PREM 19/1281

MT

Part 10

CONFIDENTIAL FILING

INDUSTRIAL RELATIONS LEGISLATION

THE EMPLOYMENT BILL

STRIKES IN ESSENTIAL SERVICES

INDUSTRIAL

POLICY

PART 1: MAY 1979

PART 10: MARCH 1983

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~7.3.83~~		~~26.7.83~~		PREM		19/1281	
~~14.3.83~~		~~5.8.83~~					
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~~27.4.83~~		~~9.9.83~~					
~~28.4.83~~		~~13.9.83~~					
~~29.4.83~~		~~17.10.83~~					
~~1.5.83~~		~~26.10.83~~					
~~10.5.83~~		~~28/10/83.~~					
~~11.5.83~~		~~31/10/83.~~					
~~16.5.83~~		~~14.11.83~~					
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~~6.7.83.~~		~~4.1.84~~					
~~11.7.83~~		~~3.2.84~~					
~~12.7.83~~		~~16.2.84~~					
~~13.7.83~~		~~20/2/84.~~					
~~18.7.83~~		21.3.84					
~~18.7.83~~							
~~20.7.83~~							

PART 10 ends:-

Hansard extract 2.4.84.

PART 11 begins:-

AT to Employment 5/4.

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
L(83) 126	15/11/1983
CC (83)17th Item 4	10/05/1983
E(83) 4th Meeting	28/04/1983
E(83) 9	22/04/1984

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed _____ Date 24/09/2013

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Commons HANSARD, 2 April 1984, column 676 to 782: Trade Union Bill

House of Commons HANSARD, 6 December 1983, column 161 to 166: Companies (political Contributions)

House of Commons HANSARD, 12 July 1983, column 773 to 786: Trade Union (proposals for Legislation)

Signed _____ Date 24/09/2013

PREM Records Team

SC. NAT. HEALTH:
NHS Pay Part 3

SECRET

file ref Strikes in Essential Services purposes.

AT 21/3

20

MR TURNBULL

c Mr Redwood

PAY DISPUTES IN THE NHS

Norman Fowler's paper for E(PSP) suggests that the Government should offer to set up arbitration machinery in exchange for a "no-strike" agreement with the Health Service Unions.

We are sceptical for several reasons: unilateral access to normal (ie 'non-flip-flop') arbitration is expensive; bilateral access does little to prevent strikes; and "no-strike agreements" are almost worthless unless they are accompanied by action on immunities. We also believe that it would be imprudent for the DHSS to make any offers to the Health Service Unions in advance of general decisions on strikes in essential services.

We understand that both the Chancellor and the Home Secretary are likely to argue against an offer being made at this stage.

OLIVER LETWIN

Policy Unit
21 March 1984

SECRET

B

JF6010

CONFIDENTIAL

PRIME MINISTER

When Oliver Letwin came to see me I sketched out my views on Tom King's paper on strikes in essential services. Since I cannot attend tomorrow's meeting, I am writing to set out my views.

2 Perhaps it is most important to recollect - and to remind the public - that we are not starting from the position at the time of the winter of discontent. The 1980 and 1982 Acts have made great changes as will the Bill currently going through Parliament. Within the limits of what is both politically possible and also both workable and effective, there are not a lot of dramatic initiatives left.

3 I support the general thrust of Tom King's paper. Like him I shy away from compulsory arbitration. While so called flip-flop arbitration has attractions I do not think aspirations are yet sufficiently realistic, nor arbiters sufficiently hard nosed, to reply upon it.

4 So far as special majorities in strike ballots to achieve immunity are concerned, I believe it would be hard to impose levels abover 50 per cent without offering some concession in return - and I cannot easily think of a concession I would wish to offer.

CONFIDENTIAL

5 Tactically it might be a good move to canvas flip-flop arbitration. In the event that it secured wide-spread approval the risks might be worthwhile. I would not canvass the option of majorities above 50 per cent since it would be bitterly opposed by the union side and probably enthusiastically welcomed by the Party. It would thus be awkward for us to disavow it and we might not wish to impose it against absolutely solid opposition.

6 I am copying this to those who received Tom King's minute of 13 February, to Tom King himself, and to Sir Robert Armstrong.

NT

N T

13 March 1984

Department of Trade and Industry

020

SECRET

Prime Minister

Mr Tebbit is unable to attend but has commented in the attached minute.

19B

AT 13/3

P.01243

PRIME MINISTER

This bring is superceded by 18.4.84 ↓ pt. 11

Strikes in Essential Services

A

This meeting is a continuation of the Ministerial discussion on 15 November 1983 of how to carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity".

2. On 15 November Ministers agreed with the Secretary of State for Employment that the following approaches should be rejected: making strikes in essential services criminal offences; "no-strike" agreements; making procedural agreements enforceable at law; or removing immunity from civil action entirely from strikes in essential services. They favoured the approach of making immunity for industrial action in essential services depend on the observance of procedures. It remained to be decided whether it would be enough to apply three simple tests suggested by the Secretary of State for Employment (no action during the currency of a substantive agreement, no action until all stages of any extant procedure agreement had been exhausted, and a minimum period of notice between deadlock in negotiations and the start of industrial action); or whether the legislation should prescribe the actual contents of procedure agreements in essential services and, if so, whether these procedures should include compulsory arbitration. The Secretary of State for Employment was asked to consider these points further and his minute of 13 February is the result.

B

MAIN ISSUES

3. The main issues are:

i. whether the general approach of making immunity depend on the observance of procedures is still thought preferable to other approaches;

ii. if so, whether it is sufficient to rely on the three simple tests rather than to prescribe the contents of procedure agreements;

iii. whether this approach should be reinforced by other measures (eg relating to strike ballots in essential services);

iv. what should be the definition of essential services;

v. when the consultations should take place.

Other approaches

4. It is unlikely that anyone will wish to revive discussion of the criminalisation of strikes in essential servives. On no-strike agreements, there have been suggestions that the trade unions representing the non-nursing groups in the National Health Service may wish to pursue this approach. If the Secretary of State for Social Services raises this, the meeting will need to consider whether the price for such an agreement is likely to be acceptable. Articles in the press about Sir Leonard Neal's report for the Centre for Policy Studies may also revive the debate about:

- making all procedure agreements (ie not just in essential services) enforceable in law

- removing civil immunity entirely from industrial action in essential services.

5. You are familiar with the arguments against making procedure agreements generally enforceable at law. Employers are opposed to this, on the grounds that the unions might invoke such powers to management's disadvantage where it suited them, but would refuse to enter into, and might even withdraw from, procedure agreements potentially of advantage to management.

6. On the proposal to remove civil immunity altogether from strikes in essential services, the main argument has been that the workers concerned would be entitled to some trade-off for the inhibition on their ability to bargain effectively with their employer. Sir Leonard Neal's proposals do in fact include such a trade-off in the form of compulsory arbitration. The potential drawbacks of that for the Government are discussed later in this brief in the context of Mr King's minute of 13 February.

Secretary of State for Employment's proposed approach

7. If Ministers confirm their earlier view that other approaches should not be pursued, the discussion can be confined to the approach of making civil immunity depend on observance of procedures and the points dealt with in Mr King's minute of 13 February.

8. The main weakness seen in Mr King's three simple tests was that the second test (no action until all stages of any extant procedure agreement had been exhausted) would have no significance unless satisfactory procedure agreements already existed. It was argued that to remedy this weakness some minimum procedure agreements should be required by law, providing for successive steps which would have to be passed through before industrial action could occur, and possibly

including compulsory arbitration as a final stage.

9. Mr King has concluded that it would be best to stay with the three simple tests. He argues that in the essential service industries there are already adequate procedures on minor matters, such as grievances, where the step by step approach of discussion at successively higher levels may be helpful. On the major matters such as pay he does not consider the step by step approach as appropriate, since both management and unions tend to be involved at a high level and nationally from the outset. He also does not see any need to build more delay into the system since, unless the unions want to provoke a confrontation, it is usually possible for the employer to arrange for several rounds of discussion over a period. If the object is merely to build more delay into the system, it would no doubt be argued that this is adequately met by the third of Mr King's tests - the need to provide for a minimum period of notice between deadlock in negotiations and the start of industrial action.

10. The suggestion that the final stage in the prescribed procedure should be compulsory arbitration raises more fundamental issues. Mr King's approach leaves open the possibility of immunity for industrial action in essential services; he seeks only to remove immunity from action taken precipitately. Making immunity depend on compliance with compulsory arbitration would be equivalent in practice to removing civil immunity altogether from industrial action in essential services.

11. The main argument against compulsory arbitration is that it may tend to result in excessively high wage awards. Arbitrators, when put in the position of producing a final binding solution, may feel obliged to go some considerable

distance towards meeting the union's claim. An attempt to circumvent this by providing for governmental or Parliamentary override might create more problems than it would solve. In effect it would be equivalent to giving the Government or Parliament the right, in the last resort, to fix the pay of workers in the particular services concerned and, if civil immunity for industrial action had been removed, the only means of protest would be to defy the law. The feeling of Ministers at the meeting on 15 November was that it would not be feasible or prudent to attempt to screw down the lid on industrial action in the essential services too tightly, and that the better approach was to circumscribe the circumstances in which industrial action could attract immunity rather than to remove the possibility altogether.

Strike ballots

12. At the meeting on 15 November it was suggested that Mr King's approach might be reinforced if the legislation currently before Parliament on strike ballots provided for a higher majority to be secured for strike action in essential services. The strike ballot provisions which have passed through Committee Stage in the Commons contain no requirement that immunity from civil action should depend on securing a given majority. The requirement is merely to have a ballot. This is deliberate, as existing union requirements vary. In some cases the test is as high as a two-thirds majority of those entitled to vote. In the case of the miners, as is well known, the requirement is 55 per cent of those voting. It was thought undesirable to put a threshold in the legislation. Levelling up the requirement to the existing highest levels might have been held to be too restrictive while pitching it lower would have been a retrograde step. Since the general provision contains no threshold, it is difficult to provide one specifically for essential services. Mr King is therefore

opposed to such a proposal and is in any case understood to take the view that the Government ought not to give the impression that strike action in essential services would be justified simply because a large majority of the workers voted in favour of it.

Definition of essential services

13. It will be necessary to define the essential services to which any special provisions apply. Mr King is understood to maintain the view he put to the meeting on 15 November, ie that the provisions should be confined to water, gas, electricity, and the health service. At that meeting it was agreed to avoid extending the list to include local authority employees such as sewage workers, although it was thought that an exception might be made for the fire service. The Home Secretary is thought likely to oppose this on the grounds that the pay indexation arrangements for the fire service make it unnecessary to take additional measures to deter them from industrial action. Sir Leonard Neal's proposals are understood to include not only Mr King's four services and also sewage workers but, in addition, workers who, while not directly employed in these services, could damage them by their industrial action. This would for example bring in the miners in respect of electricity. Moreover industrial action by workers in many industries could have an impact on the health service. Ministers will probably see disadvantages in a wide-ranging approach on these lines. They may therefore prefer to stay with Mr King's shortlist of four essential services. Even so, it would be realistic to expect that the Government may have some difficulty in justifying the selection, and may come under pressure to extend the list.

Timing of consultations

14. In his minute of 13 February Mr King suggests that, if

his proposals are endorsed, they should be worked up into a consultative document. Unless industrial action of a kind on which the proposals would bite should take place in one of the essential services in the coming months, he would propose to issue the document in the autumn with a view to legislation in the 1985/86 Session. There might well be advantage in deferring publication until after the Trades Union Congress in September.

HANDLING

15. You will wish to invite the Secretary of State for Employment to introduce the proposals in his minute of 13 February. The Chancellor of the Exchequer may have general comments. The Secretaries of State for Energy, the Environment and Social Services, who have responsibility for services affected by the proposals, should be asked for their views.

CONCLUSIONS

16. You will wish to reach conclusions on:

i. whether consultations on immunity for industrial action in essential services should be on the basis set out in the Secretary of State for Employment's minute of 13 February;

ii. whether the proposals should be contained in a consultative document to be issued in the autumn with a view to legislation in the 1985/86 Session.

P L GREGSON

12 March 1984

SECRET

Policy Unit
12 March 1984

19A

PRIME MINISTER

STRIKES IN ESSENTIAL SERVICES

You are meeting with Tom King and other Ministers on Wednesday, to discuss the next move against strikes in essential services. Three issues need to be resolved:

1. Definition: what services should be regarded as essential?

2. Checks: what hoops should a union have to pass through before it can disrupt an essential service?

3. Tactics: how and when should the new measures by introduced, and how should we handle consultation in the wake of GCHQ?

1. DEFINITION

Some services are essential in the sense that they have a direct effect on health and safety. In this category are:

Gas
Water
Electricity
Parts of the NHS
Fire
Police
Army

Of these, the Police and the Army are already secure. And it is likely that there is strong support both inside and outside Cabinet, for protecting Gas, Water and Electricity. The main questions for the meeting are:

- whether the fire service should be included;

- and what parts of the NHS are vital?

We believe that fire should be included, because (1) the effects of a strike in this area can be dramatic and highly unpopular and (2) the service is popularly regarded as parallel to the police. But the NHS is more difficult: we need to ask DHSS for more information about the tasks performed by the various classes of workers; some will undoubtedly be more important than others.

Certain other activities, which do not have a direct effect on life and limb, are nevertheless very important to the smooth running of society. Amongst these are:

Rail
Bus
Tube
Oil Delivery
Coal Mining
Docks
Airports

We believe that these should not at present be included. The point of the exercise is to keep popular opinion firmly on our side by dealing only with that small group of services which are incontrovertibly essential. If the Government extends itself too far, it risks losing the whole package. If, on the other hand, it selects only a small number at first, it will then be in a position to make further inroads in subsequent legislation.

We therefore recommend:

i. That the definition of an "essential service" should be that it has "a direct effect on health and safety";

ii. That Gas, Water, Electricity and Fire should be included;

iii. That Norman Fowler's office at the DHSS should be asked (privately) to provide a list of vital NHS functions;

iv. That all other industries should be excluded.

2. CHECKS

Tom King proposes that unions in essential services should retain immunities only if they have passed through three hoops before any strike:

i. observing substantive agreements;

ii. observing extant procedure agreements;

iii. taking a period of "cooling-off".

We agree that all of these are useful. But they are not enough: unions do not generally strike while a substantive agreement is in force; the extant procedure agreements are anaemic; and American experience shows that, although cooling-off periods can provide time for employers to take necessary measures, they do not ususally prevent strikes. We need something that will make disruption of the essential services highly unlikely.

There are three possibilities:

- no-strike agreements,
- ballots with 2/3 majorities,
- compulsory arbitration.

We oppose no-strike agreements: they are too expensive.

NB
This is not inconsistent with Policy Unit advice on NHS no-strike agreements. The Unit - like the D.Emp - believes that the NHS unions will drop calls for an agreement if the Government makes loss of immunities a condition.

Ballots with 2/3 majorities are good in two ways: they make it very difficult to hold a strike, and they are easy for the Government to defend - "democracy in the unions". But they are dangerous; if the union gets its majority, the strike may seem to be legitimised. Moreover, we would find it difficult to retract once we mentioned such ballots in a Green Paper, because our supporters would undoubtedly favour the move. This would constrict our room for manoeuvre.

I prefer Jack Peel's term "pendulum arbitration"

Compulsory arbitration is opposed by Tom King because "it removes managements' ultimate control over a major element of costs." His statement is true. But we believe that the disadvantage may be substantially offset by insisting on 'flip-flop' arbitration, in which the arbitrator must decide either wholly in favour of the management or wholly in favour of the unions, without any option to mediate between the two. Discussions with friendly industrialists, and investigations of the American experience suggest that such arbitration leads to low wage demands and to settlements that management can tolerate. If this form of arbitration were made binding on unions, on pain on their losing immunities, we believe that the likelihood both of strikes and of high settlements could be reduced.

We therefore recommend:

i. that no-strike agreements should be rejected;

ii. that ballots with 2/3 majorities should be considered;

iii. that compulsory flip-flop arbitration should also be considered.

3. TACTICS

The Manifesto commits you to "consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity." In the wake of GCHQ, we believe that the consultation should be genuine.

But the Manifesto also says that "the nation is entitled to expect that the operation of essential services should not be disrupted".

We therefore recommend that consultation, though real, should be based on the assumption that tough measures will have to be taken. To this end, we suggest:

i. that you should issue a Green Paper, which clearly and boldly makes the case for action against strikes in essential services;

ii. that the Green Paper should define "essential" as meaning those services that "have a direct effect on health and safety", and should mention Gas, Water, Electricity, Fire, and certain parts of the NHS, as our initial list, but should ask for comments on this list;

iii. that the Paper should announce our intention to use immunities as the lever, and should specify Tom King's three tests as the minimum, but should ask for comments on:

compulsory flip-flop arbitration

and (possibly) on:

ballots with qualified majorities.

We believe that the chances of carrying the public with you will be greatly increased if you engage in genuine consultation on these points.

Having consulted, you will be in a good position to introduce a Bill in the 1985/86 session.

JOHN REDWOOD

OLIVER LETWIN

MR. BUTLER
MR. COLES
MR. TURNBULL ✓
MR. FLESHER
MR. BARCLAY
MR. ALISON
MR. SHERBOURNE

New Date? Now 14.3.84

I have arranged the following meeting with the Prime Minister:-

Subject ... Strikes in EH: services ...

Date ... 21.2.84. ...

Time ... 1600 ...

Venue ... No 10 ...

Person/people invited ... Chex, HS, DTI ...

... S/Em. S/Emp. S/Ew. S/DHSS ...

Chairman RTA & Gregson

Added Ministerial attendance ...

Briefing

a) I have commissioned briefing from ....

✓ b) Could you arrange briefing if necessary

Mr Gregson has agreed to provide this → CR.

Caroline Ryder

cc Mr Gregson
Cabinet Office

File
B/F 9/3

MR. TURNBULL

"Ban strikes in essential services, Thatcher urged" -
Headline and story in Financial Times of February 20th, 1984

1. I attach a copy of the report of the Trade Union reform committee of the CPS which was put forward for their AGM a few weeks ago. You will see that it refers back to a 1983 pamphlet but goes on to reiterate its concern about the limitation of strikes in essential services and the enforcement by law of procedural agreements.

2. I also attach an extract from a paper being produced by the Trade Union Reform Group of the CPS, drafted by Sir Leonard Neal and Lionel Bloch. This is very much a draft. I attach those parts covering the section "the case for reform".

STEPHEN SHERBOURNE
20th February 1984

TRADE UNION REFORM COMMITTEE

In the past year the Group has concerned itself with current proposals before Parliament and, even more urgently, those remedies that appear not to be under contemplation.

The Group's pamphlet, The Right to Strike in a Free Society, which was published in March 1983, embodied the main concerns of its members: the limitation of strikes in essential services and the enforcement by law of procedural agreements. The public is now so much at risk from the irresponsible exercise of trade union power in services that effect life, health and safety that the Government has, we believe, a duty to provide adequate safeguards against such abuse of power. The Group is at present expanding its analysis to include a careful and learned exposition of the present law as it affects strikes in essential services, and perhaps some consideration of less thoroughgoing solutions to the problem than those we proposed. There is a strong feeling in the Group that recent legislation on industrial relations must be implemented in full.

With regard to current proposals, while the Group welcomes the suggestions regarding balloting for union committees and union officials, we have difficulty in believing that these will solve any short-term problems of industrial relations. The Group does, however, believe that the rights of workers during industrial disruption - those of miners opposed to the present overtime ban, for instance - need protection of a kind which will not be afforded by ballots before strikes.

The Group feels that the Government has an unprecedented opportunity to complete the radical reform of trade union law, and hopes that its work will help this process.

Members of the Group

Sir Leonard Neal CBE (Chairman), Lionel Bloch, John Bowis, Michael Colvin MP, John Gorst MP, Professor Cyril Grunfeld, Graham Mather, John Wood.

And can for instance, unskilled hospital workers really be left to determine what is and is not a matter of urgency?

ii) It is equally true, that had employers in an essential service asked the Attorney General to act under Section 5 - and had he agreed to do so - that would have been seized on to exacerbate and prolong the dispute, thus incurring larger immediate losses and subjecting the public to greater risks and inconvenience. Hence, the short-sighted preference for capitulation made palatable by the fig-leaves provided by conciliation services, committees of enquiry etc.

The trouble with this so-called "practical" approach is that the cumulative effect has been disastrous. Each concession offered to avoid or to end a strike creates a powerful precedent for further and ever increasing demands. The resulting momentum has crippled Britain's post-war economy. We have now almost reached a situation where any trade union leader in an essential service can pressurise the community and obtain excessive wage rises by a negotiating technique which consists of asking for 50% more than the maximum he hopes to get. This will usually be met by the employer making a "final" offer of roughly a third of the increase demanded and eventually, often after much argument, and some ruthless industrial action a "half-way" award will be made or a "give and take" compromise reached, by granting to those who were ready to use their industrial "clout", precisely what they hoped to get to start with.

Employees in essential services, have so often exceeded their "final" offers, that nobody takes them for more than bargaining gimmicks.

The Case for Reform

For these reasons, we would recommend that the Government should deal with the problem boldly by way of a consolidated statute that could adapt the essential provisions of the legislation on the subject from 1875 up to the Industrial Relations Act 1971.

Such an Act should first of all specifically prohibit strikes in the ambulance service, the fire brigade, hospital nurses and all medical staff, gas, water, electricity, nuclear power and sewerage services.

The first part of such an Act should deal specifically with the prohibitions. The second part should deal with the machinery for settling disputes, and set out particularly detailed provisions for compulsory arbitration, and also provide the framework for a general procedural agreement. There will always be room, within such a general framework to work out ad hoc arrangements adapted to the needs of any particular service or industry. This part of the proposed Act should also set out the penalties for infringing its provisions - including substantial fines and imprisonment. The fines should be applicable both to trade-union funds and to individuals. The Act will have to define carefully the liabilities of trade union leaders in "official actions" and ring-leaders in unofficial industrial action.

The third part of such an Act should deal with the rewards that would have to be awarded to those who would lose their right to strike.

Inevitably the list of essential services included in such legislation must have a degree of arbitrariness about it, but, whatever is arbitrary can be remedied by introducing an element of flexibility. We must bear in mind that in these days of industrial inter-dependence, workers in auxiliary services which generally speaking could not be considered an essential service, could, by withdrawing their labour, completely paralyse an essential one. This could give those working in the essential services the de facto ability to withold their labour without exposing themselves to the provisions of the new legislation. That kind of abuse could be largely avoided by giving the Secretary of State for Employment, or some appropriate parliamentary commissions, the additional enabling power to:

a) Declare any auxiliary service or industry (without whose labour or support an essential service cannot function), to be subject to the same restriction as the essential services already specifically designated as such in the Act.

b) Extend the prohibition against strikes to groups of key workers in any essential service as herein defined.

This last extension is extremely important in these days of advanced technology, when a handful of skilled and specialist operators could bring an entire industry or service to a complete standstill, by withdrawing their labour. Such people should not be allowed to hold entire communities or even the nation to ransom.

The Do-Nothing School

These proposals are often opposed for a number of reasons that merit brief mention:

Thus, in the Green Paper on Trade Union Immunities, presented by the Secretary of State for Employment in January 1981, (paragraph 323) it is argued that "most people would accept that action which puts lives at risk or imperils national security, constitutes an emergency".

The Green Paper goes on to recognise that essential supplies and services to the sick have been disrupted in the past, but, "in general, workers do not go on strike or if they do so, ensure that essential services are maintained".

Whilst this has been fortunately true in some cases, there have been outstanding exceptions in these last few years, particularly during the hospital porters strike, which have been sufficiently grave to remove any complacency, and more seriously, they have shown us that much worse could happen in the future. "The bad drives out the good" in this area, even more than in others.

The question therefore arises, whether one has to wait for a serious crisis with all its dire consequences, or take preventive action when there is no major crisis, that requires emergency legislation.

4

MASTER OF THE ROLLS' SPEECH ON INDUSTRIAL RELATIONS LAW

Prime Minister:

Sir Tom Dnaldson made a speech earlier this week re-emphasising his well known views on industrial relations policy.

Suggested answer

The Master of the Rolls was expressing his independent point of view as a judge, as he is entitled to do, about a matter concerning the role and administration of the law.

The Government, from its own independent point of view, will naturally study his remarks with interest and respect; but it is not bound either to agree with(or to disagree with) him.

Background Note

1. The Master of the Rolls, Sir John Donaldson, was the guest of honour at the Engineering Employers' Federation Dinner in London on 14th February. The speech he made (copy attached) has received some publicity, for example in the Guardian (copy also attached).

2. In his speech, the Master of the Rolls drew attention to the disadvantages of the present framework of law governing industrial disputes. The law could not and should not be involved in the inevitable day to day frictions of the factory floor; this was a matter for management. But we had inherited a system which allowed 'industrial warfare' within the outer limits set by the law. This had three main disadvantages: (1) it gave the courts a purely coercive role, with no role in settling disputes; (2) it tempted the contestants to overstep the limits if they could not otherwise remedy their grievances; and (3) since it was normally the unions who had to take the initiative in disputes, it was against them that the courts usually had to take coercive action, leading to unjustified accusations of bias, and confrontation between unions and courts.

3. The Master of the Rolls therefore invited consideration, in the interests of the rule of law, to giving more legal remedies to all parties in industrial disputes, but especially to unions, and making collective agreements legally binding, so as to enable more disputes to be resolved within the framework of the law.

4. The Master of the Rolls also drew attention to the need to frame industrial relations law in language that ordinary people can understand.

5. This is not the first time that the Master of the Rolls has expressed these ideas in public. He spoke on the same themes in his public lecture to the Industrial Relations

Society in 1975; and his private (but leaked) conversation with Mr Quinlan in 1982.

6. At the outset of his speech, the Master of the Rolls was careful to make it clear that it was the function of Parliament to make laws and of judges to administer them. 'But the plain fact is that some laws are easier to administer than others, and I see no reason why as a Judge I should not say so.'

Speech by Dunlop/MR

ENGINEERING EMPLOYERS' FEDERATION DINNER

14th February 1984

Despite the extent of your hospitality, Mr. President, I am still conscious - conscious of the honour which you do me by inviting me to speak tonight.

We all know that we are getting older when the policemen start getting younger. But recently I have discovered another stage in the aging process. This is when you realise that very few of the generals are old enough to have served in the last War. It was in those far off times that I, as the duty officer, went round our rather antiquated barracks after lights out. I found a young soldier lying under his bed with a lighted candle in his hand. He moved it rhythmically backwards and forwards across the mattress. To my enquiry as to what on earth he thought he was doing, he replied "Toasting my guests".

You, Mr. President, have done it so much better.

As one who, much more recently and in a rather different capacity, has attended a large number of City dinners, I am becoming a student of graces. Recently I asked a clergyman how he decided what to say. He told me that you only needed two basic graces and a preview of the menu. If it looked like a poor meal, you began "0 Lord, for these the least of all thy mercies.". If it was to be a sumptuous repast, you began "0 bountiful Jehovah ...". If he had been here tonight, he would without doubt have declared it a bountiful Jehovah evening.

Even so, there is much truth in the adage that the essence of hospitality lies not so much in what you set before your guests as what you seat beside them. Here again I could not have been more fortunate.

Mr. President and members of the Federation, on behalf of your guests may I thank you most sincerely.

You, Mr. President, have reminded us of what the EEF is all about. It is about adaptation, modernisation and co-operation between both sides of industry and it is showing results.

Only a few years ago a holder of your office might well have recalled the late Ernest Bevin's conversation with King George VI. The King asked him what was the state of industry. Bevin replied "If you take my advice, Sir, you'll put the colonies in the wife's name." Today, apart altogether from any technical difficulties arising out of the shortage of colonies, I do not think that he would have given that advice.

And this is welcome news not only to those who are members of the Federation, not only to those who work in the engineering industry but to the country as a whole. Last year's results speak for themselves. As President Carter would have put it - export earnings of £21,000 million "ain't peanuts".

Mr. President, it is just 12 years or thereabouts since I first became professionally acquainted with the Federation. Those were the days when Martin Jukes was the Director-General and I was President of the National Industrial Relations Court. They were difficult times and since then I have often been asked whether I was not glad when the NIRC was abolished and I was returned to the uniformed branch of my profession. The answer has always been "No". I believed then, and I believe now, that working for better industrial relations is one of the most important tasks facing Government, the unions and management. I also believed then, as I believe now, that the law and the courts have an important part to play. The basic problem is what part.

Let me at once make two emphatic disclaimers. First I do not believe that the law should be involved in the inevitable day to day frictions of the factory floor. They are unavoidable and it is the job of line management and shop stewards, rather than the law and the

courts, to reduce them to a minimum. Of the two, the responsibility of line management is probably the greater. I well remember a manager discussing industrial relations with a naval Captain. The manager complained that 30% of his time was spent on industrial relations. The Captain replied that 50% of his time was devoted to industrial relations, but in his profession they called it leadership.

Now my second disclaimer. Politicians and Parliament on the one hand and Judges and the courts on the other are oil and water. Each has his part to play in a Parliamentary democracy such as ours, but they are quite different and they must not be mixed. It has been well said - and I know because I said it - that a judge's relations with politics are similar to a monk's with sex. Nostalgic recollections of youthful indiscretion. Frank recognition of the fascination of the subject-matter. But a resolute determination to have nothing more to do with it in this life.

