PREM 19/1542

PART 11

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CONFIDENTIAL FILING

INDUSTRIAL RELATIONS LEGISLATION

THE EMPLOYMENT BILL

STRIKES IN ESSENTIAL ~~SITES~~ SERVICES

INDUSTRIAL POLICY.

PART 1 : MAY 1979

PART 11 : APRIL 1984

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~18.4.84~~		~~12.11.84~~					
~~30.4.84~~		~~14.11.84~~					
~~8.5.84.~~		~~22.11.84~~					
~~12.6.84~~		~~3.12.84~~					
~~15.6.84~~		~~18.12.84~~					
~~25.6.84~~		14.1.85					
~~5.7.84~~		ENDS.					
~~9/7/84~~							
~~5.7.84~~							
~~27.7.84~~							
~~3.8.84~~							
~~3/9/84~~							
~~18.9.84~~							
~~14.9.84~~							
~~26.9.84~~							
~~27.9.84~~							

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PART 11 ends:-

P. Gregson to PM. 14.1.85.

PART 12 begins:-

S/S EMP TO CST 6.3.85

~~OL TO PM. 19.4.85~~.

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(A)(85) 1st Meeting	15/01/1985
E(A)(85) 2	10/01/1985
E(A)(84) 67	28/11/1984
CC(84) 38th Meeting, item 5	22/11/1984
E(A)(84) 16th Meeting	28/06/1984
E(A)(84) 35	26/06/1984
CC(84) 23rd Meeting, item 1	21/06/1984
E(A)(84) 13th Meeting	12/06/1984
E(A)(84) 34	08/06/1984

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 J. Gray Date 17/02/2014

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 Lords HANSARD, 25 June 1984, columns 627 to 880: Trade Union Bill

Signed J. Gray Date 17/02/2014

PREM Records Team

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P.01472

PRIME MINISTER

Statutory Employment Protections
(E(A)(84)67 and (85)2)

FLAG A The Secretary of State for Employment has proposed in E(A)(84)67 that the qualifying period for bringing a complaint of unfair dismissal should be increased by Order from one year to two years for all employees (not just, as now, those in firms employing less than 20 people) but that no other changes should be made in employment
FLAG B protection legislation. In E(A)(85)2 he takes account additionally of the recommendations in this area of the Scrutiny Team on business compliance costs. These support his proposal on dismissal. He will be pursing some of the minor recommendations but rejects others. He does not propose action other than on the two year dismissal period at present.

MAIN ISSUES

2. The main issues are:

i. whether the qualifying period for bringing complaints against unfair dismissal should be raised to two years for all employees; and

ii. whether any other changes in employment protection should be pursued.

Unfair dismissal

3. On unfair dismissal, the Departmental scrutiny team recommend a requirement for a small cash deposit from all claimants. Mr King thinks this presentationally difficult and unlikely to be effective at levels of deposit low enough to stand a chance of political acceptability. Do

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the Sub-Committee agree? To note Policy Unit suggestion of a larger deposit for those (on either side) who wish to proceed to a full hearing against advice of pre hearing assessor.

4. The main issue on unfair dismissal is the increase in the qualifying period. The Government will attract criticism for diminishing employees' rights. The Sub-Committee will need to be sure that the potential benefits (an inducement to take on more workers and reducing administrative burdens for firms) outweigh this and that the change can be presented positively.

Other options

5. Of the six options discussed by the Scrutiny Team and described in paragraph 3 of E(A)(85)2, Mr King rejects four and suggests that two (possible amendment of redundancy notification arrangements and changes in the recovery by employers of maternity payments) are being pursued separately. You will wish to establish whether any member of the Sub-Committee favours any of the rejected options or action on any matter not discussed.

Timing

6. The timing of any announcement of action will no doubt have to be considered at a later stage in the context of the paper (or series of papers and statements) on employment.

HANDLING

7. You will want to ask the Secretary of State for Employment to introduce his proposals. The Secretary of State for Trade and Industry or his representative will have views on them, as probably will the Minister without Portfolio.

CONCLUSIONS

8. You will want to reach conclusions on:

i. whether, as proposed by the Secretary of State for Employment, the qualifying period for complaining against unfair dismissal should be increased to two years for all employees;

ii. whether any other changes in employment protection should be pursued.

