) and inclusion in other legislation.

The new section 119A contains an extended definition of the term “union” for the purposes of the new Part of this Act. The term is defined to mean—

- (a) An industrial union registered or deemed to be registered under the Industrial Relations Act 1973; or
- (b) An organisation of employees or employers (whether incorporated or not) that is not registered or deemed to be registered as an industrial union under the Industrial Relations Act 1973.

Subsection (2) of the new section makes it clear that, subject to *subsection (3)*, the new Part applies to persons employed in the State services.

Subsection (3) excludes members of the Armed Forces and members of the Police from the new Part.

Subject to the foregoing exceptions, expressions used in this Part of this Act which are defined in the Industrial Relations Act 1973 have the meanings so defined.

The interpretation, objects, and miscellaneous provisions of the Commerce Act 1975 are not to apply for the purposes of the new Part IVA.

The new section 119B provides that every person commits an offence who is a party to, or incites, instigates, aids, or abets—

- (a) A strike or lockout concerning a matter—
 - (i) Which is not an industrial matter; or
 - (ii) Which the employers and workers involved in the strike or lockout or their respective unions do not have the power to settle by agreement between them; or
- (b) A strike or lockout that is intended to coerce the New Zealand Government (in a capacity other than that of employer) either directly or by inflicting inconvenience upon the community or any section of the community.

The penalties for the offence range from a fine not exceeding \$150 in the case of a worker to a fine not exceeding \$1,500 in the case of a union, association, or employer. An officer or member of the committee of management of a union or association, or of the branch (if any) concerned, and a person acting on behalf of an employer, is liable to a fine not exceeding \$700.

Persons who contravene the section not only commit offences but also render themselves liable to be sued by any person suffering any loss or damage as a result of the strike or lockout or apprehending the suffering of any loss or damage thereby. Any such person will have available to him any or all of the remedies available in civil proceedings in tort, except that awards of damages may be made only against unions, associations, bodies corporate, or employers.

If, however, any judgment for damages or costs against a union or association or body corporate is not satisfied, each person who was a member of the union or association or body corporate when the strike or lockout began will be liable to pay a sum not exceeding \$200 in satisfaction of that judgment.

The new section 119c provides that where the Industrial Court is satisfied that—

- (a) The economy of New Zealand, including in particular its export trade, is substantially affected, or there is every likelihood that it will be substantially affected in the immediate future, by a strike or lockout; or
- (b) The economy of a particular industry or particular industries is seriously affected, or it is clearly evident that it will be seriously affected in the immediate future, by a strike or lockout; or
- (c) The life, safety, or health of members of the community is endangered by a strike or lockout—

it shall order a resumption of full work or, as the case may require, of the operation of any undertaking.

Where appropriate the Industrial Court will at the same time determine the procedure for the settlement of the issue, and order the taking of any necessary measures for the safety and health of the workers. Where in the case of a strike the issue is one of safety or health the Court must, before ordering a resumption of work, ensure that a competent authority has certified that the issue no longer exists. Section 119c (3) covers the case of a rolling strike. Subsection (5) provides that an application for an order under the section may be made by any Minister of the Crown (on the grounds set out in paragraph (a) or paragraph (c) of subsection (1)) or by or on behalf of any person who proves to the Court that he is directly affected by the strike or lockout. A breach of an order under this section constitutes an offence.

The new sections 119D and 119E deal with the application of the new Part IVA to the Crown.

Clause 33A: The proposed new clause requires the Secretary of Trade and Industry to publish information (other than confidential information) relating to the determination of prices if the Minister so directs.