The function of the politicians and Parliament is to make the laws. The function of the Judges and the courts is to administer them. But the plain fact is that some laws are easier to administer than others and I see no reason why as a judge I should not say so.

The machinery of the courts and the law is designed to do two things. First, both historically and in terms of importance, it designed to prevent citizens who are aggrieved by the conduct of their fellows resorting to force to settle those grievances. This can only be done by offering an alternative and better way than force for resolving disputes. Think what would happen after every motor accident, if there were no laws and courts to arrange for compensation. Think how disputes between neighbours would end, if there were no courts in the background to decide who was right? The result would be carnage throughout the land and the law and the courts and the police would be powerless to stop it.

Second, they are designed to stay in the background and to do all that they can to see that disputes are settled without a trial. And whilst their procedures can and will be improved, they are very successful. One hundred and sixty four thousand claims were made in the Queen's Bench Division in 1982, but only 8% were set down for trial. Even some of these were settled before judgment. Similar figures can be given for other courts and for the Industrial Tribunals.

The same approach could have been adopted when the industrial revolution bred an entirely new set of grievances, but it was not. Self-help - in other words industrial muscle - was the approved method for remedying grievances subject to certain limitations. Ever since then successive Governments have been tinkering with these limits. Within those limits, industrial warfare is permitted. Outside them, it is forbidden. And it is the duty of the courts, if asked, to enforce those limits.

This has a number of consequences, which I find most unwelcome. The first is that the court has no part that it can play in helping to settle those disputes. It is not given the power or the machinery to do so.

The second is that the temptation for the contestants to overstep the limits, if they cannot otherwise remedy their grievances, is almost irresistible.

The third is that in industrial warfare, in the nature of things, management's principal weapon is to do nothing. It is the unions who have to take the initiative and it is therefore usually the unions who are tempted to overstep the permitted limits. This forces the courts to take action against unions rather than management and leads the unions to believe that the courts are against them.

Last Friday, 10th February, The Times in a leading article drew attention to yet another problem which stems from the restricted jurisdiction of the courts in connection with industrial relations. The temptation to overstep the permitted limits is not removed by the court making orders forbidding the taking of specified action. The union's grievance remains, whether it is real or imagined. Indeed that feeling that it is being unfairly treated may be aggravated by the court apparently supporting management and failing to grapple with or even consider the grievance. This can lead to the orders being disobeyed.

If this happens and the court does nothing, its own credibility and that of the rule of law itself may come into question. It may be forced to assert its authority. And this necessity is much more likely to arise if the failure to

obey is attended by national publicity. This is often the case with industrial disputes and once again the courts find themselves in a situation in which the uninformed can be persuaded that the courts are anti-union.

Nothing could be further from the truth. It is the framework of the law as it has existed for over a century which, by denying the courts their natural role as investigators of grievances and settlers of disputes, exposes them to the risk of appearing not to be wholly impartial.

My plea tonight, made not in the interests of unions or management, but in the interests of the rule of law and of the country as a whole, is that consideration be given to bringing the procedure for resolving industrial relations grievances into line with that which exists for all other grievances. After all there is no basic difference. Industrial relations are simply human relations in the workplace.

This will involve giving new rights to the unions and encouraging the making of binding collective agreements. But what is so wrong about that? You may well ask what new rights? That is a matter for Parliament, but a start might be made by examining industrial disputes over the last few years, identifying common grievances and, if they have substance, creating rights to have them remedied.

In making this plea I recognise, of course, that not every dispute could be settled by courts, by tribunals or by arbitrators. Where this cannot be done, industrial warfare may well have to continue and it will be for Parliament to pass laws designed to achieve whatever is thought to be a proper balance of power. But do let us move towards providing better remedies for grievances and, where they are provided, let us discourage and eventually forbid industrial self-help. "Self-help" indeed is a misnomer. In the long run it is simply "suicide".

One final word. I am continually surprised and heartened by the average citizen's respect for the law. And I do mean the law, not the Judges. He instinctively accepts the need for law and for its observance, until it can be changed democratically. But how can he abide by the law if he cannot understand it. Here is an urgent task for Parliament. Let the laws governing industrial relations be written in words which anyone can understand. We are very far

from that situation today. If you do not believe me, take a look at the law on secondary industrial action. It involves three Acts of Parliament, mental gymnastics of a high order and an unlimited supply of cold towels. Even then you may not get it right.

Mr. President, as you reminded us tonight, the EEF has always been a trend-setter not only in the field of industrial relations, but in all things industrial. Long may it continue. May I propose the toast of the Federation.

THE GUARDIAN

15.2.84

Donaldson challenges Government to concede union rights in clear laws

By Keith Harper, Labour Editor

Sir John Donaldson, Master of the Rolls, last night challenged the Government to devise an industrial relations structure which would consist not only of legal binding collective agreements but the giving of new rights to the unions.

Sir John's remarks were made during the course of a highly charged speech to the biennial dinner of the Engineering Employers' Federation in London. In it, he defended the courts from the attack that they were anti-union and said that the framework of law had denied them their natural role as investigators and settlers of disputes.

He added that the procedure for resolving industrial relations grievances should be brought into line with that which existed for all other grievances.

The Master of the Rolls, who favoured the abolished National Industrial Relations Court, said that a start might be made by examining industrial disputes over the past few years. Parliament could identify common grievances and create rights to have them remedied.

Sir John accepted that not every dispute could be settled by the courts or tribunals. Where this could not be done, industrial warfare might have to continue and it would be for Parliament to pass laws designed to achieve whatever was thought to be a proper balance of power.

He challenged Parliament to let the laws governing industrial relations be written in words which anyone could understand.

"We are very far from that situation today," he added. "Take a look at the law on secondary industrial action. It involves three acts of Parliament, mental gymnastics of the highest order, and an unlimited supply of cold towels."

He stressed that the law should not be involved in the inevitable day-to-day frictions of the shop floor. The function of the politicians and Parliament was to make the laws, and the function of judges and the courts to administer them. But the plain fact was that some laws were easier to administer than others.

Sir John argued that industrial muscle was the approved method of remedying grievances, subject to certain limitations, and successive governments had been tinkering with the limits.

It is usually the unions who were tempted to overstep the permitted limits because management's principal weapon was to do nothing. This forced the courts to take actions against the unions and led them to believe that the courts were against them.

He strongly pressed the point before his audience of many of the country's leading employers that only the "uninformed" could be persuaded that the courts were anti-union. It was the old framework of law which exposed the courts to the risk of appearing not to be wholly impartial.

THE print union Sogat 82 yesterday paid the £10,000 contempt fine which the union's executive had resolved a fortnight ago not to pay, *writes Patrick Wintour.* The High Court's deadline for payment of the fine was today and the union leadership had become increasingly uncertain of the value in defying the court.

The £10,000 contempt fine had been imposed by Mr Justice Kenneth Jones because the union had failed to comply with a court order instructing it to lift its blacking of the distribution of the Radio Times in the London area. Since the court case, the dispute has been resolved.

SECRET

10 DOWNING STREET

From the Private Secretary

16 February 1984

The Prime Minister has seen your Secretary of State's minute of 13 February reporting the further consideration which he has given to the question of strikes in essential services. The Prime Minister has at this stage noted the points made and she will reconvene a meeting of the group which met on 15 November. This Office will shortly be in touch to arrange a time.

I am copying this letter to John Kerr (HM Treasury), Hugh Taylor(Home Office), Callum McCarthy (Department of Trade and Industry), Mike Reidy (Department of Energy), Steve Godber (Department of Health and Social Security), John Ballard (Department of the Environment), Emma Oxford (Minister of State's Office, Department of Employment), Richard Hatfield (Cabinet Office) and to Mr. Gregson.

ANDREW TURNBULL

David Norminton, Esq.,
Department of Employment.

SECRET

Prime Minister (2)

To note, X in particular

AJ

15/2

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6460

Switchboard 01-213 3000

Andrew Turnbull
Private Secretary
10 Downing Street

15TH February 1984

Dear Andrew,

Attached is a copy of a statement my Secretary of State released this afternoon, following discussions with TUC representatives, about the political levy. The TUC will not make public their Statement of Guidance about the levy until tomorrow, but I will circulate it then.

Copies of this letter go to the private secretaries to all Cabinet Ministers and Sir Robert Armstrong.

Yours sincerely,

Peter Smith

PETER SMITH
PRIVATE SECRETARY

STATEMENT BY TOM KING, SECRETARY OF STATE FOR EMPLOYMENT

The Chairman of the TUC's Employment Policy and Organisation Committee, Mr Keys, and the General Secretary of the TUC, Mr Murray came to see me this afternoon on behalf of the Committee to register the TUC's opposition to the Trade Union Bill. I noted their comments but had to advise them that the Government did not propose to make any major changes to the Bill which embodies the commitments in our manifesto.

In that manifesto last year we also said that we would invite the TUC to discuss the steps which the trade unions themselves might take to ensure that their members were freely and effectively able to decide for themselves whether or not to pay the political levy. In accordance with this Manifesto undertaking I met the Employment Policy and Organisation Committee of the TUC last October. I made it clear that if the trade unions were not able to take such steps, the Government would introduce measures to guarantee a free and effective right of choice. This would be by amendment to the Trade Union Bill now before Parliament.

Informal discussions followed with the General Secretary of the TUC and the Chairman of the TUC's Committee and I have met them again today.

They submitted to me a Statement of Guidance which had been considered by the TUC's Employment Policy and Organisation Committee and which sets out clearly and fully the action unions should take to ensure that their members are fully informed about their rights in relation to the political levy and to ensure that they are able to exercise them without difficulty or disadvantage. The Statement describes the obligations of trade unions under the 1913 Act to their members, the ways in which trade unions should ensure that these obligations are fully discharged and provides necessary guidance on information trade unions should provide in their annual returns to the Certification Officer.

The Statement of Guidance clearly recognises the importance of members being aware of their rights and being able to exercise the free and effective choice that the law provides in respect of the political levy.

Mr Murray and Mr Keys told me that the Statement of Guidance would be put to the General Council for adoption at its meeting on 22 February. I welcomed this and said that if the Statement was adopted by the General Council and issued with its committed support, I would not propose to bring forward amendments to the Bill to change the present basis of the law regarding the payment of the political levy.

I should of course make it clear that the Government's decision not to proceed with such changes in the present Bill would rest on the firm expectation that the TUC's action will in practice be effective. If it does not prove effective then, as I have already made clear to the TUC, the Government must, of course, reserve its right to legislate to ensure that union members are fully aware of the choice they have and are readily able to exercise that choice.

Were you content with this? 1.

AT
15/2

PRIME MINISTER

At the meeting on 15 November, Mr. King was asked to consider how an approach based on three tests for retaining immunity might work; and whether the Government should base the tests on existing procedure agreements or should prescribe procedure in legislation. Mr. King suggests working with existing agreements.

He was also asked to consider whether provision should be made for compulsory arbitration. Again he concludes against.

Agree best way to proceed is to reconvene 15 November meeting so that Mr. King's conclusions can be tested?

AT

14 February 1984

KS/wp

SECRET AND PERSONAL

cc JR 13/2/84

A 18

SECRETARY OF STATE FOR EMPLOYMENT

PRIME MINISTER

STRIKES IN ESSENTIAL SERVICES

1 In the light of our discussion at the meeting you held on 15 November, I was asked to consider whether the general approach we agreed should be confined to the three basic tests we considered or whether the legislation should go further in prescribing minimum procedures with the possibility of such procedures always including compulsory arbitration.

2 The proposed basic tests, which would need to be satisfied if immunity were not to be forfeit for official or unofficial action, are:-

(i) industrial action should not be taken on any issue already determined by a substantive agreement during its currency;

(ii) in addition, industrial action should not be taken until all stages of any extant procedure agreement have been exhausted;

(iii) a minimum period of notice of industrial action would need to be given which could not begin until negotiations were evidently deadlocked (eg on the formal designation of a "failure to agree" under a procedure agreement, on the employer making clear that a final offer had been made.

3 In addition, the Trade Union Bill will, when enacted, deny unions immunity for industrial action authorised or endorsed without a secret ballot.

4 I have carefully considered whether there are any other procedural steps or conditions which could be usefully imposed by legislation and which might in total provide a detailed but still minimal procedure for all essential industries and all issues on which industrial action could be threatened. I have had to conclude that there are not.

5 We need to remember that there are no doubt a wide variety of different procedure agreement in these industries on such relatively minor but still important matters as individual grievances, discipline, transfers, promotion, etc. They may well provide for successive stages of consultation and negotiation with the progressive involvement of more senior levels of management and trade union officials. Each will be fashioned for the circumstances of the industry and the nature of the issues which can arise. I have no evidence that they do not generally work well or that they do not accord with managements' needs. I believe that they are best left undisturbed and that we should avoid the risks and difficulties which could well follow the statutory imposition or other, minimal arrangements which could result in the unions withdrawing from such agreements.

6 On the other hand, the main terms and conditions of employment in these industries, on which damaging industrial action is more likely to be threatened, are settled only at national level and usually at a single, annual negotiation. The most senior levels of management and national trade union officials are invariably directly involved from the outset. What is more these negotiations are characterised by early, if generalised, claims and lengthy, indeed often stately, negotiations. Settlements are usually only reached some long time after the due settlement date. Similarly, with the

exception of a one-day strike in the water industry in 1982, any explicit threat of industrial action has not emerged until after lengthy negotiations and invariably only after the agreed settlement date. With this in mind, I do not believe that it would be sensible or worthwhile to prescribe minimum procedures to govern such negotiations.

7 The three basic tests we have considered have the advantage of both being easily understood and applicable in all circumstances. They are wholly reasonable and can be readily explained and defended, not least to the employees of essential industries themselves. This being so they have a better chance of being accepted with the retention of agreed procedure arrangements than if more detailed procedural steps were imposed. Moreover, the further we went in detailing procedure arrangements, the more difficult it would be not to make them even-handed so that unions had a potential legal remedy if it could be claimed that managements had not observed the procedures. We have decided against making procedure arrangements legally enforceable by either party.

8 As for compulsory arbitration, I have concluded that this must be avoided. Indeed, we have for some time been successfully urging public sector employers to free themselves from agreements which provide for unilateral access to arbitration because this removes managements' ultimate control over a major element of costs. Arbitration on wages in such key areas of the economy would run counter to the essential need to reduce public expenditure and could also be seriously repercussive on the level of wage increases in other industries. To legislate for arbitration arrangements and, inevitably thereafter in my view, to have to set up appropriate standing arbitration bodies ourselves would make it impossible to do anything other than accept the eventual

awards. To make powers which would enable to Government to set aside or modify a resultant arbitration award, whether by a Parliamentary override or otherwise, would be likely to involve the Government directly in major disputes. I am sure that it is best to avoid any arrangements which would limit for employers and the Government a flexibility of response to difficult issues. Additionally of course, not all issues which could result in industrial action could ever be arbitrable, eg closures, redundancies, pensions, contracting out. Decisions on such matters must be for management alone.

9 For all these reasons, I am sure we should not contemplate statutory arrangements for arbitration. If however there were voluntary agreements providing for arbitration, whether on agreement case by case or otherwise, the second of the three basic tests would mean that industrial action whilst arbitration took place or in opposition to an award would not have immunity.

The next step

10 I would propose to invite colleagues to endorse the proposals discussed

above. I would then propose to work them up into a consultative document. Unless industrial action of a kind on which the proposals would "bite" should take place in one of the essential services in the coming months, I would propose to issue this document in the autumn with a view to legislation in the 1985/86 session.

11 I am copying this minute to those who attended the meeting on 15 November.

TK

13th February 1984

IND Por : Relaciones

Pt 10

Ind Pol: Legislation

SECRET

17

Ref. A084/457

PRIME MINISTER

Parliamentary Affairs: The Political Levy

At Cabinet tomorrow the Secretary of State for Employment wishes to bring colleagues up to date on his discussions with the Trades Union Congress (TUC) about the trade unions' political levy.

2. It was agreed last year to have discussions with the TUC to see if agreement could be reached on a satisfactory way of giving individual members of unions genuine freedom of choice whether or not to pay the political levy. These have been going on between Mr King and Mr Murray, and Mr Murray is to put proposals to the TUC's Employment Policy Committee next Wednesday (which will in turn go before the General Council the following week). The state of play will then become public knowledge. The expectation is that following next Wednesday's meeting the Employment Policy Committee will offer proposals that could form the basis of a voluntary agreement (in addition to the periodic balloting requirement in Part III of the Trade Union Bill). They are likely to take the form of a TUC commitment to persuade its member unions to circulate to all their members a document explaining their rights and how to contract out.

3. The Cabinet may wish to consider briefly whether the proposals likely to emerge are satisfactory, though a final view must wait on the TUC's actual proposals.

RCA

ROBERT ARMSTRONG

8 February 1984

SECRET

PERSONAL AND SECRET

Prime Minister 16

The document is more or less identical to the one you saw in January, which you were ready to accept provided it was made clear that the Government would legislate if the unions did not implement it wholeheartedly (as provided in Manifesto)

AT 8/2

PRIME MINISTER

With your permission I should like to take the opportunity at Cabinet tomorrow to advise colleagues about the position I have reached in my discussions with the TUC about the political levy.

I enclose a copy of a draft TUC statement of guidance on political funds which reflects the current position. I intend to bring copies of this document to Cabinet tomorrow. But I hope it may be possible to give a brief explanation of its contents and not to distribute it for reasons I will explain tomorrow.

It may be necessary for me to respond next week to the TUC's Employment Policy Committee who are meeting on Wednesday and if they approve the attached document I would like to be able to give them some indication of our reactions to it.

I have had some preliminary discussions on this matter with Willie Whitelaw, Norman Tebbit and Jim Prior, who have all confirmed their support for the document and for the general approach.

A copy of this goes to Robert Armstrong.

T K

8? February 1984

PERSONAL AND SECRET

Copy No 1 of 23.

D R A F T

PERSONAL AND SECRET

TRADE UNION POLITICAL FUNDS

TUC Statement of Guidance

Introduction

1. Following discussions between the TUC and the Secretary of State for Employment, the General Council have prepared the following Statement of Guidance on good trade union practice in respect of political fund arrangements and related matters for use by affiliated unions. Unions are asked to review their existing procedures as soon as possible to ensure that this guidance is acted upon.

(i) Members' Rights

2. Unions should draw up an information sheet about their political fund which should:

- state why the union has a political fund;
- make clear that under the law a member has a legal right, if he or she so wishes, to opt out of payment to the political fund;
- make clear that members who 'contract-out' of paying the political levy must not by virtue of being exempt be excluded from any benefits of the union or placed under any disability or disadvantage compared with other members (except in relation to the control and management of the fund, including decisions on expenditure from it and the selection and election of candidates for political office);
- state the amount of the political levy as currently determined in cash terms and as a proportion of the normal subscription; and

PERSONAL AND SECRET

- provide information about how to contract-out preferably by the member completing a standard form obtainable from the union's head office (address), branch (address) and, where appropriate, workplace representatives, and also if necessary, from the Certification Officer (address); or by writing to the union to say that he or she does not wish to pay the political levy.

3. This information sheet should be supplied to:

- new members on their admission to the union;
- any existing member on request to his or her branch, district or head office; and
- all union members as soon as practicable after any ballot on the establishment of, and on the continuation of, the political fund.

(ii) <u>'Contracting-Out' Procedures</u>

4. Unions should ensure that no obstacles are placed in the way of members wishing to 'contract-out' of the political levy, and that prompt and effective procedures for exemption operate within the union in accordance with the 1913 Trade Union Act and the Certification Officer's model rules for political funds. This necessitates:

- the form of exemption notice being readily available to members through workplace representatives, union branches and the union's head office;
- the branch secretary, or whichever officer in the union handles membership records, sending an acknowledgement of its receipt to the member;
- the exemption being put into effect speedily; and
- unions ensuring that members who do not wish to pay the levy do not do so inadvertently (eg under check-off arrangements).

(iii) Access to Union Accounts

5. Unions should, where they do not already do so, provide a right of access for members to the accounts of the political fund kept by the union.

(iv) Annual Returns

6. Unions should, in completing their annual returns to the Certification Officer:

- attach a list showing each payment over £250 made from their general funds to external bodies not covered by section 3(3) of the 1913 Trade Union Act;
- specify the source and amount of any investment income to the political fund. (Under the 1913 Trade Union Act, nothing may be paid into a political fund other than contributions to the fund by members or persons other than the union itself, and income which accrues from the political fund's assets);
- show the administrative costs connected with the political fund, or a considered estimate of such costs.

Role of TUC

7. The General Council strongly recommend the above practices to affiliated unions and expect unions to ensure that their political fund arrangements operate fairly and effectively, and comply with unions' statutory obligations

under the 1913 Trade Union Act. It is particularly important that unions' procedures avoid the possibility of members being unaware of their rights in relation to the political fund or being unable to exercise them freely.

8. If difficulties should arise in the areas covered by this Statement of Guidance, the TUC will be ready to advise affiliated unions on how to ensure that their political fund arrangements and procedures meet these standards.

January 23, 1984.

Extract from Conservative Manifesto 1983

P. 12.

Political levy

Consultations on the Green Paper have confirmed that there is widespread disquiet about how the right of individual trade union members not to pay the political levy operates in practice, through the system of contracting-out. We intend to invite the TUC to discuss the steps which the trade unions themselves can take to ensure that individual members are freely and effectively able to decide for themselves whether or not to pay the political levy. In the event that the trade unions are not willing to take such steps, the Government will be prepared to introduce measures to guarantee the free and effective right of choice.

IWD POL
Legislation PK-10

10 DOWNING STREET

Andrew -

re your letter of 13/1 about the Political Levy. I have been in touch with Dept of Employment to find out progress on the 2nd last paragraph - work place ballots.

Dept of Emp. say that work is not completed yet, but the Sec of State intends to report orally to the HC, other than in writing.

Content?

Yes

Cameron

31/1

31/1/84

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

13 January 1984

POLITICAL LEVY

The Prime Minister held a meeting yesterday with your Secretary of State to discuss implementation of the Manifesto pledge on the political levy. Also present were Mr. Gummer and Mr. Alison.

Your Secretary of State said that the Government's approach was that it should seek a voluntary agreement with the TUC which would ensure that union members were in a position to decide for themselves whether or not to pay the levy. Legislation would be introduced only if agreement to satisfactory procedures could not be achieved. He had discussions with the TUC's EPOC on steps to implement this and he would shortly be seeing them again. Following the first meeting, the TUC had put forward a revised document setting out a Statement of Guidance on good trade union practice. While he would be pressing for some further improvements, these might not be achievable and his inclination was that the document as it stood (a draft of which he handed to the Prime Minister) was satisfactory. Before entering final negotiations, he would welcome the Prime Minister's views.

In discussion it was noted that the letter by Sir Len Neal to the FT of 12 January, which warned against accepting any voluntary agreement with the TUC, appeared to be based on a misconception. The voluntary procedure for informing members of their rights was in addition to the provisions in Part III of the current Bill providing for periodic ballots on political funds. It was argued that there were advantages in reaching an agreement with the TUC on procedures as it would give a flavour of acceptance by the TUC of Part III.

Your Secretary of State said that he had considered whether he should approach the TUC and propose dropping the proposals for ballots on the political funds in return for agreement that there should be contracting in. He had concluded against this as it would represent a change from the provisions of the Manifesto. The Prime Minister agreed as contracting in could represent a step towards state financing of political parties.

The Prime Minister said she was satisfied with your Secretary of State's approach. While he should seek some further improvements in the document it could be accepted as it stood. It should, however, be made clear that if the TUC did not accept EPOC's recommendation or if, subsequently, the union movement did not implement

/the

the provisions the Government would be prepared to introduce legislation.

The Prime Minister also asked your Secretary of State to discuss further with Mr. Woodrow Wyatt his criticisms of the provisions for work place ballots.

I am sending a copy of this letter to Emma Oxford (Department of Employment).

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment.

Annex A

D R A F T

TRADE UNION POLITICAL FUNDS

TUC Statement of Guidance

(Final draft of 21 December)

Introduction

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- make clear that members who 'contract-out' of paying the political levy must not by virtue of being exempt be excluded from any benefits of the union or placed under any disability or disadvantage compared with other members (except in relation to the control and management of the fund, including decisions on expenditure from it and the selection and election of candidates for political office);
- state the amount of the political levy as currently determined in cash terms and as a proportion of the normal subscription; and

(a)

- provide information about how to contract out namely that a member should do this in writing, preferably

(b) on a standard form obtainable from the union's head

(c) office (address), the branch (address) and where appropriate, workplace representatives; and also, if necessary, from the Certification Officer (address).

3. This information sheet should be supplied to:

- new members on their admission to the union;
- any existing member on request to his or her branch, district or head office; and
- all union members as soon as practicable after any ballot on the establishment of, and on the continuation of, the political fund.

(ii) 'Contracting-Out' Procedures

4. Unions should ensure that no obstacles are placed in the way of members wishing to 'contract-out' of the political levy, and that prompt and effective procedures for exemption operate within the union in accordance with the 1913 Trade Union Act and the Certification Officer's model rules for political funds. This necessitates:

- the form of exemption notice being readily available to members through workplace representatives, union

(d) branches and the union's head office;

- the branch secretary, or whichever officer in the union handles membership records, sending an acknowledgement of its receipt to the member;
- the exemption being put into effect speedily; and
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- attach a list showing each payment over £250 made from their general funds to external bodies not covered by section 3(3) of the 1913 Trade Union Act;
- specify the source and amount of any investment income to the political fund. (Under the 1913 Trade Union Act, nothing may be paid into a political fund other than contributions to the fund by members or persons other than the union itself, and income which accrues from the political fund's assets);
- show the administrative costs connected with the political fund, or a considered estimate of such costs.

Role of TUC

7. The General Council strongly recommend the above practices to affiliated unions and expect unions to ensure that their political fund arrangements operate fairly and effectively, and comply with unions' statutory obligations

under the 1913 Trade Union Act. It is particularly important that unions' procedures avoid the possibility of members being unaware of their rights in relation to the political fund or being unable to exercise them freely.

8. If difficulties should arise in the areas covered by this Statement of Guidance, the TUC will be ready to advise affiliated unions on how to ensure that their political fund arrangements and procedures meet these standards.

10 DOWNING STREET

Prime Minister

Please note the papers below, relating to your meeting with Tom King tomorrow.

MA

11/1

10 DOWNING STREET

Michael

Please see the attached letter from Sir Leonard Neal (not yet acknowledged).

You may like to show this to the PM before her meeting with Tom King tomorrow.

David Barclay
11/1

Flat 68
Millbank Court
24 John Islip Street
LONDON S W 1
tel: 01-828 9528

10th January 1984

The Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1H 9NF

Dear Mr. King

Enclosed is a letter I have sent to the Financial Times today on an issue about which I am very worried, and if you wish to discuss the matter I would be happy to put myself at your convenience.

I have sent a copy of this correspondence to the Prime Minister.

Yours sincerely
Leonard.

Sir Leonard Neal CBE

enc.

Dear Prime Minister

I dared to think you would be interested in the enclosed

Kindest regards

Leonard

Flat 68.
Millbank Court,
24 John Islip Street,
London, S W1
Tel. 01-828 9528

Sir Leonard Neal, C.B.E., M.A.C.I.P.M.

The Editor
The Financial Times
Bracken House
Cannon Street
LONDON E C 4

10th January 1984

Dear Sir

I read with sadness but not, I confess, without too much surprise the report by John Lloyd (F.T. 3.1.84) of the Government's apparent intention to dilute still further its electoral promises on trade union reforms. According to your industrial editor, Mr King is likely to make an agreement with the TUC by the end of January on a "voluntary code to govern the payment of the political levy by union members".

One had hoped that Ministers would have learned the lessons of the last thirty years and realised that "agreements" with the TUC are not worth the paper they are written on - if indeed they are written. Usually these "agreements" take the form of "understandings" or, in recent years, of "codes of practice" that the trade union militants receive and examine with joy, and either then ignore or wilfully misconstrue.

This has been the disgraceful experience in the country from Stafford Cripps onwards - through "agreements" to restrain excessive wage demands; the "solemn and binding agreement" with Mrs Castle; the "social contract" with Michael Foot that removed so many basic rights from individuals and companies and rose like a phoenix from its ashes every time the unions destroyed it.

So it has continued with every corporatist "agreement" between governments and the TUC, and so it has been with the so-called codes of behaviour including the TUC's own variety and Mr Prior's codes on picketing, as we have seen in the recent violence at the Stockport Messenger.

If the Government falls for the latest "agreement" with Mr Murray it will be a triumph of faith over experience on their part. Mr Murray will agree, of course, and may even sincerely believe he can deliver his side of the bargain, but if so, he will be gravely disappointed by the cynical opportunists among his cohorts.

Yours faithfully

Sir Leonard Neal

SECRET

15

fle Ms
cc David Lascelles

10 DOWNING STREET

From the Private Secretary

4 January 1984

STRIKES IN ESSENTIAL SERVICES

You may like to see a note produced by the No. 10 Policy Unit which was shown to the Prime Minister in connection with the papers on strikes in the gas industry. The argument of relevance to you is that endurance in a number of essential services is better than previously thought. This should not be interpreted as a reason for slowing down the work on strikes in essential services. There may, nevertheless, be a case for introducing changes in industrial relations procedures in these industries as a way of bringing in similar changes more widely.