P L GREGSON

14 January 1985

E.R.

CONFIDENTIAL

MR TURNBULL 14 January 1984

E(A) - EMPLOYMENT PROTECTION

We strongly support extending the qualifying period for protection against unfair dismissal to two years for all firms. This can only increase employment opportunities and reduce industrial tribunal cases.

The accompanying E(A) paper gives Tom King's views on the Department of Employment's scrutiny team's relatively watered down recommendations. We would differ specifically in two areas:-

The scrutiny suggests a £10 deposit to deter frivolous claims for unfair dismissal. A better proposal would be a £100 deposit for any claimant continuing after being advised against by a pre-hearing assessment. The present sanction in this situation is the possibility of being held liable for costs, but tribunals are very reluctant to impose costs and have only awarded them in a third of such cases.

On maternity rights it is manifest that small firms will be more adversely effected than larger ones in keeping jobs open for pregnant employees. Enlarging the exemption for firms employing less than 20 (rather than 5) must be sensible. It must also be a nonsense for employers to be responsible for maternity pay which they then reclaim from the Government, when the DHSS is responsible for paying the same mothers a maternity allowance. Tom King is surely wrong to dismiss a rationalisation here.

There are other proposals to come out of the scrutiny which could impact upon Employment law - for example making it easier to become self-employed thereby allowing the employer not only to avoid the burden of PAYE but also employment protection requirements. Or as another variant allowing

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employees to waive their employment protection rights and so increase their chances of getting a job.

We recommend that you endorse the two year qualifying period for employment protection but do not allow Tom King to close the door on other proposals that may come directly or indirectly out of the scrutiny, or out of the various reviews on jobs.

Peter Warry

PETER WARRY

CONFIDENTIAL

PRIME MINISTER

E(A) COMMITTEE, 15 JANUARY:
E(A)(85)2 STATUTORY EMPLOYMENT PROTECTION

I have just seen this memorandum by Tom King.

He asks the Committee to take decisions now on the employment protection recommendations of the scrutiny which has been done in his Department as part of the seven-department scrutiny of administrative and legislative burdens on firms.

He recommends acceptance of most of the recommendations of the scrutiny, but rejects the important recommendation about requiring a deposit from unfair dismissal claimants. The evidence of the scrutiny showed that small firms sometimes incurred substantial costs from vexatious claimants, and that this was a matter of real concern to small firms generally. I understand that, on average, it may cost a company £750 to £1000 plus a day or two of valuable management time in order to defend a claim. I am asking the central scrutiny team to study these facts further and to see if they can make a firm recommendation that would reasonably redress the balance and discourage vexatious claims.

It would be a mistake, too, to rule out now the option of raising the threshold for reinstatement after maternity leave, which the scrutiny showed is also a burden for very small firms. It would be better to leave a decision on this until the possible outlines of an overall "burdens" package can be discerned from the final scrutiny report, which is due on 8 February.

Finally, there is a suggestion which I shall ask the central scrutiny team to investigate. My objective is to explore whether it could be made possible for employees of the very smallest firms - firms which are really of an "extended family" kind - to waive their Employment Protection Act rights. The scrutiny showed that most of these firms try to be good employers, but that the legislative framework is simply not appropriate to them.

I shall be writing to Tom King with these thoughts on employment protection, together with my other comments on the DE scrutiny, later this week. I hope that whatever is agreed at E(A) you will ensure that the door is left open for further suggestions in this area in the light of the central scrutiny report.

JR

ROBIN IBBS
14 January 1985

8.96

cc ~~ENO~~

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

18 December 1984

David Normington Esq
Private Secretary to the
Secretary of State for Employment

Dear David,

EMPLOYMENT PROTECTION LEGISLATION

As you know, E(A) did not have time to discuss your Secretary of State's paper on employment protection at their last meeting. We understand the DE Group's Scrutiny Team report on administrative and legislative burdens will be completed by 21 December and that its recommendations will cover matters beyond those dealt with in your Secretary of State's paper for E(A). Nevertheless, without prejudice to what parts of the scrutiny report should eventually be published, the Chancellor thinks that it would be very helpful if the section of the report dealing with employment protection could be circulated to members of E(A) in advance of their next meeting.

