

New Zealand Law Society

Submission on Employment Relations (Workers' Secret Ballot for Strikes) Amendment Bill

Introduction

1. The Bill amends the Employment Relations Act 2000 to provide that a strike must be approved by a secret ballot of the members of the union who would become parties to the strike.
2. The Society is neutral on the policy objective of the Bill but makes several drafting comments.

Requirement for approval

3. In clause 4 the stated purpose of the Bill does not align with the current wording of the proposed new subsection 81(4) of the Act. Clause 4 provides that the purpose of the Bill is to require unions to hold a secret ballot vote of their members “*to approve*” a strike before undertaking any strike action. However, the proposed new subsection 81(4) simply provides that a strike may not proceed unless “*the question has been submitted to a secret ballot of those employees who are members of the union*”. As such, the Bill does not require that the strike proposal be approved by secret ballot.

Recommendation

4. That clause 6 be amended to provide that a strike proposal must be approved by a secret ballot.

Standard for approval

5. In other parts of the Act, the standard for the approval of a question put to a secret ballot is expressly set out. For example:
 - 5.1 Section 45(4) of the Act provides that the result of a secret ballot on the initiation of bargaining for a collective agreement is determined by “*a single majority of members who are entitled to vote and do vote.*”
 - 5.2 Section 69Q(5) of the Act provides that “*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*”.

Recommendation

6. That the Bill expressly states that the standard for approval of a strike by secret ballot is a simple majority of the votes cast by the members of the union who would become parties to the strike.

Clarification of legal consequences

7. The Bill should clarify the legal consequences of a strike not being approved by a secret ballot. As drafted, the Bill simply amends s81, which sets out the meaning of “*strike*”, to insert a requirement for the strike proposal to be submitted to a secret ballot.
8. Consideration should be given to the implications of the Bill for s107(1)(ba) of the Act, which defines “*involvement in the activities of a union*” for the purposes of s104 to include an employee who “*had participated in a strike lawfully.*”

Recommendation

9. That the meaning of the Bill be clarified by providing that a strike that is not authorised in accordance with the proposed new subsection 81(4) of the Act constitutes an unlawful strike for the purpose of s86 of the Act. This would have the consequence that an unauthorised strike would not qualify as “*lawful strike*” for the purposes of s83(a) and would therefore not be subject to the protections contained in s85 of the Act.

Drafting recommendations

10. That clause 6 should be amended to read:

“(4) A strike may not proceed under this Act, unless the question has been approved by the majority of votes cast in a secret ballot by those employees who are members of the union that would become parties to the strike if it proceeded.”
11. That the Bill provide for a new subsection 86(1)(h) to be inserted into the Act:

“(h) takes place in contravention of section 81(4).”
12. The Society does not wish to be heard.



Jonathan Temm
President
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