ANDREW TURNBULL

Barnaby Shaw, Esq.,
Department of Employment.

SECRET

10 DOWNING STREET

Peter.
Any comments?

Andrew

16/11

Andrew

Many thanks. A v. good note.
I have suggested only a few
minor refinements which
are I hope self explanatory

Peter 16/11

13

Second paragraph: delete last sentence and insert:

"It was however difficult to justify removing such immunity in all circumstances from groups of workers who would inevitably have to be selected somewhat arbitrarily.

In his note of 14 October his predecessor had therefore .... ."

From the beginning of the penultimate paragraph on the first page, amend as follows:

"In discussion it was pointed out that the proposals would have only limited effect where there were no existing procedural agreements. A variant of the proposals would therefore be for the legislation to set out model features which procedural agreements in essential services would have to incorporate and whose breach would trigger loss of immunity. The difficulty was that individual employers and unions might not be ready to enter willingly into agreements with such features. This meant that the legislation might in effect have to impose procedures for the essential services.

It would then be necessary to consider what the prescribed procedures should consist of. The crucial question was whether, when the procedures were exhausted, there should remain the possibility of a strike without loss of immunity. The only way of removing such a possibility would be to provide for compulsory arbitration as the final stage in the procedure.

In further discussion ... [as existing draft] ... of the dispute.

It might therefore be preferable to require compliance only with the three procedural tests envisaged in the note of 14 October or to impose procedures which merely added steps to be gone through. Although this would not preclude the possibility of strikes taking place with immunity eventually, it would raise the height of the hurdles which had to be surmounted and would provide for delay which might make it difficult for unions to sustain militancy. It might also make it harder for unions to

escalate the scope and intensity of industrial action gradually. Combined .....[as existing draft] .... protection. Another idea ... [as existing draft] .... to be made.

2 On the definition of essential services, it was agreed that they should be restricted to those services which were most vital to the life and health of the nation. It might be desirable to include the fire service but it would not be desirable to include local authority services generally.

A The meeting ... [as existing draft] ... around October 1984. In addition however it was recognised that if there were to be a strike in an essential service in the near future the Government would want to be able to make clear quickly how it proposed to carry forward its Manifesto commitment. The right approach was therefore for the Government to complete its study of the policy as quickly as possible so that it would be ready, on a contingent basis, to make a public statement, if necessary, early in the new year but otherwise to plan for public consultation in the autumn of 1984.

B Summing up, the Prime Minister said that it was agreed that the right general approach was to make immunity for industrial action in essential services depend on observance of certain procedures. It remained for consideration whether this should be confined to complying with a few basic tests on the lines envisaged in the note of 14 October or whether legislation should go further in prescribing minimum procedures for essential services and, if so, whether (despite the disadvantages noted in discussion) such procedures should include compulsory arbitration. The Secretary of State .... [as existing draft]."

Last sentence of <u>final paragraph</u> to read:

C "Copies of this letter should be shown only to those officials whose need to see it is essential for the purpose of further work on these matters."

SECRET

14 November 1983
Policy Unit

PRIME MINISTER

STRIKES IN ESSENTIAL SERVICES

1. Making these strikes criminal would be ineffective. The first time the law was successfully defied, the legislation would be discredited.

2. No-strike agreements are too expensive. Unions could always threaten to abandon the agreement if their wage demand was not met.

3. The only way likely to work is to remove immunities for strikes that fail to pass certain tests. The question is, what tests? The possibilities are:

(i) Observance of procedure agreements, and/or substantive agreements. No harm done - but not much good either. As the Cabinet Office note points out, nobody at present strikes while a substantive pay agreement is still in force; and procedure agreements are so vague that nobody bothers to disobey them. Norman Tebbit is right to advise against imposing more precise "agreements": imposition and agreement are incompatible.

(ii) Building in delays. This might be helpful: cf the USA. We should think of extending this principle. Perhaps, a period of cooling off before a strike and another during any strike that lasts 60 days or more?

(iii) Ballots. The present Bill makes union immunities depend upon the holding of a strike ballot. In the essential services, we could surely insist on a majority of two-thirds or three-quarters before any strike, if immunities were not to be forfeited.

4. Tactics. Tom King is right to be cautious. We are committed to acting against strikes in essential services; but we are not committed to a timetable. The present Bill should be allowed to pass through Parliament before we make statements about the next step.

5. Definition of "essential services". Norman only included four to start with: electricity, gas, water, NHS. Peter Gregson (para. 14) suggests adding fire (yes perhaps) and miners (no, we don't wish to revive their illusion of omnipotence).

SECRET

We recommend that Tom should be asked to work further on the immunities approach. In particular, he should be asked to consider the possibility of cooling-off periods before and during strikes, and pre-strike ballots with qualified majorities.

FERDINAND MOUNT

SECRET AND PERSONAL

6 cc: Mr. Mount
Mr Gregson

B/F

10 DOWNING STREET

16 November, 1983

From the Private Secretary

Dear Barnaby,

Strikes in Essential Services

The Prime Minister held a meeting yesterday to discuss the way in which the Government should carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedural agreements, the breach of which would deprive industrial action of immunity". Present at the meeting were your Secretary of State, the Chancellor of the Exchequer, the Secretaries of State for Trade and Industry, Energy, Environment, Social Services, the Home Secretary and the Minister of State, Department of Employment. Also present were Mr. Gregson and Mr. Mount.

Introducing the discussion your Secretary of State said a number of approaches could be adopted; strikes in essential services could be criminal offences; there could be "no strike" agreements; or procedural agreements could be made enforceable by law. For a variety of reasons he thought it wrong to follow any of these courses. The best approach was to make strikes in essential services subject to loss of immunity from civil action. It was, however, difficult to justify removing such immunity in all circumstances from groups of workers who would have to be selected somewhat arbitrarily.

In his note of 14 October, his predecessor therefore had suggested making immunity for industrial action in specified essential services depend on three tests. Action should not be taken on any issue already determined by a substantive agreement during its currency; action should not be taken until all stages of any existing procedure agreement had been exhausted; there should be a minimum period of notice between deadlock in negotiation and the start of industrial action.

He envisaged that the essential services to be covered would be water, gas, electricity and the health service.

/In

In discussion it was pointed out that the proposals would have only limited effect where there were no existing procedural agreements. A variant of the proposals would therefore be for the legislation to set out model features which procedural agreements in essential services would have to incorporate and whose breach would trigger loss of immunity. The difficulty was that individual employers and unions might not be ready to enter willingly into agreements with such features. This meant that the legislation might in effect have to impose procedures for the essential services.

It would then be necessary to consider what the prescribed procedures should consist of. The crucial question was whether, when the procedures were exhausted, there should remain the possibility of a strike without loss of immunity. The only way of removing such a possibility would be to provide for compulsory arbitration as the final stage in the procedure.

In further discussion it was argued that it would be unwise to go as far as specifying compulsory arbitration. As the water strike had shown, such arbitration could degenerate into the final stage of negotiation and could lead to the expensive resolution of disputes. It would be wise for the Government to leave itself a loophole to be used according to the special circumstances of the dispute.

It might therefore be preferable to require compliance only with the three procedual tests envisaged in the note of 14 October or to impose procedures which merely added steps to be gone through. Although this would not preclude the possibility of strikes taking place with immunity eventually, it would raise the height of the hurdles which had to be surmounted and would provide for delay which might make it difficult for unions to sustain militancy. It might also make it harder for unions to escalate the scope and intensity of industrial action gradually. Combined with the other changes taking place in industrial relations this approach might provide sufficient protection.

Another idea suggested was that strike ballots in essential services should have a higher threshold for the required majority. The Government could also take steps to build up its ability to endure strikes. A cooling-off period was helpful in this context as it would enable preparations to be made.

On the definition of essential services, it was agreed that they should be restricted to those services which were most vital to the life and health of the nation. It might be desirable to include the fire service but it would not be desirable to include local authority services generally.

The meeting then considered the timing for resolving these issues and for the introduction of legislation. Your Secretary of State said that he envisaged a step by step approach with another trade union bill two years hence in the 1985/86 session. The effects of earlier legislation were now beginning to take effect, e.g. there were signs that the closed shop was declining in importance. The current bill would also have an impact. It would

/be

useful to judge the cumulative impact of these changes in deciding the next steps. If legislation were to be introduced in October, 1985, public consultation would need to be launched around October, 1984.

In addition, however, it was recognised that if there were to be a strike in an essential service in the near future the Government would want to be able to make clear quickly how it proposed to carry forward its Manifesto commitment. The right approach was therefore for the Government to complete its study of the policy as quickly as possible so that it would be ready, on a contingent basis, to make a public statement, if necessary, early in the new year but otherwise to plan for public consultation in the autumn of 1984.

Summing up, the Prime Minister said that it was agreed that the right general approach was to make immunity for industrial action in essential services depend on observance of certain procedures. It remained for consideration whether this should be confined to complying with a few basic tests on the lines envisaged in the note of 14 October or whether legislation should go further in prescribing minimum procedures for essential services and, if so, whether (despite the disadvantages noted in discussion) such procedures should include compulsory arbitration. The Secretary of State for Employment should work on these ideas and report back by the end of January. A further meeting of the same group of Ministers would then be reconvened.

I am copying this letter to John Kerr (H.M. Treasury), Hugh Taylor (Home Office), Callum McCarthy (Department of Trade and Industry), Mike Reidy (Department of Energy), Steve Godber (Department of Health and Social Security), John Ballard (Department of the Environment), Emma Oxford (Minister of State's Office, Department of Employment), Richard Hatfield (Cabinet Office), and to Mr. Gregson and Mr. Mount. Copies of this letter should be shown only to those officials whose need to see it is essential for the purpose of further work on these matters.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

J. B. Shaw, Esq.,
Department of Employment

10 DOWNING STREET

Prime Minister

There are three papers for this meeting

(i) Mr Tebbit minute of 6 May

(ii) Mr Tebbit minute and paper of 7 October

(iii) Mr Gregson's brief of 11 November.

To note that Mr King is keeping his options open. I detect that he prefers to see how general trade union legislation works before deciding how much action is needed for essential services.

AT 11/11

SP

CONFIDENTIAL

Covering SECRET

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Andrew Turnbull Esq
Private Secretary
10 Downing Street
LONDON SW1

11 November 1983

Dear Andrew

STRIKES IN ESSENTIAL SERVICES

A meeting is arranged for 15 November to consider the Manifesto commitment to consult about procedure agreements in essential services. Mr King is not intending to put in a paper of his own. Mr Tebbit's minute to the Prime Minister which I circulated on 14 October can serve as a basis for discussion. For those who have not already received it, I enclose Mr Tebbit's minute of 6 May to which his later minute refers.

I am copying this to the private secretaries to the Chancellor of the Exchequer, the Home Secretary, the Secretaries of State for Social Services, Trade and Industry, the Environment and Energy, Mr Gummer and Sir Robert Armstrong.

Yours sincerely

Barnaby Shaw.

J B SHAW
Principal Private
Secretary

CONFIDENTIAL

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(iii)

CONFIDENTIAL

P.01166

PRIME MINISTER

Strikes in essential services

Your meeting is to discuss the then Secretary of State for Employment's minute of 7 October which considers how to carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". An earlier minute of Mr Tebbit's circulated to the Cabinet as C(83)16 is also relevant.

2. I understand that the present Secretary of State for Employment has an open mind on this matter. He is conscious of the difficulties and welcomes the opportunity for a free-ranging discussion on his predecessor's minute. He will not seek any operational decisions but would undertake, in the light of the discussion, to go away and think further about the problem.

3. Briefly the analysis in Mr Tebbit's minute is as follows:

i. the more obvious ways of dealing with strikes in essential services are unattractive (ie "no strike" agreements, extension of the criminal law, total removal of civil immunity, or making procedure agreements legally enforceable);

ii. the best approach might therefore be to make immunity for industrial action in designated essential services depend on three tests:

a. action should not be taken on any issue already determined by a substantive agreement (eg an annual pay settlement) during its currency;

b. action should not be taken until all stages of any extant procedure agreement had been exhausted;

c. there should be a minimum period of notice between deadlock in negotiation and the start of industrial action.

MAIN ISSUES

4. The main issues are:

i. which is the most promising approach to the problem of strikes in essential services?

ii. how should the Manifesto commitment to consultation be handled?

Approach outlined in Mr Tebbit's minute

5. The approach in Mr Tebbit's minute starts from the assumption in the Manifesto commitment that the right way to tackle strikes in essential services is to relate loss of immunity to breach of procedure agreements. The problem about that approach is that procedure agreements on pay, the issue most likely to give rise to industrial action, are rare. They are much more common on matters where the incentive for changing the existing situation lies with management (eg working arrangements, disciplinary action) and where, over the years, management has bound itself not to act hastily and to engage in consultation with the unions. Where procedure agreements relate to pay they rarely go beyond defining the

forum in which negotiations should take place. In a few cases they provide for arbitration, sometimes with unilateral access, whose disadvantages to the employer are well known. Making immunity depend on observance of existing procedure agreements would therefore have little impact; if it led to a withdrawal by the unions from such procedure agreements as already exist affecting pay, there might even be a slightly adverse impact.

6. This raises the question of whether the Government should seek to prescribe new and additional detailed procedure agreements for pay determination in essential services, whose breach would then lead to loss of immunity. This option is rejected in Mr Tebbit's note on the grounds that procedure agreements, of their nature, must represent a willing bargain between the individual employer and his unions and that the Government cannot intervene to impose such bargains. Hence the approach of the three tests. The first two (no breach of existing substantive or procedure agreements) are reasonable but may not have much effect in the real world (industrial action on pay is rarely taken until an existing pay agreement has expired). The third test - a minimum period of notice before the start of industrial action - is tantamount to a "cooling-off" period before strikes in essential services.

7. It can be argued that the enforced delay in starting industrial action would make it difficult to sustain militancy and would provide an oppotunity for moderates to exercise restraint. On the other hand the proposals for strike ballots might seem to be more effectively designed to meet this objective. It could also be argued that delaying the start of industrial action would give more oppotunity for the community to prepare for it. Against this it has to be admitted that little could be done in advance to mitigate the most damaging forms of industrial action in the essential services

(eg electricity). One disadvantage might be that there would be pressure to use the period of notice for conciliation in circumstances where the employer, and the Government, wished to stand firm.

8. It is easy to see therefore why Mr Tebbit did not advance the approach in his minute of 7 October with much enthusiasm. It would be difficult to attack the approach as unreasonable and it would be unlikely to do much harm. But would it be likely to do much good?

Alternative approaches

9. The main alternative approaches which have been considered for limiting strike action in essential services are:

a. making it a criminal offence;

b. "no strike" agreements;

c. making procedure agreements enforceable at law;

d. removing immunity from strike action in essential services in all circumstances.

10. In considering the "criminal offence" approach, it should be noted that until 1971 it was a criminal offence under the Conspiracy and Protection of Property Act 1875 for electricity, gas and water employees wilfully and maliciously to breach their contracts of service so as to deprive consumers of supplies. It is still an offence under the 1875 Act for an employee in any industry to break his contract, knowing or having reasonable cause to believe that the consequences will be danger to human life, bodily injury or damage to valuable property. Those powers have not been used, partly because of the tight terms

in which they were drawn and partly because no breach of contract would arise if an employee chose to give notice and the period of notice (often not more than a week) was worked out. Dealing with this latter loophole would be tantamount to civil conscription. There is also the practical problem of applying criminal sanctions against large numbers of workers.

11. On the "no strike" agreements approach, there is the well known argument that such agreements could be negotiated only in return for specially generous pay determination arrangements, a price which has not so far been though worthwhile. There is also the risk that the unions would resile from such agreements when it suited them to do so.

12. On the approach which would involve making procedure agreements enforceable at law the main argument is that employers are strongly opposed to this. It is argued, inter alia, that the unions might invoke such powers to the disadvantage of employers where it suited them but would refuse to enter into, and might even withdraw from, procedure agreements on major matters such as pay.

13. This leaves the approach of removing immunity altogether from industrial action in essential services. Such an approach would in many ways be the cleanest solution. It would avoid the problems over the criminal law, and the complications of establishing whether there are agreed procedures and how far procedures have been fulfilled. It rests on the assumption that employees in certain occupations designated as essential should have their bargaining power reduced compared with that of other employees. It is often argued that the monopoly power which workers in such services have provides of itself a justification for removing their immunity. It can however be argued on the other side that if such workers are to be deprived of the ability to bargain effectively, they are entitled to some trade-off, such as

unilateral access to arbitration, or special pay arrangements. If that were to be conceded, the price, as in the case of "no strike" agreements, might not be worth paying.

Definition of "essential services"

14. Any approach must necessarily entail defining the essential services. To avoid casting the net too wide Mr Tebbit suggests consulting initially on the basis of only four services: electricity, gas, water and the National Health Service. Is this however too narrow? The nearest we have to an accepted definition of the essential services is the formula in the Emergency Powers Act 1920 which refers to "interfering with the supply of distribution of food, water, fuel or light, or with the means of locomotion, to deprive the community or a substantial portion of the community, of the essentials of life". It may therefore be argued that the definition should be drawn more widely, to include, for example, the fire service and the miners. It is suggested that there might be a power to designate services by order, though not while a dispute was taking place. The Government would nevertheless have to explain the rationale for treating particular services in this way, and leaving out others.

Approaches not involving changing the law

15. Although this discussion is about the contribution which changes in the law might make to the problem of strikes in essential services, it should not be forgotten that union power can be reduced in other ways in some of the essential services (for example by bulding up stocks, as in the case of the miners, and by using new technology to make systems more resilient and by breaking down monopoly as in the case of telecommunications). May this not be a more effective remedy in practice? Moreover in those industries where small groups of workers have a "sudden death" power (eg power station engineers) they have tended to

find it difficult to use their industrial muscle without turning public opinion strongly against them.

Next steps

16. In his minute of 7 October Mr Tebbit was inclined against early consultations on the basis of his preferred approach because it would be seen to be not very effective. The next steps will obviously depend on how far Ministers can identify and agree on a promising approach. Even if consultations were deferred, it would be awkward for the Government to say and do nothing about its Manifesto commitment in this area for a long period. Would it be a feasible strategy to put the onus on the unions to come forward with ideas rather than put forward specific Government proposals? Should there be a Green Paper rehearsing all the different approaches which have come up in public debate?

HANDLING

17. You will wish to invite the Secretary of State for Employment to open the discussion. It may then be useful to seek comments from the Secretary of State for Trade and Industry who wrote the minute of 7 October in his previous capacity. The Home Secretary, the Chancellor of the Exchequer and the Minister of State, Department of Employment (Mr Gummer) may have general observations. The Secretaries of State for Energy, the Environment and Social Services may have comments about the implications for their essential services.

CONCLUSIONS

18. The Secretary of State for Employment is not seeking conclusions at this stage but you will wish to steer the discussion so that he has guidance on:

i. the approach to strikes in essential services which the meeting regards as the most promising;

ii. the timing and handling of consultations.

P L GREGSON

11 November 1983

IND POL: Legislativ: PE 10

SECRET AND PERSONAL

7.6 11

10 DOWNING STREET

From the Private Secretary

31 October, 1983.

Dear Barnett

Political contributions by companies

The Prime Minister held a meeting today with your Secretary of State, the Secretary of State for Trade and Industry, and with Mr. Gummer on whether there should be some restrictions on the political contributions which companies can make.

It was argued that although the trade unions were not pressing hard at present for restrictions on company contributions, there was a danger that the public might see the Government as acting unfairly. But there was no support for the idea that companies were the mirror image of unions. The true analogy with a trade union was an employers' federation. Also, trade union legislation was nowhere nearly as strict as that which applied to companies. Furthermore, there was no parallel between an employee who could not opt out of making a political contribution if he were subject to a closed shop, and a shareholder who could always sell (though the latter argument was weakened where holdings were via pensions funds).

It was suggested that a threshold could be set giving the right of a shareholder to opt out of a political contribution where this exceeded a specified percentage of profits. The difficulty with this course was that it conceded the case for symmetrical terms. Pre-notification ballots by shareholders were even less desirable as they could cause divisions within company boards.

It was agreed that it was no part of the Government's intention to impoverish either party as this could only lead to a state financing of political parties. Without a fund-raising role, grass roots organisations would wither away.

It was further argued that there was merit in going as far as possible along the voluntary route, with the unions being given a chance to put forward proposals which would meet the Government's objective of providing workers with a free and informed choice. A time limit would be set for the implementation of their proposals. In this way the Government could avoid the accusation of unfairness.

SECRET AND PERSONAL

A further suggestion was that an offer could be made to the trade unions to withdraw the proposal for a ballot on the existence of a political fund in exchange for legislation on contracting in. If unions came to believe that there was a real chance that they might lose their political funds altogether, they might be prepared to settle for this.

Summing up, the Prime Minister said that there was no support for restrictions on companies, and that argument about symmetry should be strongly resisted. The Secretary of State for Employment would consider whether to offer the trade-off suggested above. The Secretary of State for Trade and Industry was asked to study, on a contingency basis, the implications of setting a threshold for political contributions.

I am sending copies of this letter to Callum McCarthy (Department of Trade and Industry), and to Ms. Oxford (Mr. Gummer's Office).

MR. A. TURNBULL

Barnaby Shaw, Esq.,
Department of Employment.

SECRET AND PERSONAL

10 DOWNING STREET

(2)

Prime Minister

You are holding a meeting to discuss whether there should by a symmetrical provision for political contributions by companies. There is no paper making proposals, but the attached sets out the background

AT

28/10

CONFIDENTIAL

POLITICAL EXPENDITURE BY COMPANIES AND TRADE UNIONS

A. COMPANIES

PRESENT POSITION

1. Any donation by a company, whether for political or other purposes, must, in the view of the courts, be

- incidental to the objects of the company's business (ie not ultra vires)
- for the benefit of the company
- bona fide in the interests of the company.

In practice, neither of these considerations appear to have materially constrained the giving of political donations, at least as to the principle. Whether or not breaches of either consideration have occurred would fall to be determined by civil action by shareholders.

2. Under Section 19 of the Companies Act 1967 a company (other than a 100% subsidiary of a GB holding company) which gives more than £200 for political and charitable purposes taken together must disclose in the directors' report

- the amount of any money given for political purposes in the year covered by the report;
- the name of, and amount given to, any recipient of a political donation exceeding £200;
- the name of any political party to which more than £200 has been given or subscribed, and the amount of money given to it.

3. In the case of parent companies, this information must be given in respect of the group.

4. A company is considered to give money for political purposes if, directly or indirectly,

- it gives a donation or subscription to a political party of the UK or any part thereof, or

- it gives a donation or subscription to a person whom it knows to be carrying on, or proposing to carry on, activities which can reasonably be regarded as likely to affect public support for such a political party.

PROPOSALS FOR CHANGE

5. The Guardian of 8 August reported the possibility of legislation.

- "to define the right of companies to subscribe to political parties"

- "giving shareholders the right to vote on the wisdom of making [political] contributions".

6. Mr Wrigglesworth MP has written to the Secretary of State for Employment saying that the SDP would support legislation

- to ensure that political donations have the prior, specific agreement of shareholders;

- to prevent the delegation of decisions on political contributions to the board of directors;

- to encourage institutional shareholders to consult members on whether they should vote for political donations.

7. At Commons Committee Stage on the Companies Act 1980 the Labour Opposition put forward proposals under which political donations would have to be made out of a political fund which could only be established if approved by ordinary resolution in general meeting. The political fund was to be financed out of distributable profits, and shareholders who voted against its establishment or who informed the company were to be entitled to a proportionate supplement to their dividend in respect of donations made from the fund.

CONSIDERATIONS RELATING TO POSSIBLE LEGISLATION

8. Primary legislation would be required to ensure shareholder approval of political donations. If this were not to be achieved by a Companies Act, the long title of any other legislation would have to be sufficiently wide in scope.

9. It would be for consideration whether any such legislation should:

- apply to all companies, or just public or large companies. A limited scope would offer potential for avoidance;

- cover all political donations or only those (in aggregate or severally) over a de minimis amount (c.f. £200 for disclosure at present);

- provide for shareholder approval for specific, quantified donations to named recipients, or authorise the directors to make political donations at their (perhaps qualified) discretion;

- introduce an upper limit on donations;

- on the assumption that approval is to be by resolution at a general meeting in advance of a donation, require approval by ordinary or special (75% majority required) resolution;

- provide for any return to be made to CRO after a donation has been made or simply maintain present ex post facto annual disclosure arrangements;

- make special provision for groups of companies (difficult in so far as authorisation is concerned);

- retain the 1967 Act definition of political purposes;

- make provision for donations to be made out of political funds only;

- make provision for dissenting shareholders to be compensated.

10. It is conceivable that in the event of legislation being brought forward there would be some pressure for similar arrangements for charitable donations, or for contracts of service etc. for directors (which have been the subject of controversy).

11. There are sufficient significant issues involved to justify consultation and consideration of the matter over a reasonable timescale. If there is any possibility of legislating this Session, work should be set in hand straightaway.

B. TRADE UNIONS

PRESENT POSITION

12. The Trade Union Act 1913 lays down a set of conditions which a union must observe if it wishes to finance the pursuit of the political objects specified in Section 3(3) of the Act - reproduced at annex - which are essentially party-political objects.

13. The first of these is that the union must hold a secret ballot, under rules to be approved by the Certification Officer, on whether the union should adopt political objects and political fund rules. The union must obtain a majority of those voting in favour of this.

14. The essential purpose of the political fund rules, which also have to be approved by the Certification Officer, is to safeguard the right of individual members not to contribute towards their union's political expenditure where the union has adopted political objects. The Act requires that the rules should -

- provide for a separate political fund out of which any expenditure on political objects must be made;

- permit an individual member to "contract out" of contributing to the political fund;

- provide that no member who contracts out will be discriminated against within the union because he refuses to contribute to the political fund.

THE TRADE UNION BILL

15. Part III of the forthcoming Bill will

- provide that the continued operation of a trade union's political fund must be submitted to the test of an affirmative ballot of the whole membership of the union (under the procedure laid down in the 1913 Act) every 10 years;

- bring up to date the definition of political objects in Section 3(3) of the 1913 Act.

THE POLITICAL LEVY

16. The Conservative manifesto stated that:

> "Consultations on the Green Paper have confirmed that there is widespread disquet about how the right of individual trade union members not to pay the political levy operates in practice, through the system of contracting-out. We intend to invite the TUC to discuss the steps which the trade unions themselves can take to ensure that individual members

are freely and effectively able to decide for themselves whether or not to pay the political levy. In the event that the trade unions are not willing to take such steps, the Government will be prepared to introduce measures to guarantee the free and effective right of choice".

17. The TUC has accepted the Government's invitation to discussions and a meeting will take place on 19 October.

18. Areas of concern include the ignorance of many new and existing members about their right to contract out; delays in refunds where a political contribution has been collected from exempt members (particularly under the check-off system - the system whereby employers collect union subscriptions directly from employees' wages and whereby the political levy element is often collected from those who have contracted out, obliging them to seek refunds); and the paucity of information available to members about their unions' political expenditure (unions do not have to list individual donations and their published accounts do not make clear that investment income is correctly apportioned between general and political funds).

(3) The political objects to which this section applies are the expenditure of money -

a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election; or

b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

c) on the maintenance of any person who is a member of Parliament or who holds a public office; or

d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or

e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression 'public office' in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

October 26, 1983

TRADE UNION BILL

Speaking Note for Ministers

26/10

1. The Trade Union Bill delivers the Government's promise to give trade unions back to their members.

2. It aims to ensure that Britain's 12 million trade unionists:

- can elect their leaders by secret ballots

- are consulted in a secret ballot before being called out on strike. No ballot means no immunity.

- can vote on whether their union should continue to spend on political activities.

3. The Government hoped the trade union movement would have made these fairly basic democratic reforms by itself. But they have refused even to take advantage of the offer of Government money made under the 1980 Act to fund secret ballots about pay and union elections.

4. Every test of public opinion before, during, and after June 9 shows strong public support. The latest poll shows 88% support for secret ballots to elect leaders and 83% for strike ballots. Even among trade unionists - those claimed to have most to fear - the election showed 60% support for reform.

5. There is widespread unease about the way many trade unions push through decisions that would never have been agreed to in a full, fair, free and secret ballot of their members. Many unions have not held a vote about their political fund within living memory.

6. The Bill achieves these improvements not by forcing unions to submit the conduct of their affairs to the judgement of the Government or an 'independent' agency. It will do so by putting effective control of the union into the hands of its own members.

7. It follows the 1980 and 1982 Employment Acts which restrained secondary

picketing, encouraged secret ballots, curtailed the closed shop and made trade unions accountable at law for any unlawful acts.

8. It would be much better if trade unions had responded constructively to public clamour for reform, leaving Government free to concentrate on more positive things in the employment field such as training schemes for the young, schemes to help unemployed people and ways of improving productivity. The economy cannot be restored unless trade unions do what their members want and dedicate themselves to restoring industrial and commercial success to the companies that employ them.