I am copying this letter to Andrew Turnbull (No.10), Callum McCarthy (DTI), Leigh Lewis (Lord Young's office), Richard Hatfield (Cabinet Office) and Ian Beesley (Efficiency Unit).

Yours sincerely,
Margaret O'Mara

MISS M O'MARA
Private Secretary

12.12

SECRET

11 CCND

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

18 December 1984

The Rt Hon Norman Fowler MP
Secretary of State for Social Services
Department of Health and Social Security
Alexander Fleming House
Elephant and Castle
LONDON SE1

NO STRIKE AGREEMENT IN THE NHS

I have seen Kenneth Clarke's letter of 28 November and the Prime Minister's response recorded in Andrew Turnbull's letter of 3 December.

I have no objections to the present round of talks being completed, on the understanding that Kenneth remains totally uncommitted to their results and that if those results are unacceptable, the whole exercise can be abandoned painlessly, without giving rise to damaging publicity. We shall in any case need to examine the outcome carefully in relation to the proposals which Tom King is working up on strikes in the essential services and we shall also need to consider the implications for the public services more generally.

Copies of this letter go to the Prime Minister, Peter Walker, George Younger, Nick Edwards, Patrick Jenkin, Norman Tebbit and Tom King and to Sir Robert Armstrong.

NIGEL LAWSON

Ind Pol Pt II

"

Legislatures

Prime Minister ④

AT 11/12

File

MR TURNBULL

11 December 1984

OPINION RESEARCH ON ATTITUDES TO TRADE UNIONS

This survey, like most other recent studies, shows that there is widespread support for the Government's aims and considerable dissatisfaction with the tactics employed by radical unions. But it indicates considerable misgivings about the Government's present performance.

1. Trade Union Behaviour

Although 75% of trade unionists say that their union is protecting their interests very well or fairly well (table 25), almost everyone is dissatisfied with the methods employed by some trade unions: 84% of those interviewed oppose the mass picketing tactics used in the miners strike (table 5), and 75% disapprove of 'sympathy strikes' such as those organised by the dockers (table 11). 63% believe that unions should be more democratic (table 22).

2. The New Laws

Most people support the aims of the new laws: for example, 73% are strongly in favour of secret strike ballots (table 1). Moreover, 77% of those interviewed believe that unions should obey the law (table 9). But 78% think that the new laws have worked badly or not very well (table 14), and 57% of these believe that the problem is caused by people's unwillingness to use the laws (table 15).

81% believe that there is a case for new, tougher laws on union power and mass picketing (table 16). And 83% believe that the Government should restrict the number of pickets by law, though only 57% are in favour of the limit being placed as low as 6 (table 4).

E.R.

3. Handling of the Miners Strike

63% believe that the Government has handled the strike either badly or 'not very well' (table 13). 32% consider that the Government has been too weak, whereas only 26% believe that it has been too tough (table 34). 82% believe that employers should have made more use of the picketing laws (table 8).

Conclusion

It appears that the Government is likely to find popular favour if it:

a. encourages more use of the civil law in the miners' strike,

b. continues to take tough action on mass picketing, and

c. introduces new rules on picketing in the next round of trade union legislation.

Oliver Letwin.

OLIVER LETWIN

Business Attitudes Guide

The Government The Trade Unions and The Law 1984

Opinion Research & Communication

The Government The Trade Unions and The Law 1984

OPINION RESEARCH & COMMUNICATION
2 Wesley Street
London W1M 7PT
01 486 8294

December 1984

Contents

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It has come to our attention that one or two of our clients have been in the habit of passing on copies of our surveys to **non-subscribers**. This is in breach of copyright.

Should any subscriber wish to pass a survey or part of a survey outside his own organisation, would they please seek our approval **before** doing so.

COMMENTARY ON KEY FINDINGS

1 The great majority of workers are still dissatisfied with the way trade unions behave and would like to see their powers cut further in specific ways. And in particular it is certain that the way the miners have behaved on the picket line and the seeming helplessness of society to control abuses has caused a great deal of disquiet – not least among trade union members.

2 Dissatisfaction among workers, union members and non-union alike, is focussed on specific targets: mass picketing, failure by unions to use secret ballots to consult members, using members as a weapon to support some other union's battle etc. There can be no doubt that most workers would like to see the unions conduct their affairs in a more democratic fashion. But some of the strength of feeling that they should be forced to reform themselves (which was evident in earlier surveys over the last few years) has vanished. Only 37% of workers now agree with the proposition that the Governmnet should force unions to reform (even though a majority of workers freely admit that, left to themselves, the unions will not do it).

3 **While workers are strongly in favour of retaining the right to picket in an orderly way, there is very heavy disapproval of the sort of mass picketing seen during the miners' strike.**

4 Most employees believe:

- The number of pickets should be subject to legal restrictions to keep picketing orderly and peaceful.
- Picketing should be restricted to own place of work.
- Workers wanting to work must be entitled to cross picket lines.
- Pickets should only be allowed to picket their own fellow workers and should not be allowed to picket members of other unions or other organisations not involved in the dispute.
- The number of pickets should be restricted to not more than six in any onle place.

5 **Undoubtedly the abuses of picketing rights and practices during the miners' strike has contributed greatly to these attitudes. More than eight out of ten workers disapprove of the mass picketing tactics in the miners' strike.**

6 Only a minority of employees think that the police have handled the problems of mass picketing badly and a majority blame the miners for the violence at colleries when police and mass pickets have clashed.

7 The 84% of employees who said that they disapprove of the miners' mass picketing tactics were then asked to say what should be done to prevent mass picketing and intimidation in future strikes.

The great majority were in favour of:

- Employers who are harmed by mass pickets' abuse of the law should make more use of the law to claim heavy damages from the unions involved.
- The police using ordinary criminal law more vigorously and the courts imposing stiffer penalties for picketing abuse.
- The Government passing a new law tightening up on secondary picketing and increasing the penalties for picketing abuse or intimidation.

8 **There can be no doubt that the great majority of workers and trade union members fully approve of the main aims behind recent Conservative legislation in the field of industrial relations.**

9 Overwhelmingly they want to see:

- A secret ballot of all members before a strike is called.
- Senior union officials elected by secret ballot of all members.
- Prevention of the picketing of a company or works not directly involved in a strike.
- Prevention of the abuse of mass picketing.

10 It is also certain that, overwhelmingly want the unions to co-operated in achieving the aims behind the new Conservative laws.

11 However, it is also true that the great majority of workers are not happy with the way the legislation has worked in practice when tested by the miners' strike.

12 Eight out of ten think that in the light of experience in the miners' strike there is a case for another look at the way the law controls union power and at the use of mass picketing in industrial disputes.

13 The main cause of dissatisfaction is not with existing legislation but in the way it has been used (or not used). Only about one third of workers who think the legislation has not worked well in the miners' strike attribute this to its being bad legislation. **The great majority blame the fact that nobody appeared prepared to use it.**

14 There is also a majority feeling that the Government has not handled the miners' strike well – and this, very probably has had an influence on the prevailing belief that the recent union/industrial relations acts have not worked very well.

15 With the exception of the police, whose reputation appears not to have suffered too badly, it is clear that among the working population, reputations of all the main institutions concerned with the miners' strike have been damaged: the Government, the Labour Party, and the trade union movement.

16 A clear majority of workers (56%) think that the strike has done a great deal of damage to the trade union movement generally. But in addition a majority think that the TUC was wrong to promise the fullest support to the miners, that this vote of support will harm the trade union movement.

17 Even more, however, feel that the Labour Party was wrong to promise the fullest support to the miners and that this decision will harm the Labour Party.

18 Only about one third of workers felt that the Government had handled the miners strike about right. One in four felt that they had been too tough in handling it, and a further one third felt that they had been too weak.

19 The underlying disappointment with the way the new trade union laws have worked out in a pressure situation in all probability explains why workers are not certain that the way ahead is by further legislation.

20 Despite the strong signal of desire for something more to be done about mass picketing given in Table 16, it is by no means certain that workers think the way ahead is by more legislation.