9. The Bill is a further step in the Government's programme to ensure that Britain has a modern and effective framework of union law which is accepted in the country as fair and balanced. Trade unionists should seize the chance it offers them to reform any outdated and undemocratic practices in their union and to see that it does adjust to industrial realities. If they do, they will be helping the country to stage a strong and lasting recovery, and the trade union movement to recover its credibility.

10. The Bill does not as yet deal with the issue of safeguarding union members' freedom of choice as to whether to pay the political levy. In line with our previous commitment the TUC has been asked to come forward before the end of the year with their own proposals for ensuring a free, fair and informed choice.

CONFIDENTIAL

dsq

10 DOWNING STREET

From the Private Secretary

17 October 1983

I am afraid we have had to move the meeting on Strikes in Essential Services about which I wrote to you on 11 October. The new time, which I understand is acceptable to all Ministers concerned, is 1000 hours on Wednesday, 16 November.

I am sending copies of this letter to the recipients of my letter of 11 October.

David Barclay

Brett Bonner, Esq.,
Department of Employment.

CONFIDENTIAL

Distribution

Mr. Gregson, Cabinet Office
Mr. John Selwyn Gummer MP
D/Energy
DOE
DTI
DHSS
HMT

CONFIDENTIAL

file

DSG

10 DOWNING STREET

From the Private Secretary

11 October 1983

BF → now 1000 on 16 November.

I am writing to confirm that we have arranged a Meeting of Ministers to discuss Strikes in Essential Services for ~~1500 hours on Monday~~, 31 October at 10 Downing Street. I understand that your Secretary of State will be circulating a paper for this.

Other Ministers invited are: the Chancellor, the Secretary of State for Social Services, the Secretary of State for Trade and Industry, the Secretary of State for the Environment and the Secretary of State for Energy. I am sending copies of this letter to their Private Secretaries, as well as to the Chairman's Office, and to Mr. Gregson (Cabinet Office).

DB

Brett Bonner, Esq.,
Department of Employment.

CONFIDENTIAL

CONFIDENTIAL

VC NO.

NBPM

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Andrew Turnbull Esq
10 Downing Street
LONDON
SW1

10 October 1983

Dear Andrew

STRIKES IN ESSENTIAL SERVICES

You told me that the Prime Minister has agreed to my Secretary of State's suggestion of a discussion with some colleagues about how to take forward the commitment in the Conservative Party Manifesto to consultations about procedure agreements in essential services. You are going to invite the Chancellor of the Exchequer, the Secretaries of State for Social Services, Trade and Industry, the Environment and Energy and Mr Gummer to a meeting. I am copying to their offices the note my Secretary of State sent to the Prime Minister, as a basis for discussion.

Yours sincerely

Barnaby Shaw

J B SHAW
Principal Private Secretary

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IND RGN 1 IND RELATIONS LEG Pt 10.

CONFIDENTIAL

a Sir Robert Armstrong DSS
V NO

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10 DOWNING STREET

From the Private Secretary

10 October 1983

STRIKES IN ESSENTIAL SERVICES

The Prime Minister has seen your Secretary of State's note suggesting ways in which the Manifesto commitment on strikes in essential services might be advanced. She is content with your proposal for a meeting of those Ministers most closely involved, including Mr. Gummer.

This Office will arrange such a meeting. It would be helpful if your Secretary of State could circulate the note attached to his minute.

I am copying this letter to Peter Gregson (Cabinet Office).

Andrew Turnbull

Barnaby Shaw, Esq.,
Department of Employment.

CONFIDENTIAL

cc Mr Gregson

CONFIDENTIAL

Sir Robert Armstrong
cc Mr Gregson

Prime Minister

Agree to a meeting of those at X + Mr Gregson to discuss Mr Tebbit paper.

AT 7/10

PRIME MINISTER

STRIKES IN ESSENTIAL SERVICES

I would welcome a discussion about how we might carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity".

2 This commitment reflected the conclusions we reached on the basis of the analysis provided in my minute to you of 6 May. In short, we saw no foreseeable prospect of establishing no-strike agreements which would prove effective. We also concluded, I am sure rightly, that it was not practicable to seek to prohibit industrial action in essential services by an extension of the criminal law or by removing completely civil immunity for organising industrial action. Given the almost universal reluctance of employers to contemplate legally binding agreements, the option of deeming procedure agreements to be legally binding and enforceable by both parties offered no attractions.

3 We have of course already taken a number of steps which should progressively inhibit strikes in essential services. Closed shops are being undermined, trade unions' immunities have been narrowed and their funds are now at risk. The Bill I am to introduce shortly will better ensure that union leaders reflect their members' views and interests. Above all else, the requirement for strike ballots if immunity is to be

preserved should significantly reduce the disposition of union leaders to seek to command support for industrial action in essential services, which is usually both national and official.

4 With all these considerations in mind, I set out in the note attached to this minute an approach we could contemplate. Essentially this approach proposes certain minimum statutory procedural arrangements, breach of which would lead to loss of immunity. The note explains the reasons for adopting this approach and I judge it the most practicable option currently available.

5 At the present time however it does have the disadvantage that it could be viewed by some of our supporters as falling some long way short of providing a sure protection against the possibility of disruption to essential services. However understandable that objective, it is not yet attainable and we cannot pretend that it is. My concern is that if we pressed ahead with consultations now excessive expectations could be fostered and attention would be distracted from the foundations of the approach we have already laid and from the importance of the provisions of the forthcoming Bill. I see the Bill and the decay of closed shops as the next most important steps.

6 I am inclined therefore to postpone consultations specifically on the problem of essential services to a timetable which would allow legislation in the 1985/86 Session in accord with your expressed view that bills on industrial affairs seem to be needed every two years. This would allow us to experience the effects of what we have already achieved and plan, and could allow the possibility of a more radical

approach. In the interim I would be very surprised if the commitment in the Manifesto did not exert a powerful pressure on unions in essential services to observe the procedural agreements they have voluntarily entered.

7 You may wish to consider extending the discussion I suggest to other colleagues most closely concerned. I have in mind the Chancellor of the Exchequer and the Secretaries of State for Social Services, Trade and Industry, the Environment and Energy. You might consider that Mr Gummer might also participate.

NJ

N T

7 October 1983

PROCEDURE AGREEMENTS IN ESSENTIAL SERVICES: NOTE BY THE SECRETARY OF STATE FOR EMPLOYMENT

The Manifesto commitment is to consult about "the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". There is no prospect of unions in essential services agreeing that immunity should be attached to the observance of existing procedure agreements, still less that they would be willing to agree to improvements in such agreements at our behest as a conscious step to this same objective. For this and other evident reasons I would rule out, subject to the views of colleagues with sponsor responsibility for essential services, any attempt to intervene directly between management and unions to secure changes in procedure agreements case by case.

2. It follows that it would be necessary to contemplate establishing statutory tests of general application for procedural arrangements for essential services which would need to be met if unions were to preserve immunity for industrial action. At the same time it would be necessary both to allow the development of improved procedural arrangements by agreement and guard against the possibility that some unions would withdraw from existing agreements.

3. The tests, which would need to be met to preserve immunity for either official or unofficial industrial action, could be:-

(i) industrial action should not be taken on any issue already determined by a substantive agreement during its currency;

(ii) in addition, industrial action should not be taken until all stages of any extant procedure agreement

have been exhausted; it would follow that if an agreement provided for arbitration and both parties were committed to it whether on agreement case by case or otherwise, industrial action whilst arbitration took place or in opposition to an award would not have immunity;

(iii) a minimum period of notice of industrial action would need to be given which could not begin until negotiations were evidently deadlocked (eg on the formal registration of a "failure to agree" under a procedure agreement, on the employer making clear that a final offer had been made).

4. In putting these tests forward for consultation they could be presented as altogether reasonable, indeed minimal, protections for the community with the expressed expectation that trade unions and their members would accept them as such. Unions would not find it easy to argue persuasively that immunity should be retained for industrial action which affronted the principles they established or that these same principles could not be reasonably reflected in procedure agreements.

5. At the same time, it would be essential to make clear that the Government were not contemplating setting up new institutional arrangements for determining pay or to resolve other issues which might, for example, involve the judgement of third parties or concepts of comparability.

6. It would seem essential that for the consultations to identify the services which were regarded as truly essential on the basis of criteria which are clear, simple and likely to command ready public acceptance. Without such an indication the consultative process could be both protracted and

confused and public opinion and sectional interests would be likely to advance the claims for special treatment of a whole variety of services and a good many industries which, either directly or indirectly, could impinge on daily life or economic performance. The services which might be clearly in mind are electricity, gas and water as monopoly providers of essential services direct to the home and the National Health Service must be included because of the direct threat to life and health that industrial action can pose.

7. It might well not be necessary to extend the list any wider than this for the purposes of consultation. Legislation could finally be framed to allow these essential services to be designated as such by order under an enabling power which could also be used to extend the list as circumstances required or justified, though not of course while a dispute was taking place.

IND POL : Ind. Relatn Leg : Pt 10

CF

BL

GR
Fixed for 1030 on
16 Nov. Please BL.

David

Could you tell
all 3 no meeting
till November + then
arrange one

D
11/10

PRIME MINISTER

Mr. Parkinson, Mr. Tebbit and Mr. Gummer would like to speak to you about political contributions. Unfortunately, Mr. Parkinson and Mr. Gummer are going abroad after the Conference which means that the only time before the end of the month when you can meet is during the Conference. The most suitable time would be 7.45 p.m., i.e. just before dinner, on Thursday, 13 October. I know that this is not very convenient but otherwise the meeting will have to wait until November. Would you prefer:

TUC

i) to hold the meeting next Thursday; or

No

ii) to wait until November?

Yes

TF

TIM FLESHER

7 October, 1983

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Prime Minister (4)

13 September 1983

MMS 14/9

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1H 9NP

Dear Norman,

HIGHLAND FABRICATORS, NIGG

In my letter of 9 September, I promised to write to you again when I had received a detailed report from the Chief Constable of Northern Constabulary abut the picketing at Highland Fabricators' Off-shore Construction Yard at Nigg.

I am now satisfied that there is no question of pickets at the site having flouted the law; and there is an entirely reasonable explanation for the problem which arose briefly on the first day of the unofficial strike. In view of your understandable concern, it may be helpful to set out the circumstances more fully.

In discussions prior to the start of the unofficial action, the Convener of the Local Committee of Shop-stewards, Mr Wilson was advised by the police that the number of official pickets should be no more than six. Mr Wilson accepted this and also agreed to comply with the law on picketing and to allow any one wishing to work to do so. He has not gone back on this agreement. On 29 August, 62 officers were detailed for duty at Nigg from 6.30 am. Crowd control barriers were erected by the police at both sides of the main gate and on the footpath opposite the main entrance. There were only six official pickets on duty at the main gate but soon afterwards about 200 strikers gathered behind the crowd control barriers, shouting at workers and vehicles passing into the Yard. Other strikers had gathered in the large private car-park some hundred yards from the main road. About 7.40 am this second group (by now about 500 strong) suddenly surged forward on to the main road at a point about 300 yards from the main gate. About six police officers were

left at the main gate and the remainder of those on duty were directed to clear the main road, which they did within about five minutes. From then onwards, the roadway was kept open and any vehicle wishing to pass through to the Yard entrance was able to do so, as were a considerable number of workers on foot.

On 30 August, the police presence was increased to 118 officers including a contingent of 28 from Grampian Police; and the roadway was again kept open. The same has been true on each succeeding day of action; and the police have been able to reduce the number of personnel on duty progressively in line with the decrease in the number of strikers in attendance near the gates. Thus, yesterday, when 430 vehicles entered the site, there were 24 police personnel on duty and approximately 50 strikers in attendance near to but forming no part of the official picket line.

During the duration of the strike, no one has complained to the police of being prevented from getting to work. Some publicity was given to the fact that, at the beginning of the srike, buses hired by the management did not in fact enter the site. This, however, was because the drivers had been instructed by their firm's manager not to cross the picket line; and, as a result, with a single exception, none of the drivers made a genuine or positive attempt to reach the main entrance of the Yard.

One striker was arrested on 30 August for kicking a vehicle entering the Yard, but there have been no complaints of damage to property. Nor have there been complaints about intimidation of workers, though the police are making inquiries into a threatening 'phone call made to the wife of one employee.

I hope that you will have found this further information reassuring. Our joint hope now must be that normal working at the site can be resumed quickly.

I am copying this letter to the Prime Minister, the Home Secretary and the Secretary of State for Energy.

Yours ever,

George Younger.

Ind Pol
Industrial
Relations
Log no 1-10

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

NBPM
MIS 9/9

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1H 9NP

9 September 1983

HIGHLAND FABRICATORS, NIGG

Thank you for your letter dated 2 September which was delivered to Dover House yesterday morning.

I agree that the unofficial dispute at Nigg has attracted a considerable amount of publicity. I too have been concerned and I have called for a detailed report from the Chief Constable.

From information immediately available, however, I can say that police officers have been deployed at the site in sufficient numbers to permit large numbers of vehicles (between 200 and 300) to enter the site each day; and that apart from a very brief period on 29 August, the first day of the action, the highway has not been obstructed. When necessary, the Chief Constable of Northern Constabulary has called on mutual aid from the neighbouring Grampian Police.

I shall write to you further when I have received the Chief Constable's report.

I am copying this letter to the Prime Minister, the Home Secretary and the Secretary of State for Energy.

Approved by the
Secretary of State and
signed in his absence.

Ind Pol
Legislation
PX10

CONFIDENTIAL

Prime Minister (2)

MLS 5/9

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Malcolm Rifkind Esq MP
Minister of State
Foreign & Commonwealth Office
LONDON SW1

5 September 1983

Dear Minister,

DRAFT EC DIRECTIVES ON EMPLOYEE PARTICIPATION

Thank you for your letter of 24 August about the two draft Directives on employee participation.

I am glad that you agree that we should consult about these two draft Directives together, though it will entail some delay. There is of course no doubt about industry's general reactions. CBI officials have already been to see mine to emphasise that industry's opposition to the revised text of the Vredeling Directive remains unabated, as does that of UNICE who are maintaining a solid front of opposition to it.

It is clearly sensible that the handling of the official discussions in Brussels should be considered in EQO and my officials will shortly be circulating papers relevant to the first meeting of the working party on 13 September.

I am not sure what you mean by constructive opposition in this instance. We are opposed to legal enforcement of the particular measures proposed in the draft Directive and we are opposed in principle to European legislation on such matters generally. That leaves little room in which to be constructive! It is crucial that our representatives on the working party should leave other Governments and the Commission in no doubt that the Government's opposition on grounds of principle to this and the draft Fifth Directive remains undiminished - an opposition to which we are now further committed by our Manifesto. As you know, I have spelt out our principled objections to other Employment Ministers on more than one occasion, and I am hopeful that our sustained opposition will attract an increasing measure of support.

I am sending copies to the same recipients as before.

Yours sincerely,

Peter Smith

/ Approved by the Secretary of State and signed in his absence /

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Ind. Pol. : Legislation Pt 10

Prime Minister (2)

MLS 5/9

Caxton House Tothill Street London SW1H 9NF
6400
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Switchboard 01-213 3000

The Rt Hon George Younger MP
Secretary of State for Scotland
Scottish Office
Dover House
LONDON
SW1

2 September 1983

Dear George.

I have seen in the press a number of disturbing reports about picketing at Highlands Fabricators' offshore construction yard at Nigg, Easter Ross.

It would appear that large numbers of pickets have been allowed to congregate outside the entrance; that the highway has been obstructed; and that there have been cases of intimidation and possibly violence against those seeking to return to work.

I wonder if you could say if this is an accurate description of what has been occurring at Nigg. If it is indeed so and picketing on such a scale has been permitted by the police without arrests being made or other steps taken to disperse the pickets and allow access to the yard comparisons will be made with the failure of the police to act against similar incidents in the 1970s. That would be most unfortunate to say the least of it.

I am copying this letter to the Prime Minister, the Home Secretary and the Secretary of State for Energy.

Yours
Norman

CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1

24 August 1983

Dear Norman,

You sent Geoffrey Howe a copy of your letter of 5 August to Cecil Parkinson about the two draft Directives on employee participation. I am writing in his absence.

I agree that it would be sensible to consult on these draft Directives together and I accept that this will inevitably involve some delay in the start of consultations on the Vredeling text.

I take your point that this delay could be of some tactical advantage to us in the negotiations in Brussels, in that we could use the consultations as an excuse for reserving our position on points of difficulty. I am concerned, however, about what our representatives will say in the period before this process of consultation is completed in January (and I hope incidentally that we can ensure that this timetable does not slip any further). In the discussions in Brussels I am sure that we should be constructive in our opposition. I hope you will agree, therefore, that the consultative paper and our handling of this question in Brussels should be considered at EQO in early autumn. This is the best way to ensure that the officials concerned in the various departments, including my own and UKRep, are kept in the picture.

Copies of this letter go to recipients of yours.

Yours ever,

Malcolm Rifkind

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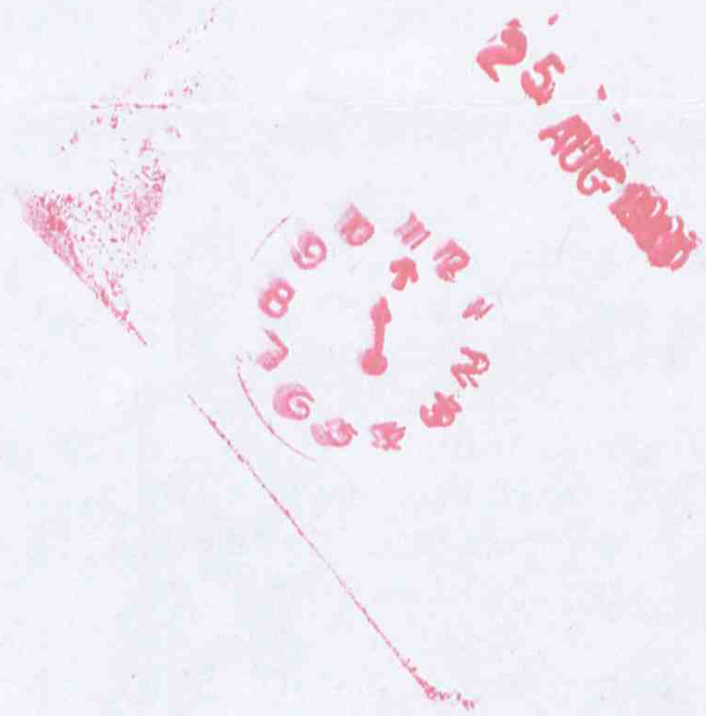
IND POL: Ind. Relations

PR CO



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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

26. VII. 83

The Rt Hon Peter Rees QC MP
Chief Secretary to the Treasur
HM Treasury
Parliament Street
LONDON S W 1

Mr Kemp
Mr Culpin

Dear Peter

ECs ACQUIRED RIGHTS DIRECTIVE

Two general issues as to the applicability of the Directive have arisen in correspondence. The first is the application of the Directive to the proposals to transfer the function of the GLC and the Metropolitan County Councils; the second is the extent to which the contracting out of services in the NHS is affected. I also see now from the latest letter from Lord Gowrie that advice is requested about the Audit Commission.

GLC and MCCs

It is right that consideration should be given to the applicability of the Directive. There are no clear limitations on its scope. Its provisions do not include any qualification on the concept of transfers of undertakings generally. It follows, as the Lord Advocate and I concluded when we looked at the Directive in the context of civil service transfers, that it is difficult to establish from the terms of the Directive itself that some limitation was clearly intended. Yet we agree that the context of Local Government reorganisation is far from the context of the takeover of businesses (other than by the acquisition of shares) in which the Directive was conceived.

As we wrote in paragraph 15 of the Joint Opinion:-

"Difficult

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"Difficult questions arise on transfers other than to the private sector. First, where a transfer is simply a hiving-off from one body to another in circumstances in which the transaction really amounts to no more than a recasting of Crown activities as opposed to the transfer of an undertaking to a new employer, it could be said that the Directive will not apply. This would arguably be the case with the transfers embodied in the National Heritage Bill. Second, where the transfer is not simply a recasting of Crown activities (eg where the transfer is from the Crown to a public corporation or local authority) and the activity could not be regarded as economic, either before or after the transfer, the transaction would be covered by the Directive if one takes it as applying to all activity but not so if one limits it to activities of an economic character."

This passage seems apt by analogy in the present context of transfers from one local authority body to another.

This exercise therefore brings to the fore the need for HMG to decide whether it should maintain the line that the Directive only applies to activities of an economic character. As was stated in the Joint Opinion, we believe there is a significant risk that the European Court would not uphold such a distinction. We do not think we can take the legal proposition any further. It must be a matter for colleagues to decide how to act in the light of that risk. However, we can say that unless and until the European Court were to hold the Directive to be of general application, there are defensible grounds for maintaining the distinction.

We believe the best argument to be that the Directive can have no application in spheres which cannot be said to

affect the establishment or functioning of the Common Market (the Article 100 point). The context of reorganisation of Local Government would be a good occasion on which this argument could be tested as it is so far from the area envisaged by Article 100 or by the framers of the Directive. We are fortified in maintaining the distinction by the Commission's apparent acceptance hitherto of the way in which our Transfer of Undertakings Regulations have been drafted.

If HMG regards the Directive as only applying to activities of an economic character we can rule out most of the transfers envisaged as being outside the scope of the Directive (cf. the position reached in relation to HMG's proposals to transfer Crown activities where the majority are transfers to the private sector). There may be a small area left where we may need to consider more closely how to proceed. We have in mind the municipal airports and the Royal Festival Hall.
We shall not comment on how to apply the Directive to these bodies unless our advice is specifically requested.

It may be that the same point applies to the Audit Commission. If the Directive is to be treated as of being of general application the transfer of the undertaking constituted by the Audit Commission is caught; if the Directive is limited to activities of an economic character it is not. We have no details beyond those in Patrick Jenkin's letter of 14 July upon which we can comment.

Contracting out

The second question raised in the correspondence is whether the Directive will apply to contracting out of services, particularly in the Health Service. We have not been supplied with any new information to take this

issue any further than in the Joint Opinion. As we understand it, contracting out will not generally involve the transfer of an undertaking. A specific service which has been performed in-house will no longer be performed in this way. Some staff may be redeployed within the NHS; others may be made redundant. The outside contractor will use his own undertaking. It must be a matter for DHSS lawyers to advise whether in any particular case a transfer of an undertaking is involved in the light of the Opinion.

I have spoken to the Lord Advocate and he has agreed to my writing in the above terms.

I am copying this letter to the Foreign Secretary, the Lord Chancellor, the Secretary of State for Employment, the Secretary of State for Scotland, the Lord Advocate, the Minister of State for Local Government, the Minister for Health, other members of 'H' and of MISC 95, and to Sir Robert Armstrong.

Yours ever. Michael

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

The Rt Hon Cecil Parkinson MP
Secretary of State for Trade and Industry
Ashdown House
123 Victoria Street
LONDON SW1

5 August 1983

Dear Cecil.

DRAFT EC DIRECTIVES ON EMPLOYEE PARTICIPATION

In an exchange of correspondence last December, Arthur Cockfield and I discussed the handling of our consultation on the two draft EC Directives which have substantial provisions on employee participation - the Fifth Company Law and the so-called 'Vredeling' Directives. At that time I reserved judgement on the method and timing of consultation but suggested that it might be advantageous, if the timing was right, to consult on both Directives at the same time.

The revised text of the 'Vredeling' Directive was adopted by the Commission in June and has now been submitted to the Council. I understand that the Commission has also now adopted the Fifth Directive and that a text will be published in the next few weeks. In these circumstances I think that it would be best to consult on both draft Directives together. This would simplify matters for those being consulted, and would help to point-up the inconsistencies between the two texts.

To consult on both texts simultaneously will mean a little delay in the start of consultations on the 'Vredeling' text which has already aroused a fair degree of public interest: I understand that we are unlikely to be ready to launch our consultative document before October. However I do not think that we will be disadvantaged by this, since we are already well aware of the views of industry, and there may be certain tactical advantages to be gained in the negotiations in the Council machinery if we prolong the process of consultation.

If you agree that this is the right approach I suggest that the actual consultation on both draft Directives should be handled by officials in one Department, and I am happy that my officials should take this on. If you agree, our officials can work out the details between them. I have in mind that a press notice would alert those not consulted initially, and we would allow three months for responses.

I am copying this letter to other members of E(A) Committee, to the Lord Chancellor, the Attorney General, to the Secretaries of State for Scotland and Wales and Northern Ireland, the Foreign Secretary and to Sir Robert Armstrong.

CONFIDENTIAL

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Old Admiralty Building
Whitehall
London SW1A 2AZ
Telephone 01-273 4400

3 August 1983

The Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
London WC2A 2LL

5/8

attached.

Dear Michael,

EC'S ACQUIRED RIGHTS DIRECTIVE

I was most interested to see a copy of your letter of 26 July to Peter Rees on the question of the EC's Acquired Rights Directive to the Government's programme for privatisation and hivings-off. Following the issue of the Joint Opinion on this matter on 11 May 1983, we had thought that the Directive was virtually all-embracing for departmental programmes in this area, due to the generality of the definition of an 'undertaking'. It now seems that you are offering a rather less restrictive interpretation of the scope of the Directive which could be of significant benefit to departments - albeit still catching some of the major programmes such as the Royal Ordnance Factories - by suggesting that it would be defensible to take the line that it only applies to economic activities. Given our earlier interpretation of the Directive, I think it would be useful if I could run over a few points to ensure that we now have the position firmly on board.

As I understand your letter, the position on the Directive runs as follows:

a. Whilst there is a significant risk that the European Court would not uphold the distinction that the Directive only applies to activities of an economic character, there are defensible grounds for maintaining that distinction until such time as the Court were to rule otherwise;

b. We can be fortified in maintaining the distinction by the Commission's apparent acceptance hitherto of the way in which the Transfer of Undertakings Regulations have been drafted; and

c. As it is impossible to take the legal position further, colleagues should decide how to act in the light of the risk outlined at a. above.

If I may say so, this advice seems - to a non-lawyer at least - somewhat at variance with the earlier Opinion. First, I had thought that the various arguments in favour of a purely economic interpretation, which we might use in our defence should a case be bought against us in the European Court, had been advanced and analysed, but led to the conclusion that there was a significant risk that it would rule that an 'undertaking' was not restricted in this manner. In particular it was said that:

> 'Activities of an economic character, particularly when looked at in the context of harmonisation of laws protecting the rights of employees, are wide in scope (and go wider than the concept adopted in the Regulations of a 'commercial venture' would suggest).'

If we were now to adopt the 'activities of an economic character' distinction, I also wonder how that phrase would be defined. An earlier problem seemed to be that it was easier to recognise than to describe such an activity, and I suspect that we will inevitably have to fall back on the definition given in the Regulations, ie a commercial venture. Does this, in turn, mean that the Regulations are not defective and can be applied? I also wonder if we should take comfort from the fact that the Commission has not previously challenged the distinction drawn in the Regulations enforcing the Directive. The analysis in the Opinion did, after all, indicate that its conclusion of significant risk was reached, "Notwithstanding the Commission's previous acquiescence".

I am also a little concerned at the suggestion that colleagues should, against the background of that risk, decide whether they wish to proceed on the basis that the Directive was of general application or only caught 'economic activities'. The Opinion stated that: 'the Crown should adopt a consistent attitude in relation to undertakings to be transferred.....' Would it not be very much more difficult, in terms of complying with the Directive, to defend a position where some undertakings, because of their commercial nature were subject to the regulations, and others were not? I wonder if we are not in some danger of becoming embroiled in such an indefensible situation if colleagues proceed on the basis of the dictates of administrative convenience, rather than the interpretation of the law.

I am sorry to trouble you further with questions on this complex matter, which obviously has already occupied much of your time, but I do feel that we can only sensibly proceed if we at the centre have a full understanding of the situation, and can give sound guidance on the basis of that understanding.

I am copying this letter to the recipients of yours and to Michael Heseltine.

Yours,
Tony

LORD GOWRIE

CONFIDENTIAL

FCO

NBPM

MIS 29/7

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000

DIRECT DIALLING 01-218 2111/3

MO 21/8/5

26th July 1983

EMPLOYEE INVOLVEMENT

I am most grateful for the helpful and constructive correspondence which has followed our original exchange. Can I suggest that we take up Geoffrey Howe's suggestion of an informal discussion, which I should like to attend.

I am copying this letter to the recipients of the earlier correspondence.

Yours ever

Michael Heseltine

Note

Told Mr Shaw

that if Mr Tebbit decided

to agree to a meeting he

should do so in the knowledge that

the PM considered the Chancellor's 18/7 letter overtaken by his of 15/7.

MCS 29/7

The Rt Hon Norman Tebbit MP

CONFIDENTIAL

Chancellor of the Duchy of Lancaster

Prime Minister (4)

c NO

MRS 21/7

CABINET OFFICE.
WHITEHALL, LONDON SW1A 2AS

20 July 1983

Dear Norman,

EMPLOYEE INVOLVEMENT

I have seen the correspondence on this which links in with some of our previous discussions - and difficulties.

I do not accept the argument that, if we do not act, our opponents will. On the contrary, if we act it is more likely to give our opponents a foundation on which to build. My own view is entirely in support of the voluntary approach. I accept that there may be occasions - as for example when we were ambushed over the companies' accounts point - where we may be manoeuvred into accepting some sort of legislative cover. But I would prefer to deal with that when it arises.

I am copying this letter to the other recipients of the earlier correspondence.

Yours,

COCKFIELD

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1

3.9

CONFIDENTIAL

Prime Minister (2) cc MPO

This crossed with Mr Tebbit's letter strongly supporting the voluntarist approach is and is, I assume, overtaken by it.

MCS 18/7

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

18 July 1983

The Rt. Hon. Norman Tebbit MP
Secretary of State for Employment

Dear Norman

EMPLOYEE INVOLVEMENT

I have seen the recent correspondence you have had with Michael Heseltine and Geoffrey Howe about employee involvement, following your minute of 20 April to the Prime Minister and her response.

I am very much of the same mind as Michael and Geoffrey. As I suggested in my minute of 26 April, although the voluntarist route is much to be preferred, I believe that we should keep open the option of legislating if voluntarism does not work. Indeed, this could well improve the chances of voluntarism succeeding.

AS: SS/Energy.

Greater involvement and identification of the employee with the company for which he works is highly desirable. The recent CBI survey of employee involvement will, I understand, be used to publicise good employee involvement practices later this year. I see attraction in some Government action, such as a Code of Practice as Michael has suggested, perhaps backed by legislation. I hope that ways of achieving this, without creating more bureaucracy and more inspectorates, will be explored. Needless to say, nothing we do must give advantage and leverage to the unions who seek to use "employee involvement" to strengthen their own position. If we play our cards right, the outcome should be the very reverse of this.

I share Geoffrey's concern about the political dangers of inaction, and I should also be glad to join in the informal discussion he has suggested.

Copies of this letter go to the recipients of the earlier correspondence.

Yours

NIGEL LAWSON

INDUSTRIAL POLICY : Industrial Relations Legislation

Pt 10

CONFIDENTIAL

Prime Minister (2)

Good.

GCHQ

MLS 15/7

MLS 15/7

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213...6400.....

Switchboard 01-213 3000

The Rt Hon Michael Heseltine MP
Secretary of State for Defence
Ministry of Defence
Whitehall
LONDON SW1

15 July 1983

Dear Michael,

EMPLOYEE INVOLVEMENT

Thank you for your letter of 27 June about employee involvement.

I agree that a code of practice on the lines you propose has some attractions, and it is one of the options which I have considered in some detail. However I concluded that any advantages are outweighed by the difficulties. If a code is to carry any weight, it must, as you say, have statutory backing. Codes of this kind, however, are more suitable for elaborating on specific legal duties, such as those relating to the closed shop, and they are not generally practicable for a wide-ranging subject such as employee involvement. A statutory code, moreover, would need to be underpinned by legal sanctions, but it is difficult to see how it could realistically be enforced. Either the sanctions would be so mild as to be ineffective; or if they were to have any teeth, they would inhibit good voluntary intiatives. There would also be increasing pressure for greater legislative intervention.

I do not underestimate the value of voluntary codes of good practice. There are already a number of such codes in existence, and others are no doubt in the making. In particular, the Industrial Participation Association has held extensive consultation on a new code which it is shortly to publish with the support of the Institute of Personnel Management. The new requirement in the Employment Act 1982 on larger employers to report on their performance is an additional stimulus for other such organisations to produce guidance on the subject.

You suggest that the introduction of a statutory code of practice might forestall more radical initiatives by our political oponents. I rather doubt whether such a code would deter the other political parties from pressing for legislation of the kind advocated in their recent manifesto. On the contrary, I believe that our adherence to the voluntary approach and evidence of progress will stand us in good stead both here and in resisting the two draft Directives emanating from Brussels.

I am copying this letter as before.

Yours

CONFIDENTIAL

PA (see N Tebbit 9/5/7) MLS 15/7

MF

CC N.O.

Prime Minister (2)

MLS 14/7

FCS/83/129

SECRETARY OF STATE FOR EMPLOYMENT

Employee Involvement

1. I have been following with interest the continuing exchanges on this subject, resting with Michael Heseltine's letter of 27 June. Voluntarism is clearly the best route if it works; and, unless we are convinced that something slightly different may offer better results in practice, we are obviously right to stick to the line we have been taking in the Community.

2. Turning now to the position at home, I continue to see some force in the arguments which Michael has put forward. There is a problem about the laggards, who are reluctant to follow good industrial practice; there are dangers in leaving the matter entirely to individual companies, and there is a danger of leaving a vacuum which some future British Government would certainly be tempted to fill and would very probably fill in a way which we would all come to regret. (Indeed, as our defeat in the Lords over the Esmond Bulmer/Lord Rochester amendment shows, there may be dangers even in the shorter term). We agreed about the importance of our Manifesto commitment to resist attempts to impose rigid systems of employer/employee relations in Britain; but the word 'rigid' is important and we should not completely close our eyes to the possible advantages of taking an initiative along the lines suggested by Michael Heseltine. If you felt the idea worth discussing informally among a small group of colleagues, I should be glad to take part. If we decided that a development of our present policy was justified on the merits in terms of British interests, I would not anticipate any difficulty in reflecting this satisfactorily in our position in the Community.

3. I am copying this minute to the Secretary of State for Defence, members of E, the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

13 July, 1983

Ind POR : Matrícs Pt 10

Department of Employment

PRESS NOTICE

Caxton House Tothill Street London SW1H 9NA
Telephone : Direct Line 01-213 7439 (24 hour answering service)
Exchange 01-213 3000 Telex 915564 DEPEMP

July 12, 1983

PROPOSALS FOR LEGISLATION ON DEMOCRACY IN TRADE UNIONS

Statement by Norman Tebbit, Secretary of State for Employment, in the House of Commons today:

"I am now able to announce the Government's conclusions following the consultations on the Green Paper "Democracy in Trade Unions" and to outline the legislative proposals I propose to lay before Parliament when the House reassembles in the autumn. I am publishing today a paper explaining these proposals and providing an opportunity for consultations on them.

"Numerous detailed and thoughtful responses to the Green Paper were received from employers, employers organisations and individual trade unions, including some affiliated to the TUC.

"These confirmed that there is widespread concern about shortcomings in trade union procedures for elections and for consulting their members on major issues, particularly on strike decisions. There is undoubtedly widespread support for legislation to safeguard the rights of members in relation to their unions.

"As foreshadowed in our election Manifesto the legislation will cover three main issues: trade union elections, strikes and the political activities of trade unions.

"First, elections. The legislation will require elections to the governing bodies of trade unions to comply with the following principles:

- voting must be secret and by ballot paper
- there must be an equal and unrestricted opportunity to vote
- every union member should be able to cast his vote directly.

"These principles are not a legal strait-jacket. They are the minimum necessary to ensure free, fair and democratic elections. Within them, trade unions will be free to constitute their governing bodies in the way they judge will best serve their members' interests and to decide on the form of ballots.

"Secondly, strikes. The consultations have shown continuing concern about the way in which strike decisions are taken. Accordingly I propose that if a trade union orders or endorses industrial action by its members in breach of their contracts of employment without first consulting those members in a secret ballot, that trade union should lose immunity from the normal civil law consequences of its action. This will give the community more protection against irresponsible industrial action and provide new safeguards for trade union members themselves against being required to strike without their consent.

"I also expect in due course to consult on the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity.

"Thirdly, the political activities of trade unions. The Government accepts that a trade union should be able to adopt political objectives and to set up a political fund. However, I believe that the authorisation of a political fund should be subject to review by a periodic ballot of the membership. The present members of trades unions should not be bound forever by a ballot that may well have been taken before any of them were born. I propose that the 1913 Act should be amended to require that political objectives and funds should be submitted to ballot at least every 10 years.

"For some years there has been disquiet over the operation of the system for contracting out of the political levy. I therefore intend to invite the TUC to discuss the arrangements which trade unions themselves might take to ensure that their members are fully aware of their statutory rights and able to exercise them freely and effectively. I hope that the trade unions will be

willing to take such steps. If that hope is disappointed I would be ready to introduce measures, as we made clear in our Manifesto, to guarantee a free and effective right of choice.

"Mr Speaker, the events of recent weeks have made it abundantly clear that trade unionists are now insistent that they should have a greater democratic voice in the affairs of their unions and the Bill which I shall bring forward will respond to that demand."

ks

MCS
MA
BI

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Willie Rickett Esq
Private Secretary
10 Downing Street
LONDON
SW1

12 July 1983

Dear Willie

PROPOSALS FOR LEGISLATION ON TRADE UNION DEMOCRACY

... I enclose a copy of the statement my Secretary of State will be making this afternoon.

... I also enclose, for information, a copy of the paper Mr Tebbit is publishing outlining his proposals for legislation.

I am sending copies of this letter to Murdo Maclean, David Beamish, David Heyhoe, Steve Godber and to the Private Secretaries to other members of E(A) and Richard Hatfield.

Yours Sincerely

Felicity Everiss

FELICITY EVERISS
Private Secretary

July 12, 1983

PROPOSALS FOR LEGISLATION ON DEMOCRACY IN TRADE UNIONS

1. The Government intend to introduce legislation in the current Session of Parliament to provide for greater democracy in trade unions in three important areas:

- elections for the governing bodies of trade unions
- ballots before strikes
- the political activities of trade unions

2. The Government have drawn up their proposals after extensive consultations on the basis of the Green Paper on "Democracy in Trade Unions" (Cmnd 8778) which was published in January 1983. More than 150 organisations and individuals submitted comments on the Green Paper. These consultations showed very wide support for legislation to safeguard the democratic rights of trade union members.

Trade Union Elections

3. The Government propose to introduce legislation which will require elections to the governing bodies of trade unions (ie their executives) to be conducted in accordance with a number of basic principles, including the following:

- voting must be secret
- voting must be by the marking of a ballot paper
- every trade union member must have an equal and unrestricted opportunity to vote
- each trade union member must be able to vote directly for members of the governing body

These principles will not make unreasonable or impracticable demands on trade unions. They will not require the use of postal ballots in all circumstances and balloting at the workplace could satisfy the tests. However, balloting at meetings held at inconvenient times or places would not do so. The principles will apply to the election of Presidents and General Secretaries only if they have a vote or casting vote on the governing body of their union, but not to elections below the level of the governing body. They will, however, exclude such practices as voting by a show of hands and the use of the block vote. They will not permit the election of governing bodies by the membership of any intermediate body, eg delegates to a national conference or members of, for instance, a regional committee. Trade unions would remain able either to have separate constituencies, eg on a geographical or occupational basis, for seats on the governing body or to provide for all members to have a vote in respect of all seats. It will be a requirement that the members of governing bodies should be elected or re-elected at least once every 5 years.

4. The statutory principles governing elections will come into effect one year after the legislation receives Royal Assent so as to allow the trade unions time to make the necessary adjustments to their rules and electoral arrangements. This will mean that trade unions will be under a statutory duty to observe the statutory principles in the first elections due to be held after this part of the legislation comes into effect.

5. The Government propose that these principles should take the form of a statutory duty owed by each trade union to each of its members. Enforcement of this statutory duty will therefore be a matter for the members of each union, acting either singly or in groups, by means of an application to the ordinary courts. The Government propose that the first step should be an application for a declaration that a trade union has failed to perform its statutory duty because a particular election has not been carried out in accordance with the principles set down in the legislation. Following such a declaration the union would be allowed 6 months within which to ensure that it complied with its statutory duty to its members. If at the end of the 6 month period it had not done so the member or members who had sought the declaration could seek enforcement of the order to compel the union to perform its

statutory duty. Defiance of such an order could lead to contempt proceedings. Except for the addition of a 6 month declaratory stage, the enforcement procedure is virtually identical with that which is already used by union members seeking to ensure that elections are carried out in accordance with union rules.

6. The availability, under the Employment Act 1980, of finance for postal ballots for trade union elections will continue.

Strike Ballots

7. The consultations on the Green Paper have confirmed that there is widespread concern about the way in which strike decisions are taken, particularly in the case of national strikes and strikes in essential services. Clear support was expressed for legislation on strike ballots provided that the practical difficulties identified in the Green Paper could be overcome.

8. The Government have therefore decided to bring forward legislation on the following lines. In the case of industrial action which is "authorised or endorsed" by a trade union (in accordance with the provisions of Section 15 of the Employment Act 1982 - see Annex) immunity in tort will be conditional on the support of the union members concerned being tested in a secret ballot. In other words when a trade union calls or endorses a strike it will either have to ballot those of its members who are being called on strike* to retain immunity** or, on the other hand, accept that calling or endorsing a strike without a ballot forfeits immunity. Without immunity the trade union would be at risk of being sued for an injunction and its funds would be at risk of an action for damages. The Government believe that this approach is the best means of providing unions with a powerful and direct inducement to hold ballots before calling strikes and that it is therefore the most effective means of extending union members' democratic rights in this area, while at the same time reducing the likelihood of irresponsible industrial action.

---

* Here and elsewhere in this paragraph, by "strike" is meant any industrial action in breach of contract.

** Assuming that it is not unlawful on other grounds (eg that it is not unlawful secondary action).

9. Again, the legislation will not impose unreasonable or impractical obligations on trade unions. It will not require trade unions to hold ballots before unofficial or spontaneous strikes which it has not endorsed and which may be shortlived and involve only small numbers of strikers. Nor will it inhibit trade union officials from attempting to bring unofficial action to an end; on the contrary, only if the action is made "official" will any question of loss of immunity arise. The legislation will not make immunity conditional on the result of the ballot. The Government do not believe that any trade union would persist with a strike call if it had been shown not to have the support of a majority of those directly involved. However, a ballot will ensure immunity only if all those who are being called on to take the industrial action have had an equal and unrestricted right to vote in a secret ballot on the specific question whether they wish to strike or take other action in breach of their contracts of employment.

10. It is intended that the provisions relating to strike ballots should come into force shortly after Royal Assent.

THE POLITICAL ACTIVITIES OF TRADE UNIONS

11. In the Green Paper the Government made clear its commitment to the principles of the Trade Union Act 1913:

(i) that trade unions should, if they so choose, be able to pursue their members' interests through political organisations and to give financial support to such organisations;

(ii) that no trade union member should be obliged to support financially any political organisation if he does not want to, and that he should not suffer so far as his union membership is concerned by refraining from giving such support.

The responses to the Green Paper have confirmed the Government's view that these principles are no longer adequately safeguarded.

12. Under the 1913 Act unions are required to hold an affirmative ballot of their members only in order to authorise the setting up of a political fund. There is no statutory requirement ever to hold a further ballot on the issue (unless a union amalgamates with another which has no political fund). The Government believe it to be indefensible that political funds should be operated on the basis of decisions taken up to 70 years ago. They propose to provide that the continued operation of a political fund must be submitted to the test of an affirmative ballot of the whole membership of a union (in accordance with the procedure laid down in the 1913 Act) every 10 years. The Government believe that this step is necessary to safeguard the right of successive generations of trade union members to determine whether or not their union has a political fund and engages in political activities.

13. It is also intended that the definition of "political objects" in Section 3(3) (see Annex) of the Trade Union Act 1913 should be brought up to date so as to cover expenditure on television, radio and other forms of publicity, on elections to the European Parliament and the printing of political literature.

14. In respect of the second principle referred to in paragraph 11, the consultations on the Green Paper have confirmed that there is a widespread disquiet about the way in which the right of individual members not to pay the political levy operates in practice through the system of "contracting out". The Secretary of State for Employment is therefore inviting the TUC to discuss the steps the trade unions themselves can take to ensure that their members are freely and effectively able to decide for themselves whether or not they pay the political levy.

Conclusion

15. The Government intend to introduce a Bill to give effect to these proposals when Parliament reassembles in the autumn. They would welcome comments on the proposals by the end of September. Any comments should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.

Department of Employment
July 1983

ANNEX

TRADE UNION LIABILITY (paragraph 8 of paper)

1 Section 15 of the Employment Act 1982 lays down when a trade union is to be held liable for the unlawful acts of its officials and members.

2 The union will be held liable for any unlawful act authorised or endorsed by:

- its Executive Committee;
- its General Secretary or President;
- any other person given power under the union's own rules to call industrial action.

3 In addition the union will be held liable for any unlawful act authorised or endorsed by:

- any official employed by the union;
- any committee to which one of these officials regularly reports; except where
- the official or committee who authorised or endorsed the act was forbidden to do so by the union's own rules; or
- the authorisation or endorsement is disowned by the Executive Committee, the General Secretary or the President. This 'repudiation' must be delivered in writing and as quickly as is practicable. It will not be regarded as repudiation if the Executive Committee, General Secretary or President subsequently behave in a manner which is inconsistent with having disowned the unlawful action.

"POLITICAL OBJECTS" OF TRADE UNIONS (paragraph 13 of paper)

4 Section 3(3) of the Trade Union Act 1913 reads

> (3) The political objects to which this section applies are the expenditure of money -
>
> (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connexion with his candidature or election; or
>
> (b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
>
> (c) on the maintenance of any person who is a member of Parliament or who holds a public office; or
>
> (d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or
>
> (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.
>
> The expression "public office" in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

CC NO

NBBM

MLS 11/7

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

11 July 1983

Ms F M Everiss
Private Secretary to the
Secretary of State for Employment

Dear Felicity,

TRADE UNION BILL

We have seen a copy of your letter of 6 July to Willie Rickett, enclosing a draft of the statement your Secretary of State proposes to make to the House on Tuesday 12 July outlining the proposals he intends to include in the Trade Union Bill.

The Chancellor is content with the draft statement, which reflects earlier discussions in E Committee.

I am sending copies of this letter to the recipients of yours.

Yours sincerely,
Margaret O'Mara

MISS M O'MARA
Private Secretary

Ind Pol
Employment Bill
pt 10

FCS SH

10 DOWNING STREET

From the Private Secretary

8 July, 1983

Thank you for your letter of 6 July with which you enclosed the draft statement which your Secretary of State proposes to make on Tuesday, 12 July. This is just to confirm that the Prime Minister has agreed to the statement.

TF

Ms. F. M. Everiss,
Department of Employment

COVERING CONFIDENTIAL

VccMCS

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

1

Prime Minister

You agreed in Cabinet that Mr Tebbit should make this statement. Content with the draft?

6 July 1983

Willie Rickett Esq
Private Secretary
10 Downing Street
LONDON
SW1

Dear Willie

TRADE UNION BILL

My Secretary of State will publish on Tuesday 12 July a paper explaining the provisions he intends to include in the Trade Union Bill (as agreed by E on 28 April E(83)4th and set out in the Conservative Manifesto).

... Mr Tebbit also proposes to outline his proposals in a statement to the House on Tuesday, and I enclose a copy of the draft.

I would be grateful to know whether the Prime Minister is content, and for any comments on the draft statement from you and other recipients by close of play on Monday 11 July.

I am sending copies of this letter to Murdo Maclean, David Beamish, David Heyhoe, Steve Godber and to the Private Secretaries to other members of E(A), Richard Hatfield and Bernard Ingham.

Yours Sincerely

Felicity Everiss

MS F M EVERISS
Private Secretary

COVERING CONFIDENTIAL

TRADE UNION BILL

DRAFT STATEMENT

I am now able to announce the conclusions the Government has reached as a result of the consultations on the Green Paper "Democracy in Trade Unions" and to outline the legislative proposals I propose to lay before Parliament when the House reassembles in the autumn. I am publishing today a paper explaining these proposals and providing an opportunity for consultations on them.

Numerous detailed and thoughtful responses to the Green Paper were received from employers, employers organisations and individual trade unions, including some affiliated to the TUC.

These confirmed that there is widespread concern about shortcomings in trade union procedures for elections and for consulting their members on major issues, particularly on strike decisions. There is undoubtedly widespread support for legislation to safeguard the rights of members in relation to their unions.

As foreshadowed in our election Manifesto the legislation will cover three main issues: trade union elections, strikes and the political activities of trade unions.

First, elections. The legislation will require elections to the governing bodies of trade unions to comply with the following principles:

- voting must be secret and by ballot paper
- there must be an equal and unrestricted opportunity to vote
- every union member should be able to cast his vote directly.

These principles are not a legal strait-jacket. They are the minimum necessary to ensure free, fair and democratic elections. Within them, trade unions will be free to constitute their governing bodies in the way they judge will best serve their members' interests and to decide on the form of ballots.

Secondly, strikes. The consultations have shown continuing concern about the way in which strike decisions are taken. Accordingly I propose that if a trade union orders or endorses its members in industrial action in breach of their contracts of employment without first consulting those members in a secret ballot, that trade union should lose immunity from the normal civil law consequences of its action. This will give the community more protection against irresponsible industrial action and provide new safeguards for trade union members themselves against being required to strike without their consent.

I intend in due course to undertake consultation on procedure agreements in essential services. The honouring of agreements which have been freely negotiated is fundamental to orderly industrial relations. In essential services in particular the public has a right to expect that they will not be flouted and that precipitate industrial action will be avoided. I therefore propose to consult particularly on the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity.

Thirdly, the political activities of trade unions. The Government accepts that a trade union should be able to adopt political objectives and to set up a political fund. However, I believe that the authorisation of a political fund should be subject to review by a periodic ballot of the membership. The present members of trades unions should not be bound forever by ballots that may well have been taken before any of them were born. I propose that the 1913 Act should be amended to require that political objectives and funds should be submitted to ballot at least every 10 years.

For some years there has been disquiet over the operation of the system for contracting out of the political levy. I therefore intend to invite the TUC to discuss the arrangements which trade unions themselves might take to ensure that their members are fully aware of their statutory rights and able to exercise them freely and effectively. I hope that the trade unions will be willing to take such steps. If that hope is disappointed I would be ready to introduce measures, as we made clear in our Manifesto, to guarantee a free and effective right of choice.

Mr Speaker, the events of recent weeks have made it abundantly clear that trade unionists are now insistent that they should have a greater democratic voice in the affairs of their unions and the Bill which I shall bring forward will respond to that demand.

CONFIDENTIAL

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000

DIRECT DIALLING 01-218 2111/3

MO 21/8/5

27th June 1983

EMPLOYEE INVOLVEMENT

I am grateful to you for coming back to me on the issue of employee involvement.

I myself would proceed by the use of a code of good practice flexibly drawn so that companies can devise or adapt systems appropriate to their own circumstances. It would need statutory backing but minimum inspection and enforcement.

Ideally the CBI could do this and many times senior people there have told me that they see the need. But of course they have no powers and they would run into significant opposition from the very sort of companies that most need to change.

So I am left with the belief that progress is needed in the field of better employee relationships but knowing that industry itself just would not make the comprehensive efforts involved.

Equally I have no doubt that the next non-Tory Government will act in this field. So that gives us a chance to carry out necessary reforms in a way that would be broadly acceptable to the bulk of industry and perhaps forestall much more comprehensive and far ranging activity by our political opponents.

The Rt Hon Norman Tebbit MP

I would not see the sort of code I would advocate expecting more of companies than would be found today in our best companies. I just do not see the laggards catching up on their own and the gap that they represent will be the excuse that others will parade for comprehensive action.

I am copying this letter to the recipients of yours.

Michael Heseltine

NON-ATTRIBUTABLE BACKGROUND

TRADE UNION REFORM

"A Bill will be introduced to give trade union members greater control over their unions."

The Government will introduce legislation to bring about further trade union reforms in three main areas. As announced on May 18, 1983 in the Conservative Manifesto, the Government will give union members the right to:

- have democratic and secret ballots for the election of their governing bodies.

- decide periodically, say every ten years or so, whether their unions should have party political funds.

The Government also announced its intention to remove immunity against legal action where a trade union called a strike without giving its members an opportunity to approve or disapprove the action through a fair and secret ballot.

The TUC will be invited to discuss steps which the unions themselves can take to ensure that individual members are freely and effectively able to decide for themselves whether or not to pay the political levy.

There will also be consultation about the need for specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity.

The Government has always made clear that it is determined to protect individuals and the community from the abuse of trade union power. The 1980 and 1982 Employment Acts widened the grounds for claiming unfair dismissal in a closed shop, substantially increased the compensation available and promoted the regular testing of support for closed shops through secret ballots. The legislation tackled other important issues such as secondary action and secondary picketing and made trade unions accountable for any unlawful industrial action they organise.

However, there is still much public concern about the need for trade unions to become more democratic and responsive to the wishes of their members. Following the refusal of the trade unions to reform themselves voluntarily the Government issued a Green Paper, "Democracy in Trade Unions", in January 1983 (Cmnd.8778, HMSO).

TRADE UNION REFORM (contd.)

Responses to the Green Paper confirmed that there is widespread concern about trade union procedures for elections and for consulting members on major issues, particularly on strike decisions. There was widespread support for measures that would enable trade union members to have a greater say in the affairs of their unions.

Press Office
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

01-213 7439

22 June 1983

SP

CONFIDENTIAL

CM 1/6

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

The Rt Hon Michael Heseltine
Secretary of State for Defence
Ministry of Defence
Whitehall
LONDON SW1

31 May 1983

D Michael,

EMPLOYEE INVOLVEMENT

Thank you for your letter of 16 May commenting on my minute to the Prime Minister about employee involvement.

We are all agreed on the importance of employee involvement in securing improved efficiency in industry. Indeed, there are recent examples where the involvement of all employees in a better understanding of the business has led to improved performance. One such example is Jaguar Cars, whose reputation for poor quality nearly destroyed its markets a few years ago, and which is now a thriving company. There is also a good deal of evidence to show that employee involvement is increasingly being established in industry on a voluntary basis. It is by no means the case therefore that 'voluntarism' has failed.

Nevertheless, I acknowledge that many shortsighted employers have been slow to follow the example of the best, and I have looked carefully at the question of some legislation. Detailed examination has only reaffirmed my view, however, which is also that strongly held by the CBI and most employers, that arrangements for employee involvement must reflect the needs and circumstances of the individual company. Any imposed single system would cut across existing arrangements and be disruptive for good industrial relations, particularly if it was underpinned by sanctions. The problem is that legislation would run the risk of being either to vague to be effective (motherhood style) or too rigid to avoid conflict with the needs of individual enterprises.

Given these problems, I find it difficult to devise legislation which would prove genuinely helpful to our aim. I wonder if from your own experience or thinking you could see any way between these twin rocks or if you have formed any view of the form of legislation which might take the concept forward.

I am copying this to the same recipients as before.

Ind Rel.
Industrial Relations
Legislation, Pt 10

CONFIDENTIAL

SCNO 2

Prime Minister

MIS 18/5

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 21/8/5

16th May 1983

EMPLOYEE INVOLVEMENT

I have seen your minute of 20th April to the Prime Minister and the subsequent correspondence.

I do not myself believe that it is sufficient as you propose, to follow the voluntarist line and to oppose initiatives in Europe.- The voluntarist approach is most unlikely to achieve the substantive benefits which we are all seeking in terms of economic performance and better industrial relations. Its attractions to the CBI and other interests may reflect their own ambivalence towards progress in this whole area. While we need to avoid an over-bureaucratic approach, this need not rule out sensibly framed legislation to give a new impetus to involvement.

Moreover there is an important presentational issue here. We must guard against being outflanked by our political opponents who must not be allowed convincingly to argue that their more extreme legislative solutions have been shown to be the only viable way forward.

Copies go to the other recipients of your minute.

Michael Heseltine

The Rt Hon Norman Tebbitt

SUBJECT MASTER

cc

file

SECRET

10 MY

bc Nick Owen

10 DOWNING STREET

From the Private Secretary

11 May 1983

Dear Barnaby,

Trade Union Legislation

The Prime Minister held a meeting yesterday to discuss the issues raised in your Secretary of State's minute of 6 May. The Chancellor of the Exchequer, the Home Secretary, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment, Health and Social Security and Scotland, the Chief Secretary, Sir Robert Armstrong, Mr. Gregson and Mr. Mount were also present.

On the measures that might be taken to prevent or deter strikes in essential services, it was agreed that the Government's position should be that essential services would be affected by the proposal to remove immunity in the absence of pre-strike ballots; and that the Government would consult further about the need for industrial relations in specified essential services to be governed by adequate procedural agreements, breach of which would deprive industrial action of immunity.

On the authorisation of a trade union's political fund, and the question of whether the political levy should depend on "contracting in" rather than "contracting out", it was agreed that the Government's position should be made known on the following lines: that consultations on the Green Paper had confirmed that there was widespread disquiet about how the right of individual trade union members not to pay the political levy operated in practice through the system of "contracting out"; your Secretary of State would therefore invite the TUC to discuss the steps which the trade unions themselves could take to ensure that individual members were freely and effectively able to decide for themselves whether or not to pay the political levy. In the event that the trade unions were not willing to take such steps, the Government would be prepared to introduce measures to guarantee the free and effective right to choice. If in the General Election campaign the question was raised whether the Government's statement of policy meant that it would, if

/necessary

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necessary, be prepared in the next Parliament to replace "contracting out" by "contracting in", the answer should be in the affirmative. This would allow the Government, if re-elected, in the next Parliament to argue that it had a mandate, if it so wished, to put an end to the system of "contracting out".

I am sending a copy of this letter to John Kerr (HM Treasury), Tony Rawsthorne (Home Office), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Steve Godber (Department of Health and Social Security), Muir Russell (Scottish Office), John Gieve (Chief Secretary's Office), Richard Hatfield and Peter Gregson (Cabinet Office). I would be grateful if you and the copy recipients would ensure that this letter is not circulated outside your Private Offices.