The survey raises three doubts about this route:

- There is no clear cut desire shown, for the power of the unions in a general sense, to be cut further or for the Government to take on the job.
- The great majority of workers think that if the object of recent legislation was to deal with the abuses of picketing then it has not worked well.
- **Almost half the employees in the national work force think that on the whole the new laws have made industrial relation worse.**

21 If it has done nothing else the miners' strike has made a lot of ordinary workers think beyond black and white solutions. Most of them reject the view that the law has failed to deal with the picketing problems because it is not strong enough. Only 17% take that point of view whereas twice as many say that you can use the law to deal with serious industrial relations problems.

22 Most of the rest have come to the conclusion that the law has failed either because the Government is afraid to apply it if a powerful union is involved or because employers will not use the powers that the law has given them for fear of making the strike worse.

23 The recent dock strike evoked a considerable amount of public criticism since the action was widely construed as a sympathy strike – an attempt to add some muscle to the miners' cause.

Much of that criticism is echoed among the majority of ordinary workers, union and non-union members alike. Three-quarters of full-time employees think that union leaders are NOT justified in calling their members out for sympathy strikes.

Amost as many (seven out of ten) agree that sympathy strikes should be prevented by law unless there has first been a properly conducted secret ballot among the union members concerned.

24 **Trade unionists, to a very strong degree, disapprove of a trade union – their own or any other – breaking the law for any purpose. The general attitude of workers, whether a trade union member or not is that however much the unions dislike the new laws which have been passed by the present Government they are not entitled to defy them.**

By a very clear majority trade union members would not be in favour of their own unions defying the law.

25 While dislike of the abuses of mass picketing, strikes without ballots etc remains strong, in general, there is not a great deal of dissatisfaction with the job trade union members think their union is doing in looking after their interests.

26 Almost two out of ten think they are doing a very good job and 57% think that they are doing a fairly good job. Both figures are up on attitudes in 1982 when we last asked this question. Only 6% think the unions are doing a not at all good job.

27 The perceived advantages of belonging to a trade union are: safety in numbers, having someone to negotiate pay and working conditions and fighting for job security.

28 Disadvantages can be summed up as: the union having the power to force members into industrial action and failing to consult members adequately.

Introduction

Our last survey showed that a majority of workers think that industrial relations between management and employees have worsened over the last five years.

This view, almost certainly, is influenced by the traumas of recession, redundancy, and the longest ever industrial strike, still fresh in their minds.

A great deal of time and thought has been given by the present Government to produce a new legal framework within which industrial relations in Britain might improve.

Obviously everybody would agree that it is important for employers, for Government, and for the country that this should happen.

The miners' strike produced the first real test of the new legislation and we felt this was a good moment to pose a number of questions to the national workforce:

> How well did they believe the Prior/Tebbit attempts to produce a better framework for industrial relations had worked?
>
> If it had not been perceived to work well, why was this?
>
> What more, if anything should be done by way of amending legislation?
>
> Are the unions still thought to be too powerful by workers (as was overwhelmingly the case when Mrs Thatcher first came to power in 1979) – or do workers think that the unions' wings have been clipped enough already?

These and a number of other important questions are dealt with in this survey.

Among Personnel Directors and other experts on industrial relations there is no agreement on how the problems should be tackled. Some believe that strong legislation, limiting the powers and immunities is essential to put things right. Others argue that legislation has no major part to play in bringing industrial peace to our factories and offices.

It is, anyway, a very complex subject in which even the experts are not always logical and consistent.

It can therefore be no surprise that some of the views put forward by ordinary workers who are not experts, are contradictory.

Within one context they may be strongly in favour of further legislation to restrict union powers. Within another (or if the question is put in a different way) many of them feel that you cannot put industrial relations right by passing laws, and in at least one instance, substantial numbers said that the trade unions should be left alone.

Contradictory attitudes and the curious ability ordinary people have to hold opposing views in their minds at one and the same time are familiar phenomena in market research.

But having made every allowance for this, what does come across clearly, is that the great majority of workers are still dissatisfied with the way trade unions behave and would like to see their powers cut further in specific ways. And in particular it is certain that the way the miners have behaved on the picket line and the seeming helplessness of society to control abuses has caused a great deal of disquiet – not least among trade union members.

It seems very unlikely that the Government can leave things as they are; and when the inquest on how the miners' strike was handled is over, further action by the Department of Employment must be a distinct possibility.

If action is taken, industry will of course have to be consulted beforehand. We hope that this survey will be of value to you in deciding your own attitude.