Yours sincerely,

Michael Scholar

J.B. Shaw, Esq.,
Department of Employment.

SECRET

9 Sec

bc Mr. Owen

10 DOWNING STREET

From the Private Secretary 9 May 1983

STRIKES IN ESSENTIAL INDUSTRIES

The Prime Minister has noted, without comment, your Secretary of State's minute of 6 May.

M. C. SCHOLAR

J.B. Shaw, Esq.,
Department of Employment.

SECRET

Ind.
Pol.

NOTE

The circulation of this memorandum has been restricted. Recipients are accordingly asked to ensure that the confidentiality of its contents and the need to know principle are strictly observed.

SECRET

B. 8

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTYS'S GOVERNMENT

C(83) 16

COPY NO 2

9 May 1983

CABINET

TRADE UNION LEGISLATION

Note by the Secretary of State for Employment

I attach for consideration by the Cabinet a copy of a minute which I sent to the Prime Minister and certain other colleagues on 6 May 1983 on the arguments for and against making immunity of industrial action dependent upon the honouring of procedure agreements.

N T

Department of Employment

9 May 1983

SECRET

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SECRET

PRIME MINISTER

STRIKES IN ESSENTIAL INDUSTRIES

We are to meet on 11 May to resume the discussion at E Committee on 28 April on the outstanding legislative issues, including possible constraints on strikes in essential services. It may be helpful if I sketch out the possibilities and the arguments for and against making immunity dependent upon the honouring of procedure agreements which I see as the option most worthy of consideration.

As background, I see little prospect of establishing no-strike agreements. In any case they would be expensive and probably ineffective. I would not advise using the criminal law. The criminal sanctions still in force under the Conspiracy and Protection of Property Act 1875 are not applied. Going further would create more problems than it would solve, not least of enforcing sanctions against would-be martyrs in large or small numbers. We should not contemplate making it a criminal offence for an employee to refuse to work beyond the expiry of the notice he can currently give to end his employment.

This leaves the possibility of extending the scope of civil action. Here the proposal we have already agreed to remove immunity in the absence of pre-strike ballots, together with the restriction of union immunity in the 1980 and 1982 Employment Acts, will do much to reduce the propensity to strike in essential industries as elsewhere. Beyond this, the possibilities are

- to remove immunity for organising industrial action in essential industries;

- to make procedure agreements enforceable at law.

I do not believe the case for removing immunity for organising industrial action in essential industries is strong. The very definition of "essential" would be difficult; but more important this step is likely to be ineffective. Ordinary consumers, in most cases, would have no cause of action, (eg NHS patients have no contractual right to treatment). The decision whether to sue unions for organising strikes would therefore normally fall on the employers concerned. For the removal of immunity to be effective, trade unions would have to believe that employers were willing to sue, and that must be in doubt. And it is difficult to see how immunity could be withdrawn without providing arrangements (eg unilateral access to arbitration) which would always resolve disputes without the threat of recourse to industrial action.

However, the principle that agreements once made should be honoured is irrefutable. We have always stressed the importance of bringing greater order and predictability into industrial relations and the need to deter precipitate strike action. Legislation to give the observance of procedure agreements the force of law would therefore be fully in accord with our general approach. The idea did not arouse wide enthusiasm from employers in their responses to the 1981 Green Paper, but it has had the support of the CBI and the Institute of Directors and it has recently gained greater support following the refusal of the unions in the water dispute to honour the agreement to accept unilateral reference by the employers to binding arbitration.

If we decide to legislate on this issue there seems no good reason to confine ourselves to the difficult-to-define essential industries. The principle is of universal application. The questions we need to consider are the form legal enforceability might take and the effects it might have in practice.

Enforceability might be achieved in two ways. The more direct way would be to deem procedure agreements to be enforceable at law by either party, just as if they were legally binding contracts, irrespective of the intentions of those who originally entered into them. Alternatively, observance of agreed procedure could be made a condition of immunity for inducing breaches of contract in furtherance of a trade dispute.

It is clear that employer opinion strongly favours the latter approach. If procedure agreements were deemed to be binding contracts, it would provide opportunities for trade unions to take or threaten legal action against employers whilst the employers' remedy would be at best uncertain, particularly against unofficial strikers. The immunities approach does not have this disadvantage. Strikes in breach of procedure now have immunity, but immunity is irrelevant to an employers decision whether or not to break a procedure although he may of course face a lawful strike if he does so. Removing immunity from strikers in breach of procedure could therefore be seen as restoring the balance. I have no doubt that the immunity approach would be preferable.

The effect of legislation on these lines would be that a union which organised a strike in clear breach of an agreed procedure would do so without immunity and therefore at risk to its funds. In such a case the attractions of legislation are clear. The problem lies in assessing how often such cases would actually occur, given the nature of most procedure agreements. It has to be remembered that most employers do not have anything that can be termed procedure agreements governing negotiations on annual or major pay claims. In the main, their agreements deal with matters such as grading claims, grievances and disciplinary matters. Procedure agreements covering annual pay negotiations are more common in the public than in the private sector, but even there they often provide for no more than the agreed forums in which negotiations are to take place. Agreements providing for successive stages for negotiations

SECRET

and finally for the involvement of third parties (particularly as arbitrators) are relatively rare. The effect of legal enforceability on disputes over major pay issues would therefore be limited, unless agreements provided for binding arbitration as a final stage and our policy is to avoid reference to arbitration except on the agreement of both parties.

Many procedure agreements are too vague and imprecise to lend easily themselves to judicial interpretation. There must be a risk that the courts would decide that some agreements included mere expression of intent and had no precise meaning and hence that immunity was not lost despite employer complaints of a breach. There is also the risk of a concerted campaign by trade unions to withdraw from existing procedure agreements and to refuse to enter into new ones, similar to the successful TUC campaign not to enter into legally binding collective agreements under the 1971 Act. The CBI has recognised this risk. A number of possible ways of countering this threat or of providing alternative mechanisms in the absence of procedure agreements (including binding arbitration and compulsory arbitration by ACAS) have been suggested but I do not believe any would be satisfactory. My conclusion is that the risk of a successful campaign to withdraw from procedure agreements would simply have to be faced. Formal withdrawal from procedure agreements would nullify the legislation and also present greater opportunities for militants. It would undoubtedly alarm those employers who currently operate under generally effective procedure agreements. But in practice, trade unions might be found to value existing procedure agreements sufficiently to retain them or at least tacitly to observe them.

I am sending copies of this minute to the Home Secretary, the Chancellor of the Exchequer, the Secretary of State for

SECRET

Scotland, the Chief Secretary, the Secretary of State for Social Services, the Chancellor of the Duchy of Lancaster.

NT

6 May 1983

/Reference to removal of immunity from non-balloted strikes: continue/

We shall consult further about the need for industrial relations in specified essential services to be governed by adequate procedural agreements, breach of which would deprive industrial action of immunity.

T.U.C. T.U.'s Govt observations.

Secret

Mr Scholar
cc Mr Mount
Mr Shipley

STRIKES IN ESSENTIAL SERVICES

Tomorrow's Cabinet will conclude the discussion of this topic. In advance of a sight of note which will be circulated for the discussion, I am commenting on Mr Tebbit's note of 6 May, which set out the issues. It summarised the position well ; no-strike agreements are probably expensive; no-strike legislation is unworkable. This leaves two options: removing immunity and making procedure agreements enforceable.

Removing Immunity

This approach follows the line already pursued in the 1980 and 1982 Acts. As Mr Tebbit observes, these measures, and those which are planned, will reduce propensities to strike in essential services, as elsewhere. Good arguments, then, for extending this approach and removing immunities altogether in essential services. The note mentions three objections to doing so, none in our view, decisive.

1) 1) the definition of "essential": No difficulty.

2) the effectiveness of withdrawing immunity depends on the willingness of employees or customers to take legal action. But so, too, does the Government's reliance on civil action, which has yet to be tested in the Courts. The difficulties are overstated in the note: need the absence of a contractual right to treatment deter NHS patients from suing health service unions? One could certainly envisage a steel producer, to whom the electricity industry has a statutory duty to supply, suing the electricity industry unions for damages arising from severance of supply.

3) the pressure to provide machinery to resolve disputes. It would be argued that withdrawal of immunity would

Prime Minister

7

Mr Owen argues that it would be better to go for withdrawing immunity (i.e. extending what we're already doing) than making procedure agreements enforceable.

MLS 9/5

amount to a denial of the right to strike, and that therefore there would need to be a provision to unilateral access to binding arbitration - an uncertain and expensive route. But while there would undoubtedly be pressure for this, it could be resisted, for the right to strike would not be denied; it would merely be attended henceforward with a risk of civil action.

Making Agreements Enforceable

Against the obvious advantages of this option it is maintained that procedure agreements are too vague and imprecise for judicial interpretation. This, again, overstates the difficulty. procedure agreements are hardly vaguer than the agreements - often verbal and implicit - between individuals in matters of family or property on which the Courts have to pronounce as a routine matter. In any case, the prospect that agreements would henceforward be enforceable would push both sides to clarify them better. A more sustainable objection to them is that the unions would walk away from agreeing any, unless the level of settlements looked attractive. It would be unrealistic, for example, to expect that the electricity workers would accept increases linked to the RPI in return for accepting procedural agreements which would be enforeable: they comfortably out-ran the RPI in the period 1974-1981.

To summarise, both options look workable but the withdrawal of immunity looks the better: it is an extension of the approach already adopted and involves no obvious costs.

NICHOLAS OWEN

9/5

6

PRIME MINISTER

Trade Union Legislation
(C(83)16)

BACKGROUND

When E Committee discussed trade union legislation on 28 April 1983 (E(83)4th Meeting), they approved the Secretary of State for Employment's proposals relating to trade union elections (subject possibly to their coming into effect within a shorter period than two years after Royal Assent) and strike ballot. They left over for further consideration two sets of issues:

Flag A

i. the authorisation of a trade union's political fund and the question of whether the political levy should depend on "contracting in" rather than "contracting out";
(this, like trade union elections and strike ballots, was covered in the Green Paper)

ii. measures to prevent or deter strikes in essential services;
(this was not mentioned in the Green Paper but became a live public issue again at the time of the water strike).

They also agreed that the means and timing of announcement of the Government's further proposals on trade union legislation should be settled when the decisions on the outstanding policy issues had been taken.

Flag B

2. In his minute to you of 6 May 1983, now circulated as C(83)16, the Secretary of State for Employment deals with the issue of strikes in essential services. Having ruled out the use of criminal law, he concludes that it would not be feasible or effective to remove immunity for all forms of industrial action in essential services. He suggests that a more promising approach would be to make immunity dependent on the

honouring of procedure agreements, and that this might apply generally instead of being confined to essential services (thus removing the problem of defining what these essential services are). He points out however that such a proposal might have only limited effect since few employers have procedure agreements covering negotiations on annual or major pay claims and where they do exist (in some parts of the public sector) they are often of little significance, and are too vague and imprecise to lend themselves easily to judicial interpretation. There is also the danger that, by making immunity dependent on the honouring of such agreements, the Government would merely encourage trade unions to withdraw from such agreements as already exist.

3. No proposals have been circulated on the political fund and the political levy. There was however a preliminary discussion in E Committee, of which the Most Confidential Record has been made available only to you and the Secretary of State for Employment. On the political fund there was support for a proposal from the Secretary of State for Employment that trade unions should be required to hold a ballot every ten years to authorise any political fund. On the political levy the arguments were finely balanced. On the one hand it was felt that it was wrong in principle that trade unionists who did not support the Labour Party should be obliged to contribute to its funds unless they contracted out. On the other hand the abolition of contracting out would raise fundamental questions about the financing of political parties. It was however recognised that it would be difficult for the Government to avoid taking up a position since the matter had been discussed in the recent Green Paper and was already a matter of lively political debate.

4. You are having an informal meeting before Cabinet and you will no doubt wish to handle the Cabinet discussion in the light of this.

MAIN ISSUES

5. The main issues are:

i. whether the Government should announce proposals relating to industrial action in essential services, or should follow the approach of making immunity of industrial action generally dependent on the honouring of procedure agreements, or should do nothing in this area;

ii. whether the Government should announce proposals relating to the political fund and/or the political levy, and what these should be;

iii. what should be the means and timing of announcement.

Essential services: immunity dependent on honouring procedure agreements

6. The Secretary of State for Employment is lukewarm even about his preferred approach of making the immunity of industrial action generally dependent on the honouring of procedure agreements. Neither this proposal nor any of the other options relating to essential services appeared in the recent Green Paper. It would be possible to postpone a decision on whether to take action in this area until after the Election. If Ministers are not persuaded that any of the current proposals have much merit, and might indeed distract attention from the other proposals, this would probably be the best course.

Political fund and political levy

7. This is a matter essentially for political decision. The difficulty is that the Government must say either that it is taking action, that it is not taking action, or that it is not yet ready to make up its mind. It has moreover been argued that the Government could not take action in the next Parliament unless this proposal had been mentioned in the Manifesto. One option referred to at E Committee was that the Government might say that it would tolerate contracting out only if no unreasonable obstacles were put in the way of those wishing to contract out; if such obstacles continued to be erected the Government would feel free to change the system.

Means and timing of announcement

8. Whether or not it is decided to include some or all of the proposals for trade union legislation in the Manifesto, the Secretary of State for Employment is likely to argue that the details should be set out in a Government statement in the course of this week. He will probably propose that there should be a statement in the House tomorrow (Tuesday).

HANDLING

9. You will wish to invite the Secretary of State for Employment to introduce his proposals, subject to any decisions taken at your informal meeting before Cabinet.

CONCLUSIONS

10. You will wish to reach conclusions on the following points:

i. whether the Government should announce proposals relating to industrial action in essential services, or should follow the approach of making immunity of industrial action generally dependent on the honouring of procedure agreements, or should do nothing in this area;

ii. whether the Government should announce proposals relating to the political fund and/or the political levy, and what these should be;

iii. what should be the means and timing of announcement.

RCA

ROBERT ARMSTRONG

9 May 1983

CONFIDENTIAL

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1

9 May 1983

Dear Norman

EMPLOYEE INVOLVEMENT

This is to record that I am content with the recommendation in your minute of 20 April to the Prime Minister that we continue with a policy of encouraging voluntary progress in the field of employee involvement. There can be little doubt that transport sector employers, particularly in the nationalised industries, will endorse a policy of firm but constructive opposition to the unnecessary legislation which would flow from the EC draft directives on employee participation.

I would, however, also like to repeat my familiar theme that the best kind of industrial involvement is through direct ownership and we should lose no opportunity in promoting this cause in all practicable ways.

I am sending copies of this to the recipients of your minute.

Yours ever

David

DAVID HOWELL

CONFIDENTIAL

Ind PSl : Ind Relations Bill Pt 10

SECRET

VCC NO 2

Prime Minister 5

To note at this stage.

MLS 6/5

PRIME MINISTER

STRIKES IN ESSENTIAL INDUSTRIES

We are to meet on 11 May to resume the discussion at E Committee on 28 April on the outstanding legislative issues, including possible constraints on strikes in essential services. It may be helpful if I sketch out the possibilities and the arguments for and against making immunity dependent upon the honouring of procedure agreements which I see as the option most worthy of consideration.

As background, I see little prospect of establishing no-strike agreements. In any case they would be expensive and probably ineffective. I would not advise using the criminal law. The criminal sanctions still in force under the Conspiracy and Protection of Property Act 1875 are not applied. Going further would create more problems than it would solve, not least of enforcing sanctions against would-be martyrs in large or small numbers. We should not contemplate making it a criminal offence for an employee to refuse to work beyond the expiry of the notice he can currently give to end his employment.

This leaves the possibility of extending the scope of civil action. Here the proposal we have already agreed to remove immunity in the absence of pre-strike ballots, together with the restriction of union immunity in the 1980 and 1982 Employment Acts, will do much to reduce the propensity to strike in essential industries as elsewhere. Beyond this, the possibilities are

- to remove immunity for organising industrial action in essential industries;

- to make procedure agreements enforceable at law.

I do not believe the case for removing immunity for organising industrial action in essential industries is strong. The very definition of "essential" would be difficult; but more important this step is likely to be ineffective. Ordinary consumers, in most cases, would have no cause of action, (eg NHS patients have no contractual right to treatment). The decision whether to sue unions for organising strikes would therefore normally fall on the employers concerned. For the removal of immunity to be effective, trade unions would have to believe that employers were willing to sue, and that must be in doubt. And it is difficult to see how immunity could be withdrawn without providing arrangements (eg unilateral access to arbitration) which would always resolve disputes without the threat of recourse to industrial action.

However, the principle that agreements once made should be honoured is irrefutable. We have always stressed the importance of bringing greater order and predictability into industrial relations and the need to deter precipitate strike action. Legislation to give the observance of procedure agreements the force of law would therefore be fully in accord with our general approach. The idea did not arouse wide enthusiasm from employers in their responses to the 1981 Green Paper, but it has had the support of the CBI and the Institute of Directors and it has recently gained greater support following the refusal of the unions in the water dispute to honour the agreement to accept unilateral reference by the employers to binding arbitration.

If we decide to legislate on this issue there seems no good reason to confine ourselves to the difficult-to-define essential industries. The principle is of universal application. The questions we need to consider are the form legal enforceability might take and the effects it might have in practice.

Enforceability might be achieved in two ways. The more direct way would be to deem procedure agreements to be enforceable at law by either party, just as if they were legally binding contracts, irrespective of the intentions of those who originally entered into them. Alternatively, observance of agreed procedure could be made a condition of immunity for inducing breaches of contract in furtherance of a trade dispute.

It is clear that employer opinion strongly favours the latter approach. If procedure agreements were deemed to be binding contracts, it would provide opportunities for trade unions to take or threaten legal action against employers whilst the employers' remedy would be at best uncertain, particularly against unofficial strikers. The immunities approach does not have this disadvantage. Strikes in breach of procedure now have immunity, but immunity is irrelevant to an employers decision whether or not to break a procedure although he may of course face a lawful strike if he does so. Removing immunity from strikers in breach of procedure could therefore be seen as restoring the balance. I have no doubt that the immunity approach would be preferable.

The effect of legislation on these lines would be that a union which organised a strike in clear breach of an agreed procedure would do so without immunity and therefore at risk to its funds. In such a case the attractions of legislation are clear. The problem lies in assessing how often such cases would actually occur, given the nature of most procedure agreements. It has to be remembered that most employers do not have anything that can be termed procedure agreements governing negotiations on annual or major pay claims. In the main, their agreements deal with matters such as grading claims, grievances and disciplinary matters. Procedure agreements covering annual pay negotiations are more common in the public than in the private sector, but even there they often provide for no more than the agreed forums in which negotiations are to take place. Agreements providing for successive stages for negotiations

and finally for the involvement of third parties (particularly as arbitrators) are relatively rare. The effect of legal enforceability on disputes over major pay issues would therefore be limited, unless agreements provided for binding arbitration as a final stage and our policy is to avoid reference to arbitration except on the agreement of both parties.

Many procedure agreements are too vague and imprecise to lend easily themselves to judicial interpretation. There must be a risk that the courts would decide that some agreements included mere expression of intent and had no precise meaning and hence that immunity was not lost despite employer complaints of a breach. There is also the risk of a concerted campaign by trade unions to withdraw from existing procedure agreements and to refuse to enter into new ones, similar to the successful TUC campaign not to enter into legally binding collective agreements under the 1971 Act. The CBI has recognised this risk. A number of possible ways of countering this threat or of providing alternative mechanisms in the absence of procedure agreements (including binding arbitration and compulsory arbitration by ACAS) have been suggested but I do not believe any would be satisfactory. My conclusion is that the risk of a successful campaign to withdraw from procedure agreements would simply have to be faced. Formal withdrawal from procedure agreements would nullify the legislation and also present greater opportunities for militants. It would undoubtedly alarm those employers who currently operate under generally effective procedure agreements. But in practice, trade unions might be found to value existing procedure agreements sufficiently to retain them or at least tacitly to observe them.

I am sending copies of this minute to the Home Secretary, the Chancellor of the Exchequer, the Secretary of State for

Scotland, the Chief Secretary, the Secretary of State for Social Services, the Chancellor of the Duchy of Lancaster.

NT

6 May 1983

Ind POL Ind Relations Pt 10

CONFIDENTIAL

CC No.

Prime Minister
To note
MES 9/5

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

EMPLOYEE INVOLVEMENT

I have seen a copy of the Secretary of State for Employment's minute of 20 April, the comments of other colleagues and Michael Scholar's letter of 25 April. I agree with the Secretary of State for Employment's view that the need for more direct employee involvement in industry is undeniable.

2. As I see it, there are two different aspects of the term "participation". The first is the need to inform employees about the workings of and prospects for their company. This increases understanding both of how their company is performing and also of the wider question of how the market works. It makes it more difficult for militant trade unionists to distort or ignore the facts on a dispute, particularly in the private sector. There is clear evidence that the practices of all too many of our large firms fall far short of a reasonable minimum when it comes to communicating to and informing their employees; and that this failure makes for poorer productivity, low morale and troubled collective bargaining. Average British management has much further to go before it reaches the levels of best practice and we should certainly be prepared to do all we can to encourage it.

3. The second aspect consists of involving workers more fully in the organisation and ownership of the business. Firms like the John Lewis Partnership, Sainsburys and Marks & Spencer

/encourage employees

CONFIDENTIAL

encourage employees to contribute to the running of their organisations and to benefit from any success through profit sharing schemes. In successive Budgets I have tried to encourage this type of activity by generous tax reliefs and we are now having a considerable response.

4. I believe we need to encourage more British firms to develop the forms of employee involvement which suit them best and to speed up progress towards better communication and information. I am sure that a voluntary approach to this is still right at this stage, although I would agree with the Secretary of State for Employment when he stresses the importance of the CBI and others in making the voluntary approach a success and in demonstrating that progress is being made. But I should not want to rule out statutory action which left room for firms to choose their own way forward, while making it clear that they had to move.

5. Nor am I convinced that we have to take an entirely negative line over this in Europe. Clearly we cannot go along with imposing the two tier board system on British companies. We must certainly avoid any commitment to potentially harmful legislation. But there is no need for us to be seen resisting the ideas of better communication, and more profit sharing, within industry.

G.H.
6 May 1983

IND POL: IND Relations Legislation: MP

With the Compliments

of

THE LORD ADVOCATE

..4th..May..... 19 83

LORD ADVOCATE'S CHAMBERS
FIELDEN HOUSE
10 GREAT COLLEGE STREET
LONDON SW1P 3SL

Telephone: Direct Line 01-212 0100
Switchboard 01-212 7676

CC N.O

CONFIDENTIAL

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone: Direct Line 01-212 -0515
Switchboard 01-212 7676

4 May, 1983

The Rt. Hon. Lord Cockfield,
The Secretary of State for Trade,
1, Victoria Street,
London SW1H OET

Prime Minister

2

Mrs S/S

COMPANIES ACT 1948 SECTION 27
COMPANIES ACT 1980 SECTION 37

in PM's Box 4/5

I refer to your Private Secretary's letter of 3 May to P.S./Home Secretary regarding the interpretation of section 27 of the Companies Act 1948 and section 37 of the Companies Act 1980 with regard to pension funds and employee share schemes.

In the short time available to me to consider such a difficult matter I am forced to conclude that the safest course would be to take an early opportunity to legislate on this apparent problem to put the matter beyond doubt. I also agree that it would be desirable to restrict the spread of knowledge of the problem.

Copied as before.

MACKAY OF CLASHFERN

CONFIDENTIAL

Ed/NO

2

Prime Minister

MLS 29/4

FCS/83/90

SECRETARY OF STATE FOR EMPLOYMENT

Employee Involvement

1. I have seen a copy of your minute of 20 April to the Prime Minister, and the Prime Minister's comments.

2. I agree that we must continue to oppose any element of compulsion in the Community approach to employee involvement and make clear to our partners our serious reservations on the two draft directives. But, as you suggest, it is also important that we should maintain our efforts to persuade the Commission and other member states that voluntarism works and play our part in the detailed negotiations on the revised texts when they emerge from the Commission. It looks like being a long haul.

3. It is encouraging that the views of industry remain close to our own. Commissioner Richard will no doubt wish to try and demonstrate that industry, and the multi-nationals in particular, are willing to live with the revised proposals. I am sure you are right therefore to pay particular attention to that aspect.

/4.

4. I am copying this minute to the Prime Minister and other recipients of yours.

(FRANCIS PYM)

Foreign and Commonwealth Office

29 April 1983

Ind AR : Ind Relations Pt 10

CC NJO

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

MBPM

MIS 3/5

The Rt Hon Norman Tebbit MP
Department of Employment
Caxton House
Tothill Street
London SW1H

29 April 1983

Dear Norman

EMPLOYEE INVOLVEMENT

You copied to me your minute of 20 April to the Prime Minister on the subject of EEC Directives on Employee Involvement.

I am an emphatic supporter of better communications between management and the shop floor, and believe that we have a long way to go to bring the practice of most firms up to that of the best. We should pursue this vigorously.

I am equally emphatic that to go down a legislative path involving compulsion would be disastrous and therefore strongly support the strategy you proposed.

I am copying this letter to the Prime Minister, other members of E, the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales and Sir Robert Armstrong.

Yours

KL

CC 70

Secretary of State for Industry

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
SWITCHBOARD 01-212 7676

JU484

28 April 1983

Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1

NBPM NBPM
MIS 3/5 PUS 3/5

Dear Norman,

EMPLOYEE INVOLVEMENT

I have seen your minute of 20 April, and have also seen the Prime Minister's comments of 25 April, and Peter Walker's of the same date.

2 I very much agree with the proposals in your minute for handling the proposed EC directives on employee involvement and that there is a need to make progress on a voluntary basis. I shall be happy to press the advantages of the voluntarist approach, and to encourage companies to publicise evidence of their adherence to the existing guidelines.

3 I am copying this letter to the recipients of your minute.

Yours ever

Patrick

Ind Pol
Employment Bill
p710

C

SECRET

MOST CONFIDENTIAL RECORD

OF

E(83) 4th Meeting

Thursday 28 April 1983 at 11.30 am

OUTCOME OF CONSULTATIONS ON GREEN PAPER ON 'DEMOCRACY IN TRADE UNIONS' AND PROPOSALS FOR LEGISLATION

Trade Union Funds and Political Objectives: Strikes in Essential Services

THE SECRETARY OF STATE FOR EMPLOYMENT said that the main legislation governing the political activities and objects of trade unions was contained in the Trade Union Act 1913, as amended. The Act required that any political fund established by a trade union must be authorised by a ballot of the membership. But once the ballot had been held its results were valid indefinitely; and most trade unions had held no ballot for many years. He proposed that in future unions should be required to hold a ballot every ten years.

Consultations on the Green Paper 'Democracy in Trade Unions' had revealed strong and widespread public support, including support among active trade unionists, for replacing the existing system whereby those who did not wish to pay the political levy raised by most trade unions had to "contract out" by a system whereby those wishing to pay the levy had to "contract in". However, if the Government were to take action in this field, it would raise fundamental questions about the financing of political parties. The Government's political opponents would undoubtedly commit themselves to abolishing or severely restricting the right of companies to make contributions to political parties. It would strengthen the hand of those who favoured State financing of political parties. One possible approach would be to prohibit the use of "check-off" arrangements, whereby employers made direct deductions from pay, for payment of the political levy. But employers themselves were likely to object strongly to this, not least because they would be apprehensive of the reaction of the trade unions. He did not favour this course. Nevertheless, despite the difficulties of taking any action in this field, it was already a matter of lively political debate, and it would be difficult or impossible for the Government to avoid declaring its views. Indeed, if it said nothing, it would be regarded as having positively decided to take no action. He would welcome guidance from his colleagues.

Although the recent dispute in the water industry had again raised the question whether steps should be taken to prevent strikes in essential services, or at least to make them less likely, there were serious problems about any of the possible courses of action. It would, in fact, be difficult to produce a satisfactory definition of an "essential service"; and it was therefore necessary to consider measures which could apply to all employment. "No strike" agreements were expensive, and uncertain in their effects; and they could not in practice be enforced. Invoking the criminal law was unlikely to be effective and would give the opponents of change plausible reasons for resistance. As for civil remedies, employers would generally be unwilling to sue; and many of those damaged by strikes in essential services would have no obvious ground of legal action. Another possibility would be to provide that failure to observe any relevant procedure agreement should lead to loss of legal immunity for organising a strike. This would carry risks: it might encourage unofficial action; and it could lead unions to withdraw from procedure agreements. It would also be attacked as imposing obligations on trade unions without corresponding obligations on employers. Nevertheless, the risk might be worth running. He had reached no definite conclusions; and it might be that the Government would be best advised to rest, at least for the time being, on the effect of the industrial relations measures which it had taken and proposed to take.

In discussion, the following main points were made.

a. There was a strong case for requiring trade unions to hold periodic ballots if they wished to maintain a political fund; and a proposal to this effect would not raise the fundamental political questions that would be raised by any proposal to change the law regarding the political levy.

b. Any proposal to change the law regarding the political levy would raise issues that were quite separate from the issues raised by changes in industrial relations legislation. The two should be kept distinct in public discussion.

c. It was wrong in principle that trade unionists who did not support the Labour Party should be obliged to contribute to its funds unless they contracted out (which was often made hard for them to do) or to give trade union leaders at Labour Party conferences block votes which were often used to further policies which were totally unacceptable to them.

d. The Labour Party would argue strongly that any intention to change the law regarding the political levy must be stated in an Election Manifesto: otherwise they would refuse all cooperation in the management of Parliamentary business. Moreover, failure to mention the matter in the Manifesto would be taken as tacit acceptance of the existing situation. On the other hand, it was argued that it would be a tenable position for the Government to say that it would tolerate the system of contracting out only if no unreasonable obstacles were put in the way of those who wished to contract out; if such obstacles continued to be erected the Government would feel free to change the system.