NOTE

The findings discussed in this report come from two surveys:
One was conducted amongst employees in September 1984 and the other amongst a representative sample of the general public in October 1984.

1. Attitudes to the Prior/Tebbit legislation

There can be no doubt that the great majority of workers and trade union members fully approve of the main aims behind recent Conservative legislation in the field of industrial relations.

Overwhelmingly they want to see:

- A secret ballot of all members before a strike is called.
- Senior union officials elected by secret ballot of all members.
- Prevention of the picketing of a company or works not directly involved in a strike.
- Prevention of the abuse of mass picketing.

Table 1 : Attitudes to the main aims behind Conservative Government Legislation.

Question:
Since they were first elected in 1979 the Conservative Government has brought in two laws with the aims of improving industrial democracy and cutting the power of the unions. Here are some of the main things they are trying to do. Would you say for each whether you are strongly in favour, in favour to some extent, against to some extent or strongly against? (Employee Survey)

	Strongly in favour	In favour to some extent	Against to some extent	Strongly against	Don't know
	%	%	%	%	%
A secret ballot of all members before a strike is called	73	16	4	5	2
Senior officials in unions to be elected by secret ballot of all members	66	20	5	6	4
Prevent strikers picketing a company or works which is not directly involved in the strike	58	18	11	12	1
Limit the number of pickets in a strike to about half a dozen	50	26	11	11	1

Table 2 : Attitudes to main aims behind Conservative Legislation (analysed by trade union membership)

Question:

Since they were first elected in 1979 the Conservative Government has brought in two laws with the aims of improving industrial democracy and cutting the power of the unions. Here are some of the main things they are trying to do. Would you say for each whether you are strongly in favour, in favour to some extent, against to some extent or strongly against? (Employee Survey)

	Strongly in favour/in favour to some extent				Strongly against/against to some extent				Don't know			
	All Employees %	TU Members %	TU Activists %	Non TU Members %	All Employees %	TU Members %	TU Activists %	Non TU Members %	All Employees %	TU Members %	TU Activists %	Non TU Members %
A secret ballot of all members before a strike is called	89	87	84	92	9	11	15	6	2	2	1	1
Senior officials in unions to be elected by secret ballot of all members	86	86	84	87	11	11	14	9	4	2	2	4
Prevent strikers picketing a company or works which is not directly involved in the strike	76	70	61	83	23	27	36	17	1	2	2	*
Limit the number of pickets in a strike to about half a dozen	76	70	61	83	22	28	37	16	1	2	3	1

1.2 ***Whether unions should co-operate in the aims behind the Conservative laws.***

The strength of support among workers of all kinds is shown when they are asked whether or not the unions should co-operate in the achievement of the aims.

Overwhelmingly the view is that the unions should co-operate.

Table 3

Question:
Going through the list again, would you tell me whether you think the unions should or should not co-operate in these aims. (Employee Survey)

	Should				Should not				Don't know			
	All Employees	TU Members	TU Activists	Non TU Members	All Employees	TU Members	TU Activists	Non TU Members	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%	%	%	%	%	%	%	%	%
A Secret ballot of all members before a strike is called	88	85	81	92	9	12	16	5	2	2	2	2
Senior officials in unions to be elected by secret ballot of all members	85	83	81	87	10	12	16	8	4	3	2	5
Prevent strikers picketing a company or works which is not directly involved in the strike	81	77	70	85	15	18	26	11	4	4	4	3
Limit the number of pickets in a strike to about half a dozen	76	72	63	82	19	24	33	19	4	3	3	4

1.3 Attitudes to mass picketing

While workers are strongly in favour of retaining the right to picket in an orderly way, there is very heavy disapproval of the sort of mass picketing seen during the miners' strike.

Most employees believe:

- The number of pickets should be subject to legal restrictions to keep picketing orderly and peaceful.
- Picketing should be restricted to own place of work.
- Workers wanting to work must be entitled to cross picket lines.
- Pickets should only be allowed to picket their own fellow workers and should not be allowed to picket members of other unions or other organisations not involved in the dispute.
- The number of pickets should be restricted to not more than six in any one place.