THE PRIME MINISTER, summing up this part of the discussion, said that the Committee were not yet ready to take decisions. She would arrange for further informal discussion by the Ministers most closely concerned. The issues would then be brought back to the Committee for final decisions, including decisions on the appropriate means and timing of publication. Meanwhile, it was important to do all that was possible to ensure that discussion remained confidential.

The Committee -

Took note, with approval, of the Prime Minister's summing up of their discussion.

Cabinet Office
28 April 1983

cc MO

Ministry of Agriculture, Fisheries and Food
Whitehall Place London SW1A 2HH

From the
Parliamentary
Secretary

PRIME MINISTER

28 April 1983

DEMOCRACY AND TRADE UNIONS

In Peter Walker's absence in Luxembourg I am writing to convey this Department's acceptance of the proposals for legislation set out in Norman Tebbit's memorandum (E(83)9) of 22 April. in meeting folder for 'E'

I note from paragraph 13 of the memorandum that there are further matters on which he proposes to speak. I would simply record this Department's interest in the essential services mentioned including bulk milk tanker drivers and industrial gasses for animal sperm and embryo banks.

I am copying this minute to other members of E and to Sir Robert Armstrong.

Peggy Fenner

PEGGY FENNER

IND POL: Industrial Rels

Pt 10

010

SECRET

Prime Minister CC NO

3

PRIME MINISTER

I have given further thought to our conversation of last Friday concerning political activities of unions.

The issue is indeed difficult. You may wish to take into account the following:

1) Public opinion, as measured by O.R.C in a private unpublished survey early this year (Annex A) is overwhelmingly against "politicking" by unions. That view is held more strongly by trade unionists than the general public.

Both the general public and trade unionists support a change to "contracting in" by a margin of more than 2 to 1 - Again trade unionists are more hawkish than the general public, even when the question drew attention to the implications for Labour Party finances.

You will be relieved to know that there is strong opposition to state financing of political parties.

2) The SDP seem intent on running the levy as an issue.

3) CTU favour contracting in. So does the CBI. Similarly the Institute of Directors would welcome a change to contracting in.

4) Action against the payment of political contributions by payroll check offs would help only some 50% to 70% of trades unionists. The costs and bother involved might well cause employers to pay the levy themselves! And any conflicts would be between employee and employer - not employee and trades union.

SECRET

5) You may be interested to see what Mr Gavin Laird told the Financial Times recently. (Annex B).

NT

NT

27 April 1983

ANNEX A

5. Payment of the political levy.

The most explosive idea being explored by Mr. Tebbit is that of changing the system by which the political levy is paid by union members. Such a move would not only anger the union leadership but would undoubtedly be political dynamite too. If the method of payment was to be changed it would cripple the Labour Party's already shaky finances since they rely heavily on funds provided out of the union levy by the trade union movement.

There can be little doubt that the present system, whereby the political levy is deducted from union members pay unless they positively "opt out" is very unpopular. Since many trade unionists support the Conservative party or the Alliance this is hardly surprising. But the opposition to the political levy and the method of paying it is by no means restricted to Conservative and Alliance voters among the workforce. Overwhelmingly all categories of workers feel that they should not have to pay the political levy at all - and even among Labour voters only just over one third (37%) believe workers should have to pay it.

But if a levy has to be paid at all the great majority of union members would prefer a new "opting in" system such as is advanced in the Green Paper.

Significantly, support for this view is not weakened when it is pointed out how heavily the Labour Party relies on these political levies. We deliberately "loaded" the question in favour of the present system by suggesting that it would put Labour at a disadvantage to the Conservative Party in the matter of financing. Despite this a clear majority of union members favoured a law which switched political contributions to an "opting in" basis. Even among Labour voters there was not a majority in favour of keeping the present system.

One other idea which was scouted in the survey was that if the law should be changed, putting the Labour Party at a financial disadvantage, the whole method of financing political parties should be changed too, with the taxpayer footing the bill rather than unions and the business world. This idea however was decisively rejected by all groups.

Table Twelve:

Question: Members of trade unions have to pay a regular sum of money called a political levy which goes in one way or another to help the Labour Party. Do you think union members should or should not have to pay this political levy?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Should	18	9	37	15
Should not	68	81	44	74
Don't know	14	10	18	11

Table Twelve b:

	TU Members	Non TU Members	TU Activists
Should	16	19	20
Should not	82	67	70
Don't know	2	14	9

Table Thirteen:

Question: The present system is that union members pay this political levy unless they "opt out"; that is unless they say specifically that they do not wish to pay it. Some people believe the system should be the other way round: that nobody should have to pay the political levy unless they "opt in" - that is unless they say specifically that they wish to pay the political levy. Which system do you think is the best and fairest: the present "opting out" or the suggested "opting in"?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Opting out	21	16	36	19
Opting in	63	73	46	70
Don't know	16	11	18	11

Table Thirteen b:

	TU Members	Non TU Members	TU Activists
Opting out	19	22	27
Opting in	73	61	66
Don't know	9	17	7

Table Fourteen:

Question: There is a proposal by the Government to change the law so that people will not pay the political levy unless they "opt" or "contract in". The Labour Party relies heavily on these political levies for its survival just as the Conservatives rely heavily on money paid to them by business and industry. Bearing in mind the importance to the Labour Party of this financial support do you think the law should be left as it is or changed so that union members only pay the political levy if they contract in?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Have as at present - opting out	25	16	47	18
Change to opting in	57	71	35	63
Don't know	18	13	18	19

Table Fourteen b:

	TU Members	Non TU Members	TU Activists
Have as at present - opting out	30	24	32
Change to opting in	62	59	56
Don't know	8	17	12

Table Fifteen:

Question: Do you think, if the law was changed to "contracting in" we should also consider the way the political parties are financed. One suggestion is that all parties should have their expenses paid by the taxpayer rather than getting their money from trade unions, business, or individual contributions. Do you think this would be a good or a bad idea?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Good thing for all parties to be financed by the taxpayer	26	25	27	30
Bad thing for all parties to be financed by the taxpayer	57	62	56	57
Don't know	17	13	17	13

Table Fifteen b:

	TU Members	Non TU Members	TU Activists
Good thing for all parties to be financed by the taxpayer	31	27	36
Bad thing for all parties to be financed by the taxpayer	56	57	56
Don't know	13	17	7

6. Political activities of the unions

From time to time the close ties between the trade union movement and the Labour Party are the subject of criticisms. Various polls we have carried out in the past among workers suggest that political acts and aims by the union leadership are not popular with rank and file members who would prefer to see the unions concentrate on purely industrial matters.

In this survey however we looked at the more topical subject of whether the unions should give financial support to the Labour Party, or indeed any other.

What comes across loud and clear is that workers believe the unions should not be involved in political matters and that it should not be giving financial support to any political party.

Table Sixteen:

Question: Do you think the trade unions should or should not be involved in political matters?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Yes, should be	27	14	46	30
No, should not be	64	80	46	65
Don't know	9	6	8	5

Table Sixteen b:

	TU Members	Non TU Members	TU Activists
Yes, should be	24	25	36
No, should not be	74	66	59
Don't know	3	9	5

Table Seventeen:

Question: Would you say you approved or disapproved of the trade unions giving support to none of the political parties?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Approve	53	63	38	59
Disapprove	32	27	46	27
Don't know	15	10	15	14

Table Seventeen b:

	TU Members	Non TU Members	TU Activists
Approve	62	53	57
Disapprove	29	32	35
Don't know	7	15	7

Table Eighteen:

Question: Would you say you approved or disapproved of the trade unions giving financial support to all of the political parties?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Approve	19	21	15	23
Disapprove	67	70	72	63
Don't know	14	9	13	14

Table Eighteen b:

	TU Members	Non TU Members	TU Activists
Approve	20	19	17
Disapprove	72	66	75
Don't know	8	15	8

Table Nineteen:

Question: Would you say you approved or disapproved of the trade unions giving financial support only to the Labour Party?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Approve	17	5	43	11
Disapprove	71	89	44	77
Don't know	13	6	12	12

Table Nineteen b:

	TU Members	Non TU Members	TU Activists
Approve	18	13	22
Disapprove	78	75	70
Don't know	4	13	7

Table Twenty:

Question: Would you say you approved or disapproved of the trade unions giving financial support to both the Labour Party and the Social Democratic Party?

	All voters	Cons.	Lab.	Lib./SDP Alliance
Approve	10	8	16	16
Disapprove	76	87	70	70
Don't know	15	8	16	13

Table Twenty b:

	TU Members	Non TU Members	TU Activists
Approve	15	9	10
Disapprove	81	77	81
Don't know	4	14	9

FINANCIAL TIMES

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ANNEX B

DATE 28 MAR 19

Labour's fears over loosening ties

BY DAVID GOODHART, LABOUR STAFF

THE EMPHATIC restatement by Mr Tebbitt plans to reform the political levy paid by union members to the Labour Party should be causing a few sleepless nights among the party faithful.

A marked loosening of ties between the trade unions and Labour is already expected if the Conservatives win the next General Election and a reform of the levy—originally mooted in the Green Paper on union reform — would dramatically undermine the party's finances.

The Labour Party depends for more than three-quarters of its central income on the 63 unions which maintain political funds and is even so suffering severe financial difficulties. Since 1946 the vast majority of those unions have used the contracting-out system by which members have to take positive steps to opt out of the political levy which ranges from 5p to £2.08 per annum.

The contracting-out system is responsible for the very high proportion of union members—averaging 82 per cent—paying the levy along with their general union subscription. The proportion paying is markedly higher in the big manual-based unions than the more recently affiliated white-collar unions.

In the National Union of Public Employees and the Transport and General Workers Union, for example, less than 5 per cent of the membership contract out according to the latest figures now before the Certification Officer. In the white-collar section of the Engineering Union, Tass, however, about 43 per cent contract out and that is even higher in several other white-collar unions.

The evidence of the years 1927 to 1946 when members had to contract in (the number of contributors fell from 3.2m to 2.6m in spite of an overall growth in union membership of 80 per cent) and the more obvious evidence of opinion polls and elections, suggest that ignorance and apathy over the levy help to keep it so high.

Under the 1913 Trade Union Act any members wishing to contract out must be free to do so without losing union benefits and exemption forms must be available. But there is no obligation to bring this right to union members' attention and few members bother to make a close study of their union rule book.

While many unions are scrupulously informative about the right to exemption others are quite open about the difficulties they create for "quitters" from the levy. Mr Gavin Laird, general secretary of the AUEW—a union lauded for its internal democracy in the Green Paper—said: "We make it as difficult as we possibly can for people to contract out of paying the political levy."

Only about 10 per cent of AUEW members contract out compared with nearly 25 per cent in the Electrical and Plumbing Trades Union. The EPTU, however, has long had a large proportion of non-Labour supporters and before 1946 had only 15 per cent of members contracting-in. Conversely the evidence pre-1946 suggests that some unions might retain a high affiliation even when contracting-in, the mineworkers, for example, had 77 per cent of members affiliating before 1946. The Transport Salaried Staffs Association had 85 per cent paying the levy pre-1946 and is now the white-collar union with the lowest opt-out.

The Green Paper said: "An analysis of the available information on those unions which have political funds gives rise to serious doubts whether statutory requirements for contracting-out work satisfactorily in all unions."

It tried to support this doubt with figures highlighting the disparity between unions with more than 95 per cent of members contributing to the levy and those with less than 40 per cent. These figures have been criticised for failing ot differentiate between those unions which count non-paying members as levy payers and those which count them as non-levy payers.

But the discrepancies—say between the print union Sogat 82 with 70 per cent contracting out and the NUR with 4 per cent contracting out—must point beyond differences of political tradition to ease of contracting-out.

The total amount in trade union political funds at the start of 1981 was £5.3m with expenditure—predominantly to the Labour Party—of more than £4m in 1980.

In real terms those figures have been falling a little with the rapid drop in union membership although some unions have counteracted that by affiliating a higher number of levy-payers than before.

The latest batch of figures to go before the Certification Officer also shows a small increase in the number of members contracting out in many unions.

TGWU officials in the south of England said that in many areas there was a rise in the contractors-out when the SDP was formed two years ago and more recently Mr Keith Sneddon, the south-eastern organiser of the Sheetmetal workers union, said that numbers had risen "noticeably" following the publicity surrounding the issue following publication of the Green Paper.

This slender evidence appears to underline the point that ignorance is bliss for the Labour Party treasurer. But it's not all one way. The Society of Post Office Executives recently voted 54-46 per cent in favour of setting up a political fund in the compulsory ballot—laid down by the 1913 Act—with 84 per cent participation. Fighting the privatisation of BT at the next election was the major motive for setting up the fund and it is not certain that SPOE will actually affiliate to the Labour Party.

The Post Office Engineering Union, the last union to set up a political fund in 1963, also reports a drop in the number of members contracting out because of privatisation.

2885

Goodhart's own interview with Laird some time ago.

Could we find the origins of this quote.

NZ

CONFIDENTIAL

SC 24.0.

Prime Minister

MCS 27/4

PRIME MINISTER

EMPLOYEE INVOLVEMENT

I have seen a copy of the Secretary of State for Employment's minute of 20 April. I agree broadly with his emphasis on the undeniable need for more employee involvement in British industry and with his argument for a voluntarist approach to this end.

I have no doubt whatever that an approach which treats all employees equally, irrespective of the union to which they belong or whether they belong to a trade union at all, has a vital part to play in our dual objective of strengthening the employee's sense of identification with the company for which he works and diminishing the power of the unions.

It is also important that we should be seen to be in favour of employee involvement. Such a stance would be both a demonstration that we are in no sense 'anti-worker' and a complement to our desire to give the unions back to their members. We cannot allow the SDP/Liberal Alliance to make the running on this issue which is likely to become increasingly prominent.

Therefore, while the achievement of employee involvement throughout large scale British industry by the voluntarist route is highly desirable, the conclusion I reach is that we must not rule out the possibility of some kind of legislation on this issue should voluntarism fail. Indeed, it may be only the knowledge that there would be legislation if voluntarism failed that will enable it to succeed.

I am copying this minute to the Secretary of State for Employment, other members of E Committee, the Lord Chancellor, the Secretaries of State for Scotland and Wales, the Attorney General and to Sir Robert Armstrong.

Secretary of State for Energy
26 April 1983

Ind Pol: Ind Relations
PH10

10 DOWNING STREET

Prime Minister

Mr King will have to leave E at 1215 for the memorial service for Brynham Bartlett former MP for Bridgwater

LM

2

SECRET

P.01007

PRIME MINISTER

Outcome of consultations on Green Paper on 'Democracy in Trade Unions' and proposals for legislation.

E(83)9

BACKGROUND

FLAG A.

Following discussions in the Committee in October 1982 (E(82)21st Meeting, Item 1) the Government issued a Green Paper 'Democracy in Trade Unions' discussing the election of trade union leaders; mandatory strike ballots; and the provisions of the Trade Union Act 1913 regarding contracting out of the political levy, and the definition of the 'political objects' of trade unions. Consultation on the Green Paper is now complete, although the Trades Union Congress and its affiliated unions refused to submit comments. In his

FLAG B.

memorandum E(83)9 the Secretary of State for Employment advances proposals on two of the main topics discussed in the Green Paper.

(i) Trade union elections

The Secretary of State proposes legislation making it a requirement that trade union governing bodies (and certain senior officers) should be elected by secret ballot giving all union members an equal and satisfactory opportunity to vote. Elections would have to take place not less than once every five years. It would be forbidden to place unreasonable restrictions on candidature or to withdraw the right to vote as a disciplinary measure for refusing to strike. Unions would not be able to opt out of these requirements by a referendum of their members. Although postal ballots would, of course, be possible, they would not be mandatory: other methods of balloting (in practice this would usually mean balloting at the work-place) would also be acceptable. The statutory requirements would be enforceable by individual union members through the courts, and would come into effect two years after the legislation received Royal Assent.

Remove for immunity for strikes called without a ballot

(ii) Strike ballots

Trade unions would not be required to hold a ballot before taking industrial action. But if any union authorised or endorsed such action without a ballot, there would be no immunity for inducing breach of contract in furtherance of the relevant trade dispute, as there is under the existing law. Those suffering or threatened with loss would be able to sue for an injunction or for damages.

2. E(83)9 does not discuss the third group of topics considered by the Committee in October 1982 (contracting out and the definition of 'political objects'), but promises an oral report. It also promises an oral report on the matter of strikes in essential services.

FLAG C

3. In accordance with the Cabinet's decision on the legislative programme for 1983-84 (CC(83)12th Conclusions, Minute 4), the Secretary of State proposes that if the 1983-84 Session is of normal length, there should be a Bill containing all his proposals; but that if the Session is curtailed, legislation should extend only to trade union elections. He proposes to publish a document setting out detailed proposals as soon as possible.

MAIN ISSUES

4. The main issues raised by E(83)9 are as follows.

(i) Does the Committee agree with the substance of the proposals on

- trade union elections;

- strike ballots?

(ii) How should the Government decisions be made known?

Depending on the content of the promised oral reports, some discussion may also arise on:

(iii) changes to the Trade Union Act 1913; and

(iv) strikes in essential services.

Trade union elections

5. The Committee is likely to be broadly sympathetic to the proposals in E(83)9; but you may wish it to consider a number of points.

(a) Nature of ballots

Some members of the Committee may suggest that the Government should do more to encourage postal ballots, on the grounds that the main alternative (balloting at the work-place) is undesirably exposed to undue influence, and that there is evidence that postal ballots encourage the membership to participate in elections. In some industries, such as those mentioned in paragraph 4 of E(83)9, it may well be impracticable to require a postal ballot; but this point might be dealt with by empowering the Secretary of State to make orders exempting certain trades from a general requirement to hold elections by postal ballot. The objection that membership records are out of date is clearly of more general application; but it seems odd to regard inefficiency as a valid excuse for failing to adopt the best procedures.

(b) Timetable

Obviously unions must be given a reasonable period in which to bring their rule books into line with any new statutory requirements; but the Committee may wish to ask whether it is necessary to allow as much as two years after Royal Assent - which might mean as much as three years after the Government had given clear notice of its intention to proceed.

(c) Restrictions on candidature

Paragraph 3 of Annex I to E(83)9 is not specific on what would be regarded as unreasonable restrictions on candidature, or on whether detailed requirements would be laid down in statute or left for the

courts to decide. You may wish to ask the Secretary of State for a fuller description of his thinking.

Strike ballots

6. In his previous memorandum (E(82)64) the Secretary of State for Employment argued against mandatory strike ballots (even as a necessary condition of legal immunity for industrial action - the precise proposal now before the Committee), on the grounds that they would be likely to be turned into a 'vote of confidence' in the union, could impede the resolution of disputes, and might hamper the holding of ballots by management. The latter point carried considerable weight with the Committee.

7. The Green Paper also contained a number of further arguments against mandatory strike ballots: that they might encourage unofficial industrial action and action which, though damaging, was not in breach of any contract of employment.

8. You will wish to ask the Secretary of State why he now takes a different view of the balance of argument. The Committee may also wish to discuss the merits of the alternative approach of providing a statutory right for a defined proportion of the union membership to 'trigger' a ballot before a strike. The relevant arguments seem to be clearly set out in E(83)9.

Changes in the Trade Union Act 1913

9. We do not know what the Secretary of State for Employment intends to include in his promised oral report. The issues ('contracting out' or 'contracting in' to the political levy and the definition of 'political objects') are well known to the Committee.

Strikes in essential services

10. Again, we have no clear indication of what the Secretary of State is likely to say. We understand that his present thinking, which is still only tentative, is that, at least for the time being, the Government should rely on the proposed provisions regarding union elections and strike ballots.

11. If the Secretary of State indicates that he wishes to make specific proposals in either of these areas, it would be appropriate to invite him to circulate a memorandum to the Committee.

Announcement of decisions

12. The Secretary of State seeks authority to publish a document setting out his proposals for legislation as soon as possible. The Committee may wish to consider this carefully against the background of their earlier decisions. If they are not ready to announce decisions on "contracting out" and "political objects", the position is more difficult. A document confined to two of the three areas discussed in the Green Paper is bound to stimulate questions about the Government's views on the third. The timing, manner and content of publication may also depend on whether there is to be a summer election.

HANDLING

13. You will wish to ask the Secretary of State for Employment to introduce his memorandum. All members of the Committee are likely to wish to contribute. The Lord Chancellor and the Law Officers have been invited to attend the meeting in case any legal questions should arise.

CONCLUSIONS

14. You will wish the Committee to reach conclusions on the following:

i. Is the substance of the proposals in E(83)9 on trade union elections and strike ballots accepted?

ii. Are there any other matters which should be dealt with in legislation in the 1983-84 Session (if that is of normal length)? (If so, you will no doubt wish to invite the Secretary of State for Employment to submit proposals to the Committee).

iii. Should the Government set out its proposals in advance of legislation, and, if so, how and when?

P L GREGSON

26 April 1983

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

NB PM

MIS 25/4

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

25 April 1983

EMPLOYEE INVOLVEMENT

I read with interest your minute to the Prime Minister of 20 April and I agree entirely with the line you propose. with mcs?

During 1982 I gave my full support and endorsement to a report by the Food and Drink Manufacturing EDC on improving productivity in the industry, which featured full, effective and continuous employee involvement as its key recommendation. It is encouraging that Sir James Cleminson, who chaired the Working Group which produced the report and was its leading protagonist, has been elected Deputy President of the CBI.

I am copying this letter to the Prime Minister, other members of E, the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales, and to Sir Robert Armstrong.

cc

PETER WALKER

CONFIDENTIAL

FIF SW

bcc: Nick Owen

cc: D/En.
CDL
CS, HMT
D/Trans.
D/Trade
D/I.
LPSO
DoE
MAFF
MoD
NIO
DES
HMT
FCO
HO
LCO
LOD
SO
WO
CO

10 DOWNING STREET

From the Private Secretary

25 April, 1983

Employee Involvement

The Prime Minister was grateful for your Secretary of State's minute of 20 April.

She agrees to his proposal that the Government should maintain its present opposition to legislation on employee participation, and should adopt the stance of "constructive opposition in Europe".

The Prime Minister has minuted as follows:

"We must strenuously oppose the draft directives and any attempt at legislation."

I am sending copies of this to the Private Secretaries to the other members of E, the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales and to Sir Robert Armstrong.

M. C. SCHOLAR

J. B. Shaw, Esq.,
Department of Employment

CONFIDENTIAL

Ind. Pol.

10 DOWNING STREET

M
15.50 pm
PLM
CS:
22/4

1

Prime Minister

Trade Union Bill

Do you want contracting out removed merely from Mr Tebbit's paper (in case of leaks); or do you want his proposal out of the Bill?

MLS 21/4

Agree. Only the paper - and possibly for a later Bill. Have a word with him.

SP SECRET

TRW
Telentry Exercise
MLS 21/4

Prime Minister

Do you agree with that Mr Tebbit should circulate these proposals on Trade Union Reform?

Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 6400
Switchboard 01-213 3000

I would leave out the political levy. MLS

Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

20 April 1983

Dear Michael

... I attach a draft of the paper that Mr Tebbit wants to submit to E Committee for discussion next week. I should be grateful if you could show it to the Prime Minister and let me have any comments in time for us to circulate the paper this week. MLS 20/4

You will see that the paper is limited to the issue of democracy in unions. The issues raised by strikes in essential services are also live, and Mr Tebbit plans to give E Committee an oral account of his ideas in this area.

Yours ever
Brian Shaw

J B SHAW
Principal Private Secretary

SECRET

S E C R E T

DRAFT E PAPER

Outcome of Consultations on Green Paper on "Democracy in Trade Unions" and Proposals for Legislation

1 Consultations on the Green Paper "Democracy in Trade Unions" are now complete. There was a wide response from industry (although the TUC and its affiliated unions refused to submit comments) and the general reaction was clearly one of concern at the undemocratic nature of much current trade union practice and of broad support for legislation on each of the three topics discussed in the Green Paper. My proposals for legislation are set out below.

SECRET BALLOTS FOR TRADE UNION ELECTIONS

2 I am in no doubt that we should legislate in this area at the earliest opportunity. Our consultations have confirmed that there is widespread dissatisfaction with the existing election procedures in trade unions and that legislation on this subject will command overwhelming support. I have concluded that the legislation should be straightforward and based on easily-understood principles. That will make the legislation simple to explain and defend and, conversely, very hard to attack without appearing to be opposed to democracy itself.

3 The more detailed points of the legislation are described in Annex 1. Broadly, I propose that the legislation should require all trade union governing bodies (ie executives) to be elected in accordance with four fundamental principles. These are: that voting must be secret; that every member must be given an equal and unrestricted opportunity to vote whether at his workplace or by post; that voting must be by the marking of a ballot paper; and that each union member must be able to vote directly for the members of the governing body. These principles will put an effective end to the most serious and most frequently

cited abuses of union election procedure: voting by show of hands, block voting and indirect elections in which the members elect delegates who may or may not be bound by the members' choice of candidate.

4 It would be possible to go further and require postal balloting in all cases. However, considerable problems could be caused by out-of-date membership records which could mean the effective disenfranchisement of up to 25% of the members. Furthermore in particular cases such as seamen and itinerant construction workers properly conducted workplace ballots could be a highly effective means of giving members a genuine choice. Finally, by allowing unions some flexibility within the principles set out in paragraph 3, we should be able to undermine the argument that the Government is imposing a legislative straightjacket without regard to the diversity of trade union structures and tradition and also to avoid any problems with the ILO.

5 I believe it would be impractical to impose similar legislative requirements on trade union officials below the level of the governing body. This was the virtually unanimous view to emerge from the consultations. However, I do propose that the election of General Secretaries and Presidents should be subject to the legislation in those cases where they have a vote or casting vote on the governing body.

6 I propose that the legislative requirements should take the form of a statutory duty laid on every trade union without any possibility of opting out by referendum of the members (as suggested in para 54 of the Green Paper). This duty would be owed by the union to each and every member so that in the event of failure by a trade union to carry out an election in accordance with the legislation any individual member would have recourse to the ordinary courts to secure compliance by the union with its statutory obligations. If the union

ignored or defied any court order the sanction would be the normal contempt procedure. This is the procedure under which numerous actions have been brought by trade union members of left and right in disputes over alleged breaches of union rules and electoral malpractice. So as to give time for trade unions to change their procedures to comply with the legislation I propose that the legislation should take effect two years after Royal Assent.

STRIKE BALLOTS

7 In my earlier memorandum (E(82)64: para 7) I suggested that the difficulties surrounding theimposition of strike* ballots argued against legislation. Since then however a number of major strikes have underlined the important role pre-strike ballots can play and the responses to the Green Paper have shown considerably more support from industry for legislative action in this area than was apparent in the responses to the 1981 Green Paper. I have therefore concluded that legislation on strike ballots should be introduced, provided that the difficulties identified in my earlier memorandum can be avoided.

8 There are three ways of giving effect to a provision for strike ballots:

- requiring a legally enforced ballot for all strikes;
- providing for a statutory right for a defined proportion of union members to "trigger" a ballot before a strike;
- making the holding of a pre-strike ballot a condition of immunity for organising a strike.

*"strike" here means any industrial action in breach of contracts of employment

9 A statutory requirement to ballot before all strikes is impracticable and has little support. The "trigger" approach has however attracted support in the consultations. It has the presentational advantage of conferring rights directly on union members. However, I believe that it has three major defects. First, its effectiveness in practice would depend entirely on the ability and willingness of union members to operate inevitably complex procedures for pulling the trigger at short notice and subsequently to take what could be very costly enforcement action in the courts. Secondly, the legislation would be very complex and in some respects difficult to defend. It would, for example, be necessary to define exactly the circumstances in which the "trigger" could be pulled so as to prevent militants calling for a ballot during a strike in order to forestall a settlement or undermine a call for a return to work by union leaders. I have no doubt of the mischief making potential of an unrestricted right to call for a strike ballot. Thirdly, there would be considerable scope for protracted conflict between unions and the courts (perhaps continuing even after the original dispute had ended) as union members sought the enforcement of an order for the holding of a ballot.

10 In contrast the "immunity" approach, would, I believe, provide a much more powerful inducement for the holding of ballots because of the direct threat to union funds. The legislation could be much simpler both in form and operation. The issue before the courts would be whether or not a particular strike had been called without support for it being tested in a secret ballot. If there had been no ballot, the remedy and sanctions would be those for any unlawful industrial action and the courts would not become involved in the enforcement of orders for the holding of ballots.

11 I propose that the pre-strike ballotting requirement should apply only to industrial action which is "authorised or endorsed" by a trade union (as defined in section 15 of the Employment Act 1982). I do not think that it would be realistic to try to extend the ballotting requirement to cover all strikes, including unofficial strikes for which trade unions could not be held liable even in the absence of a ballot. There would be little point in suing the individual organisers of unofficial action since they are usually "men of straw". Moreover, it would make no industrial sense to require a trade union to seek a demonstration of support for a strike which it had refused to "authorise or endorse".

12 I therefore propose that it should be made a condition of immunity for any strike which is "official" within the wide definition of S.15 of the 1982 Act that the support of the strikers for that strike must have been demonstrated in a secret ballot before the strike was called. The holding of the ballot would be subject to the first three of theprinciples set out in para 3. This is a more radical approach than the "trigger" approach but I believe it is much more likely to work in practice and will thereforebe a more effective way of enhancing the democratic rights of trade union members. The details are set out in Annex 2.

TRADE UNION POLITICAL FUNDS

13 The consultations on the Green Paper have not caused me to revise my view that we should take steps to remedy the worst defects in the operation of the Trade Union Act 1913. The two major changes I propose are

- to reverse the clearly unsatisfactory situation whereby trade union members who do not wish to pay the political levy have to "contract out", by substituting a system of "contracting in"; and

- to make each union's political objects and funds subject to review by secret ballot of the full union membership every 10 years. (At present, once a fund is set up, there is no statutory provision for review).

I also propose a number of further steps to safeguard the position of union members whose political levy is currently collected by means of the check-off and to improve the administration of unions' political funds (see Annex 3).

CONCLUSIONS

14 I will make an oral report to colleagues on my thinking about strikes in essential services.

15 I propose to publish a document setting out my detailed proposals for legislation (as with the 1980 and 1982 Acts) as soon as possible. This will make it clear that there will be no legislation on trade union political funds until after the General Election. Accordingly, as agreed at Cabinet (CC(83) 12th) a 1983-84 session of normal length after a General Election would include a Bill covering all three subjects. A short session in advance of an Election would contain a Bill on trade union elections alone.

16 I seek the agreement of my colleagues to the legislative proposals described above.

ANNEX 1

SECRET BALLOTS FOR TRADE UNION ELECTIONS

1 Paragraph 3 of the paper notes that the legislation will require direct election to the governing body. However, I see no reason to prevent unions reserving particular seats on the governing body (in accordance with existing practice) to represent particular trade groups or areas or for preventing unions from choosing different voting arrangements (eg 'first past the post' or the single transferable vote). Likewise I do not, in general, intend that the legislation should seek to define who should and who should not be able to vote in elections for the governing body from amongst a union's members. This would be a matter for the union's rules. In practice many unions exclude certain categories of member, such as recent entrants, from voting in elections and it would be a difficult if not impossible task to seek to define who should and who should not be able to vote. However, I do propose that the legislation should prevent the right to vote from being withdrawn by trade unions as a disciplinary measure/(as occurred recently in the NUR in relation to some union elections.)
for refusing to strike

The frequency of election

2 Many union governing bodies are elected annually and I know of none where the interval between elections under the union's rules is longer than five years. However, I propose that the legislation should stipulate a maximum five-year interval between elections for the governing body. This would apply equally to the election of General Secretaries etc who are voting members of the governing body. The legislation would, of course, apply to any elections which took place more frequently.

Restrictions on candidature

3 I propose that the legislation should make it unlawful to put unreasonable restrictions on candidature. For example I propose that it should be unlawful for any member to be disqualified from standing for office on the grounds that he has been disciplined for refusing to strike.

A referendum procedure

4 Paragraph 54 of the Green Paper suggested that if a majority of the total membership of a trade union were to support the union's existing election procedures in a referendum then the specific statutory requirementsmight not apply. However, there was little support for such a procedure in the consultations - the CBI for one were firmly against it - and it would in any event be difficult to justify allowing any union to opt out of the basic principles described in paragraph 3 of the paper. I have concluded therefore that we should not proceed with this alternative.

Financing of ballots

5 I propose that the existing provision of public funds available under section 1 of the 1980 Employment Act should continue to be available for secret ballots for union governing bodies which unions choose to conduct postally.

ANNEX 2

STRIKE BALLOTS

The main features of my proposals are as follows:

(a) there would be no immunity for inducing breaches of contract in furtherance of a trade dispute unless there had been a ballot on the question whether the union members concerned wished to take the industrial action in breach of their contracts of employment;

(b) this test would apply only to industrial action which was "authorised or endorsed" by a trade union, as already defined by section 15 of the 1982 Act*;

(c) the constituency for the ballot would be all those members of the union or unions who had been or were to be called on to take industrial action;

(d) as for elections the legislation would not prescribe the detail of the balloting arrangements (fully postal, semi-postal or workplace), given the very wide variety of circumstances in which ballots might need to be held, but instead would provide that every member should have a fair and reasonable opportunity of voting by marking a ballot paper and that the secrecy of the ballot was properly secured;

(e) there would be no requirement for a particular size of majority: since the objective is to give union members the chance of a vote. I believe we should leave it to the members themselves to enforce the results of ballots. It would be extremely difficult for a union to

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*to comply with this definition the action would need to be authorised or endorsed by the principal executive committee; by any other person who is empowered by the rules to authorise or endorse such action; by the President or General Secretary; by any other employed official; or by any committee of the union to whom an employed official regularly reports.

persist with a strike which had been shown not to command majority support (particularly with the new safeguards in the Closed Shop Code against expulsion of union members for refusing to strike)

(f) anyone suffering loss (or threatened with such loss) as a result of inducement to break contracts without a ballot would be able to sue the inducers for an injunction or damages in exactly the same way as they can now if, for example, there is no trade dispute or the inducement is to take unlawful secondary action.

POLITICAL FUNDS

ANNEX 3

Amongst the detailed provisions which I propose to introduce to improve the administration of political funds are:

(a) a duty on employers not to collect the political levy by means of the "check-off" (whereby deductions from wages are made at source) unless the employee in question has authorised this in writing, and to itemise political levy deductions seperately from payments of general union dues in pay or deduction statements;

(b) a requirement for greater details of political contributions to be recorded in unions' annual returns to the Certification Officer;

(c) an updating but not a radical revision of the statutory definition of trade unions' "political objects";

(d) a restoration of individual trade union members' right of access to their unions' detailed accounts (originally conferred by the Trade Union Act 1871, re-enacted in the Industrial Relations Act 1971, but removed by the Trade Union and Labour Relations Act 1974);

(e) a requirement for unions to make clear in their accounts that investment income is directed to the fund from which the investment was made and that any deficits in political funds are charged to that fund and not to the general fund;

(f) subject to advice from the Consultative Committee of Accounting Bodies whom I have consulted, a duty on auditors to ensure specifically that political funds are not subsidised from general funds.

2. I am not proposing any changes in the nature of the duties of the Certification Officer but some of the changes I am suggesting above will lead to an increase in the work of his office. This would involve a modest increase in staff in his office (at a cost of around £100,000 a year).

CC NO

PRIME MINISTER

Prime Minister

Agree to X on p 3, subject to colleagues?

MLS 20/4

Yes - we must obviously consult colleagues further before deciding on any substantive action.

EMPLOYEE INVOLVEMENT

At the meeting of E on 14 October last year (E(82)21, p+9), I was invited to consider further, together with the Secretary of State for Trade and other Ministers concerned, the Government's policy relating to employee involvement, and to bring forward recommendations in due course. This followed discussion of this subject at an earlier meeting of E (E(81)33, p+8) and a meeting I had with the Chancellor and the Secretaries of State for Industry and Trade in April last year. Subsequently David Waddington was asked to look at the question with colleagues from the Treasury, Industry and Trade.

Our immediate concern has been the now imminent re-emergence of the two draft EC Directives on employee participation, both of which would require major legislation. Revised texts of the two draft Directives are now expected to be published very shortly (the draft Fifth Directive in the next few days). For the benefit of colleagues, I attach a note on the current state of play and the likely content of the directives.

David Waddington reported to me in November last year. He and his colleagues concluded that we should maintain our present opposition to legislation. The need for more employee involvement, both for our national economic prospects and for the health of individual enterprises, was undeniable. But the imposition of legislative requirements would add unnecessarily to costs, be disruptive for many well-established arrangements and could prove self-defeating. Accordingly, the Waddington Group recommended that in Europe the Government should continue to make clear its strong reservations

on the two draft Directives but should be ready to participate in the detailed examination of the texts when they emerged from the Parliament and the Commission. Meanwhile the Government and Industry should present a united front in firm commitment to the voluntary approach: employer organisations, in particular the CBI, should be urged to renew their efforts of exhortation among their members (particularly multinationals) and to ensure that good practice received more publicity than hitherto. Our best hope of persuading the Commission and other member states of the validity of our approach lay in demonstrating that voluntarism worked.

The Secretary of State for Trade and I both endorse these conclusions, which, as far as the draft Fifth Directive is concerned, reflect the views which he expressed in his letter to me of 14 December. For my part, I have made a point of expressing forcibly, both publicly and in discussion with other EC Ministers and Commissioners, our unqualified opposition to unnecessary EC instruments to harmonise employment practices. Now that I have given a lead in the matter, I find that my counterparts in other countries have been more prepared to express their opposition too.

Before reporting back to colleagues, however, I thought it useful to review the subject with the CBI. I took the opportunity to do so on 28 February when the Director General of the CBI and a number of his colleagues came to see me. Their views are very much in line with ours. In particular, they recognise the importance of demonstrating that progress is being made in extending the practice of employee involvement without legislative intervention.

To this end, the CBI propose to mount another survey of the employee involvement activities of their members. The results should be

available this summer. The survey would provide some up to date information, but should also encourage members to publicise good employee involvement practices where they existed. The CBI will also continue to press the case for voluntarism on its merits both here and in consultation with employers' organisations in Europe. All this is helpful, and I welcomed it, suggesting that it would be useful if companies, especially multinationals, publicised their acceptance of and compliance with the various existing international guidelines on consultation and communication.

We need to be aware, however, of the emphasis being placed on worker participation by the other parties, particularly the SDP, which has recently advocated the achievement of industrial democracy through a comprehensive set of legislative and other measures. This may have some electoral attractiveness in some quarters. But legislation would in our view be counterproductive to the achievement of our aims. It would also attract strong opposition from many employers, who would condemn any proposals as unnecessary bureaucracy. And it would complicate our negotiating stance in Europe.

In the light of your Private Secretary's letter of 15 December, in reply to Lord Cockfield's letter of 14 December, I should be grateful for your and other colleagues' agreement that we should continue to follow the voluntarist line, and adopt the stance of constructive opposition in Europe, as proposed in paragraph 3. It would be helpful if colleagues would take suitable opportunities to press the advantages of the voluntarist approach, and to encourage companies to publicise evidence of their adherence to the existing guidelines.

I am copying this to members of E, the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales and to Sir Robert Armstrong.

NT

NT

20 April 1983

BACKGROUND NOTE

THE "VREDELING" DIRECTIVE

1. The Draft Directive on Informing and Consulting Employees in Complex Undertakings was published in October 1980. It requires head offices of large companies and other employers such as building societies and partnerships to provide subsidiaries or separate establishments with information about the activities of the group for local management to communicate to employee representatives. It would also give employee representatives rights to consultation about decisions likely to have a serious effect on the interests of employees.

2. In December 1982, the European Parliament adopted an Opinion which for the most part watered down the original proposals. Commissioner Richard had earlier made it clear, in a statement to the European Parliament, that the Commission was prepared to accept many but not all of the Parliament's amendments.

3. The Commissioner's statement provides the best indication of the likely form of the revised text of the Directives. The new proposals will apply to undertakings with 1,000 or more employees in total and to subsidiaries or separate establishments with at least 100 employees. Extensive information would have to be provided annually to employee representatives, with a procedure for protecting business secrets. Employee representatives would have to be consulted 40 days before major decisions. The new proposals would give employees a more limited right to approach head office than originally proposed; but employee representatives would still be able to apply to head office in writing for information to be sent to local management if the latter failed to provide information. Consultations could only be transferred to a higher body if the employee representatives and local management agreed. Court proceedings could be brought against either local or head office by employee representatives if the former failed to comply with the information and consultation provisions. The appointment of employee representatives would be left to the practice of Member States (previous UK legislation in this field provides for representatives of independent recognised trade unions).

4. The Commission has said that it will publish a revised final text shortly for consideration within the Council of Ministers' machinery. It may be several years however before final decisions on implementation are needed.

THE FIFTH DIRECTIVE

1. The Draft Fifth Directive on Company Law Harmonisation, introduced in 1972, originally proposed that employees be represented on the supervisory board of a two-tier board system in public limited companies with over 500 employees.

2. The Legal Affairs Committee of the European Parliament recommended that greater flexibility should be introduced into the proposals. They were endorsed by the Parliament in May 1982 and have subsequently been broadly accepted by the Commission.

3. It is likely that the Commission's final revised text will apply employee participation provisions to companies with more than 1,000 employees (counting also the employees of subsidiaries) and will offer a wider choice of structures for employee participation. There will also be the possibility that no participation system will be required where the majority of a company's employees oppose them. Member states will still be obliged to legislate where necessary to allow companies to adopt a two-tier board system, but they will also be permitted to allow companies to retain a unitary board. The participative system from which a choice will have to be made are: worker directors (either elected or co-opted on to the supervisory board of a company with a two-tier board structure or elected as non-executive directors of companies with a unitary board structure); a works council; or a system established by collective agreement. Except where worker directors are co-opted on to a supervisory board, all employee representatives (including those participating in a system established by collective bargaining) would be elected by proportional representation through a secret ballot of all employees.

4. The alternative participative systems are intended to be equivalent in effect. Directors representing employees would have rights to the same information as supplied to other directors, as would the representatives of employees in other schemes of participation. The rights are: to receive a

written report on the company's affairs every three months and the draft annual accounts and report, and to request special reports and undertake investigations where necessary. In addition all employee representatives would have the right to be consulted about decisions such as the closure, transfer or extension of the activities of the undertaking.

5. The Commission is expected to publish its revised text shortly which it will submit formally to the Council of Ministers, which will presumably refer it to a working group of officials. Negotiations in such a group could be expected to last for many years, even without any specific action by the UK.

Ind Pol : Ind Relations

Pt 10

Encl A01

MR VEREKER

cc Mr Scholar
Mr Mount
Mr Wolfson
Mr Gow
Mr Ingham
Mr Walters

PREVENTING STRIKES IN THE ESSENTIAL SERVICES

I apologise for not responding more quickly to your note of 3 March .

What you say about a requirement for an arsenal of weapons is surely correct. But have we identified the right target? Problems in essential services arise so far as the public are concerned because so many of these services are provided by monopoly suppliers, in which monopoly trade unions (many operating in closed shops) hold sway. Any initiative which does not tackle these two fundamentals - monopoly services and monopoly trade unions - wiil not lead to a lasting solution.

I believe that this failure is the real weakness of some of the proposals for a direct assault on the right to strike in essential services; both the (if I may use the word) unilateralist approach - the Government going it alone to ban by law such strikes - and the multilateralist - no strike agreement in exchange for guarantees about pay - are addressed to the problem of the essential services in their present shape and form. They are essentailly defensive, short-term measures which do not necessarily pave the way to any radical changes in the structure of the relevant services.

Even as limited restrictive moves these approaches are, I believe, defficient. The legislative approach is I agree far from simple and uncertain. There is also the problem of definition: what is essential and to whom? One could specify named services and limit the terms of the Act to them, or one could adopt a formula which defined essential in terms of the effects industrial action would have: any worker who provided services to the community, the absence of which would endanger life, health or safety, would

be prohibited from striking. This would be more flexible and broader in scope.

The problems of enforceability and sanction would remain. No Government can overcome mass disobedience by tens of thousands of workers and there is no point in passing laws which cannot ultimately be enforced. Given its inglorious history the 1875 Act Conspiracy and Protection of Property/ does not provide a useful starting point. And the questions of who is prosecuting whom, on what grounds and to what ends - whether we are talking about civil or criminal actions, against unions or individuals, leading to fines, sequestration of funds or prison - can only be answered by changes in the law as it affects trade unions generally.

The alternative direct approach, that of securing no-strike agreements between management and workers is equally unpredictable. The quid pro quo for undertaking not to strike, which unions would undoubtedly demand, would be a guarantee about wages. Linking essential service pay to the RPI or even the TPI might look tempting with inflation at or below 5%, but such a linkage offers too great a hostage to fortune.

What I would prefer is a concerted but indirect approach to remove the fundamental obstacles. Such a package would comprise the following elements:

(a) more vigorous pursuit of finding ways of breaking up monopoly services;

(b) further pressure on the closed shop;

(c) legislation to make <u>all</u> procedural agreements enforceable in law;

(d) further legislation on trade union immunities generally.

It seems to me important that points (c) and (d) are not limited only to essential service. There is surely no difference in principle in an agreement broken in an essential service and one broken in any other sector of industry. Natural justice demands that both areas should be treated equally.

Placing the essential service unions in a special status category would give us the worst of all worlds: it could re-inforce their own awareness of their importance and potential power, while at the same time preserving the formal privileges of other unions.

I agree with what you, and Bernard, say about deterrence and discouraging strikes in essential services. Apart from the physical steps one can take to endure such strikes the importance of the propaganda battle and the education of public opinion cannot be understated. The water strike, incidentally, may cause us to be too complacent in some respects. The strike was not prosecuted by the unions with the utmost vigour: by and large they continued to provide emergency cover and they took aggressive action (mass picketing, occupation, sabotage) only in a limited number of cases. In addition, technical and managerial staff provided some cover for the strikers, and other unions did not go out of their way to extend solidarity with damaging action.

There is no escaping that the resolution of these difficulties in public/essential services is going to be a long haul with a variety of approaches required.

11 March 1983

PETER SHIPLEY

Ind Pol

MR VEREKER

cc Mr Scholar
Mr Mount
Mr Wolfson
Professor Walters
Mr Shipley
Mr Gow

PREVENTING STRIKES IN ESSENTIAL SERVICES

I wonder whether I could inject a slightly tougher approach into the thinking.

I am not - and never really have been - overly impressed with the argument that there should be no strike agreements in essential services, even if they could be afforded. This is partly for reasons of equity and because I do not think they could be guaranteed to work effectively outside a disciplined service. We have see a steady breakdown in workers' reluctance to take strike action in public services and I see no prospect of their acquiring a new moral fibre without stronger trades union leadership (which is crying for the moon) or a substantial period of low inflation.

If you accept this view it seems to me that we have to adopt an altogether more rigorous approach with the objective of discouraging (as distinct from eliminating) strikes; and that we need to adopt it sooner rather than later if we are to have a better chance of holding down the "vengeance is mine" syndrome when the economy picks up.

This is essentially to say:

(i) there is no justification whatsoever for industrial action in our society except as a last resort;

(ii) by the same token there is no justification for breaking agreed procedure;

(iii) nor is there any justification for management and labour to operate without an agreed procedure; this meets the argument that if unions were required to observe procedure they wouldn't have one;

(iv) any procedure must require a strike ballot of the workforce on questions to be agreed between management and unions; and

(v) any industrial action in breach of procedure or in the absence of procedure is unprotected and renders company or union funds liable to civil suits.

It does not - or need not - follow from this that all procedures would end up at arbitration or with some third party. There is nothing to compel management to agree to cede the resolution of disputes to others; nor would unions necessarily want it since it would tend to emasculate them.

None of this interferes with the ultimate right to strike provided procedure is observed.

I do not see why we should run away from this approach simply because we (rightly) believe the trade unions and Labour Party would oppose it tooth and nail. Nothing upsets the public, apart from inconvenience through strikes, than failure to observe procedure and strikes which have not been sanctioned by those involved and/or are in defiance of their wishes. The test is not whether the TUC and Labour Party would oppose it after a General Election; it is whether this approach is fair, reasonable and practical.

I do not suggest this approach would necessarily lead to fewer strikes or that unions would immediately face court action. It would be very important not to oversell any such approach.

But I do not believe you can outlaw or buy off strikes in the undisciplined services or sectors of a democratic society; I am not attracted by any arrangement which draws a distinction in this matter between essential and other services - we ought to be in the business of universally promoting adherence to democratic procedure; and I do not think arbitration or indexing would serve the aim of containing costs - only resourceful and resolute employers can do that.

In short, I advocate an unflinching approach to a more orderly industrial society which preserves basic freedoms once the legitimate interests of society have been properly served.

B. INGHAM
7 March 1983

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Tim Flesher Esq
Private Secretary
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4 March 1983

4/3

Dear TIM

COMPENSATION FOR PAST CLOSED SHOP DISMISSALS

The Prime Minister may wish to be aware that an application by Mr S M Temple for compensation under the Employment Act 1982 for his past closed shop dismissal has been rejected by my Secretary of State on the basis of a report by Mr Billam, who has been appointed as the Assessor under the 1982 Act.

Mr Temple was a member of the appropriate trade union (TGWU) while the closed shop agreement at his place of work was in operation. He was dismissed as a result of resigning from the union after it failed to give him the support he believed due in a grievance with his employer. The Assessor, however, does not uphold his claim that he genuinely objected on grounds of conscience or other deeply-held personal conviction to being a member of the TGWU.

Mr Temple's case received considerable press publicity at the time of his dismissal. He also received expressions of sympathy from Mrs Thatcher and Mr Prior during the General Election campaign after he had brought to their notice the general fact that he had been dismissed in a closed shop. It is therefore possible that the decision on Mr Temple's application for compensation may receive publicity.

I am sending a copy of this letter to Derek Hill (NIO).

Yours Sincerely

Felicity Everiss

MS F M EVERISS
Private Secretary

MR MOUNT

cc Mr Scholar
Mr Wolfson
Mr Gow
Mr Ingham
Mr Walters
Mr Shipley

PREVENTING STRIKES IN THE ESSENTIAL SERVICES

As I promised some time ago, I have been giving some thought to no-strike arrangements. The water strike has intensified public and Ministerial interest in the issue: but it has been on the Government's agenda for a long time - ever since the Manifesto commitment:

> "In consultation with the unions, we will reconcile these [pay bargaining arrangements] with the cash limits used to control public spending, and seek to conclude no-strike agreements in a few essential services."

Although it is not mentioned in the Green Paper inviting comment on the Government's proposals for the next round of industrial relations legislation, it remains a possibility - a possibility considerably increased by the Prime Minister's comment during Question Time on 24 February:

> ". . . So there can be agreements that are broken. We are looking at the consequences of this for future legislation and the need for a statutory duty to continue the supply of essential services."

You and others may find the attached short draft paper a helpful starting point. It represents personal thoughts only, but I have talked through the issues with one or two people in Whitehall. If it does no more than undo the damage caused by the muddled and over-simplified paper by Lionel Bloch which has received so much public attention, it will have served its purpose.

Department of Employment officials are themselves looking again at these issues, as we would expect; but I understand that Mr Tebbit has not yet decided if, or how, he wants to take it further. I think the conclusion points pretty firmly in the direction of further legislation on immunities and legally binding collective agreements, so this may be yet another category of post-election issues.

JOHN VEREKER

3 March 1983

PREVENTING STRIKES IN THE ESSENTIAL SERVICES

Note by the No 10 Policy Unit

The Government has two objectives for industrial relations in the essential services.* It wants to prevent strikes. But it also wants to keep costs down. This note addresses the difficulty of reconciling the two.

There are broadly two approaches, although they are not often distinguished in public debate: preventing strikes through agreement between management and unions, and preventing strikes through legislation by the Government. In their simple and unqualified forms, neither of them can meet both the Government's objectives.

No-strike agreements which ignore the consequences for the ability of management to control pay, manpower and working practices are easy to formulate - but a waste of time. There is no point in a no-strike agreement which gives the unions everything they might want to strike for anyway, such as a guaranteed place in the earnings league, or a veto on redundancies. And agreements can be broken.

No strike legislation, in contrast, can be imposed on the unions without a quid pro quo. But it suffers from a major weakness, as the existence of such legislation since 1875 demonstrates: it doesn't work. This is principally because it is always open to the workforce concerned to give notice that they wish to leave. Legislation could not reasonably prevent individuals from leaving after due notice, nor could it reasonably cover those who are no longer employed in a particular industry.

But if we look under the surface, the picture is a little more promising.

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* Throughout this note, "essential services" are narrowly defined, in order to minimise the coverage, complexity or cost of whatever provisions are favoured. So we are thinking in terms of electricity, gas and water supply, and the three emergency services, but not necessarily all workers in all those industries.

1. No Strike Agreements

There are two problems: cost, and enforceability.

(a) Cost. It is widely believed at present that the cost would be too high. Certainly if the cost of persuading the unions to sign an agreement not to strike is that management has to accept unilateral access to binding arbitration, or no redundancies, then the cost is too high. And most automatic pay formulae, especially those which have an inherent upward gearing (by linking basic pay increases to average earnings elsewhere, for instance), would be equally unacceptable.

But now that inflation has come to the end of its steep fall, and looks set to bounce around between 4% and 7% for the foreseeable future, the earlier disadvantages of indexation to the RPI are much less. For three years the fall in pay, largely reflecting the RPI over the previous 12 months, has lagged behind the fall in inflation, and that is why the Average Earnings Index has always been so embarrassingly high. The other disadvantages of indexation to the RPI - or "guaranteeing pay rises to match the cost of living" as it would be understood - remain: even if applied to a few, it would be envied by many, and in the present state of the labour market anything which prevents real wages falling will raise unemployment. But at present workers in the essential services generally get a cost of living increase anyway.

(b) Enforceability. The UK lags behind other industrial countries in not having legally enforceable collective agreements. And there are circumstances in which they would clearly help. In the water strike, for instance, if the procedure agreement had been legally enforced there would have been no strike - but we can only guess at what the outcome of binding arbitration would have been. There are practical problems: most existing agreements are not in a form suitable for legal determination - which is why the CBI is opposed to it, and why virtually all agreements under the 1971 Industrial Relations Act were drawn up with a provision exempting them from it. But we are not concerned here with the generality of agreements, only with those in the essential services: they could surely be drawn up anew in a legally watertight way.

No strike agreements in a limited number of essential services are therefore feasible, and need not be particularly damaging. But there would need to be new legislation, possibly covering specified essential services only, to make procedural collective agreements binding in law; and agreements would then have to be reached, in each of the industries concerned, under which the unions undertook not to strike. A possible inducement to such an agreement would be a management commitment to link pay rises to the RPI. It remains to be seen whether that carrot would bring the unions to a legally binding agreement[1], or whether something more costly would be needed.

2. No Strike Legislation

There were two relevant sections to the Conspiracy and Protection of Property Act 1875. Section 4, now repealed, made it a criminal offence for gas, water and electricity workers to break their contracts of service with intent to cut off supplies. Section 5, which is still in force, made it a criminal offence for anybody to break a contract of service with intent to endanger life, to cause serious bodily injury, or to damage valuable property.

Virtually no cases have been brought under either of these sections, for three reasons. First, no offence can arise if those concerned give notice of leaving their jobs. Second, there are practical problems in enforcement against large numbers of strikers. Third, it is difficult to prove what the consequences of industrial action will be.

So/no strike effective legislation would also be far from simple, and uncertain in its effect, although it probably would be feasible. The problem of giving notice can only be circumvented by building much longer periods of notice - say, three months - into contracts[2], until the Government is prepared to let large numbers leave and replace them (see below). New legislation would be needed, to reinstate the special position under the law of those who provide specified essential services, and to widen the definition in Section 5 to something like "with intent to disrupt the provision of the specified service". The practical difficulty of prosecuting large numbers of individual strikers would remain, but could be removed

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1. The Department of Employment think it would not.

2. The Department of Employment believe this would still be circumvented by notice being given earlier.

by removing civil law immunities from unions who induce employees in essential services to break their contracts, so that the unions themselves could be prosecuted.

3. Other Approaches

It is because of the difficulties inherent in concluding no strike agreements, or in passing no strike legislation, that the Government has sought other ways of discouraging strikes. These have in some cases (eg coal mining) amounted to a powerful deterrent - but they are no more than that, and do not provide a guarantee of prevention. The best deterrent is endurance: our ability to withstand a coal strike for longer than the miners can is crucial, and our new-found ability to withstand a water strike is the silver lining to the cloud of the cost of the last settlement. We are now reasonably well equipped to endure strikes in most essential services, but not electricity or gas. There, and as a last resort in water and possibly elsewhere, we need to acquire an alternative workforce capacity in order to make the threat of dismissal real. At a time of very high unemployment that should be possible.

There is considerable public interest in arbitration arrangements. They offer the possibility of preventing strikes, at the cost of an independently determined settlement, but only if they can be enforced - which brings us back to the need for legislation to make procedure agreements legally enforceable. There is scope for reform of arbitration arrangements themselves, by improving the quality of arbitrators or by, for instance, introducing "flip-flop" arbitration (where the arbitrator has to rule in favour of one side or the other, and may not split the difference) but this is unlikely to have a major impact.

Summary

Prevention of strikes requires an arsenal of weapons. Among those which we should consider acquiring are:

(i) Legislation to make collective procedure agreements binding in law, possibly in the essential services only;

(ii) No strike agreements linked to the RPI;

(iii) Legislation to clarify section 4 of the 1875 Act;

(iv) Legislation to remove Civil law immunities from those who induce employees in essential services to break their contracts; and

(v) Sources of alternative labour in those essential services where endurance is necessarily limited.

PART 9 ends:-

JV to MCS 20/1/83

PART 10 begins:-

JV to FM 3/3/83