Undoubtedly the abuses of picketing rights and practices during the miners' strike has contributed greatly to these attitudes. More than eight out of ten workers disapprove of the mass picketing tactics in the miners' strike.

Only a minority of employees think that the police have handled the problems of mass picketing badly and a majority blame the miners for the violence at colleries when police and mass pickets have clashed.

The 84% of employees who said that they disapprove of the miners' mass picketing tactics were then asked to say what should be done to prevent mass picketing and intimidation in future strikes.

The great majority were in favour of:

- Employers who are harmed by mass pickets' abuse of the law should make more use of the law to claim heavy damages from the unions involved.
- The police using ordinary **criminal** law more vigorously and the courts imposing stiffer penalties for picketing abuse.
- The Government passing a new law tightening up on secondary picketing and increasing the penalties for picketing abuse or intimidation.

Table 4 : Attitudes to various aspects of picketing

Question:
I am going to read out a number of statements regarding picketing. Do you agree or disagree with each of them?
(General Public Survey)

	Agree				Disagree				Don't know			
	All Employees %	TU Members %	TU Activists %	Non TU Members %	All Employees %	TU Members %	TU Activists %	Non TU Members %	All Employees %	TU Members %	TU Activists %	Non TU Members %
The number of pickets should be subject to legal restriction to keep picketing orderly and peaceful	83	74	63	86	11	22	32	9	6	4	6	5
Workers who want to work are fully entitled to cross picket lines	83	81	75	89	11	14	19	7	6	5	6	4
Those on strike should only be allowed to picket at their own place of work	82	77	75	85	12	19	22	9	6	4	3	6
Those on strike should only be allowed to picket their own fellow workers and not be allowed to picket members of other unions or organisations not involved in the dispute	79	74	67	82	13	20	25	12	8	6	8	6
It is important that the right to picket should be preserved	78	85	88	79	15	9	8	15	8	6	4	6
The number of pickets should be restricted to not more than six in any one place	57	48	49	57	34	46	44	36	10	7	7	7

Table 5 : Level of approval for the miners' mass picketing tactics.

Question:
Do you approve or disapprove of the mass picketing tactics used in the miners' strike? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Approve	11	15	23	7
Disapprove	84	81	75	88
Don't know	5	5	3	5

Table 6

Question:
Do you think that the police have handled the mass pickets in Nottinghamshire and other mining areas well or badly? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Very well	39	34	24	45
Fairly well	36	37	36	33
Fairly badly	10	13	17	11
Very badly	9	14	21	11
Don't know	6	3	3	-

Table 7

Question:
And who would you say is responsible for the violence at collieries when police and mass pickets have clashed? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
The Police	6	7	6	5
Mass picketing miners	61	55	45	63
Both equally	28	31	38	27
Don't know	5	7	11	5

Table 8 : What should be done to prevent mass picketing abuse – asked of the 84% disapproving of activities of miners' mass pickets, (Employee Survey)

Question:
What do you think should be done to prevent the mass picketing and intimidation used by some miners in future strikes:

Statement A
Employers who are harmed by abuse of the law by secondary picketing should make more use of the law which allows them to claim heavy damages from the offending unions.

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Yes	82	78	77	8
No	10	13	18	7
Don't know	7	8	5	6

Statement B
The Police should use the ordinary **criminal law** more vigorously and the courts should impose stiffer penalties for picketing abuse or intimidation.

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Yes	74	69	66	80
No	18	22	26	14
Don't know	7	9	7	6

Statement C
The Government should pass a new law tightening up on secondary picketing and increasing the penalties for picketing and abuse or intimidation.

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Yes	70	61	51	80
No	23	30	40	14
Don't know	7	8	7	6

1.4 Trade unions and the law

Trade unionists, to a very strong degree, disapprove of a trade union – their own or any other – breaking the law for any purposes. The general attitude of workers, whether a trade union member or not is that however much the unions dislike the new laws which have been passed by the present Government they are not entitled to defy them.

By a very clear majority trade union members would not be in favour of their own unions defying the law.

Table 9

Question:
Thinking of the laws we have just been discussing would you be in favour of your own union defying the law in this fight or do you want them to obey the law? (Employee Survey)

	Trade Union Members	Trade Union Activists
	%	%
Defy the law	16	16
Obey the law	77	77
Don't know	7	7

Table 10

Question:
A number of union leaders believe that these laws passed by the Conservative Government are too severe and restrict the power of the unions to do their job too much. They are in favour of fighting to defeat these laws? (Employee Survey).

Could you tell me whether you agree or disagree with the following things.

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Staement A "However much the union dislikes these new laws they are not entitled to defy the law".				
Agree	79	74	66	87
Disagree	16	21	30	10
Don't know	5	5	4	3
Statement B "Even if it is breaking the law the unions are entitled to defy it by coming out in sympathy strikes with a union whose fight is being restricted by the law."				
Agree	25	30	40	19
Disagree	67	61	53	74
Don't know	8	9	7	7
Staement C "Unions are entitled to give financial help to a union which has been fined by a court for defying the law on mass picketing".				
Agree	40	46	54	32
Disagree	49	42	38	58
Don't know	10	11	8	9

1.5 Attitudes to sympathy strikes

The recent dock strike evoked a considerable amount of public criticism since the action was widely construed as a sympathy strike – an attempt to add some muscle to the miners' cause.

Much of that criticism is echoed among the majority of ordinary workers, union and non-union members alike. Three-quarters of full-time employees think that union leaders are NOT justified in calling their members out for sympathy strikes.

Almost as many (seven out of ten) agree that sympathy strikes should be prevented by law unless there has first been a properly conducted secret ballot among the union members concerned.

Table 11

Question:

Recently the T & GWU called a national dock strike. It was widely believed that the real reason for it was that it was a sympathy strike to help the miners.

Do you think trade union leaders are or are not justified in calling out their members for sympathy strikes? (General Public Survey)

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Are justified	16	25	32	13
Are not justified	75	70	61	79
Don't know	9	6	7	8

Table 12

Question:

Do you think that unions should or should not be prevented by the law from calling out members on sympathy strikes until they had first held a properly conducted secret ballot to see what their members want to do? (General Public Survey)

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Should be prevented by law	69	66	63	73
Should not be prevented by law	18	25	24	15
Don't know	13	10	14	12

2 How well the Conservative Government legislation on union powers and on industrial relations is believed to have worked

2.1 Government legislation and the miners' strike

It is immediately clear that the great majority of workers are not happy with the way recent legislation has worked in practice when tested by the miners' strike. Eight out of ten think that in the light of experience in the miners' strike there is a case for another look at the way the law controls union power and at the use of mass picketing in industrial disputes.

However it seems very likely that the main cause of dissatisfaction is not with existing legislation but in the way it has been used (or not used). Only about one third of workers who think the legislation has not worked well in the miners' strike attribute this to its being bad legislation. **The great majority blame the fact that nobody appeared prepared to use it.**

There is also a majority feeling that the Government has not handled the miners' strike well – and this, very probably has had an influence on the prevailing belief that the recent union/industrial relations acts have not worked very well.

Table 13 : Whether the Government has handled the miners. strike well or badly.

Question:
How well would you say the Government has handled the miners' strike? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Very well	9	9	4	10
Quite well	21	14	11	25
Not very well	26	28	33	26
Badly	37	48	50	32
Don't know	6	3	1	7

Table 14 : How well legislation has worked

Question:
Since it first came into office the present Government has passed various acts designed to restrict the power of trade unions and to reduce mass picketing. How well would you say this legislation has worked in practice, very well, not very well, or badly?
(General Public Survey)

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Very well	3	4	3	3
Quite well	12	11	11	16
Not very well	43	38	32	45
Badly	35	45	54	29
Don't know	7	3	-	7

Table 15 : Reasons for thinking legislation has worked badly or not very well (asked of those saying "not very well" or "badly" in previous table).

Question:
Would you say that the legislation has not worked well because it was bad legislation or because nobody was prepared to use it in the miners' strike? (General Public Survey)

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Bad legislation	32	45	45	26
Not prepared to use it	57	49	48	62
Don't know	11	5	6	12

Table 16 : Whether there should be further changes in the law.

Question:
Would you say, in view of the experience of the miners' strike, that there is or is not a case for another look at the way the law controls union power and the use of mass picketing in industrial disputes? (General Public Survey)

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Is a case	81	84	90	82
Is not a case	9	10	7	8
Don't know	10	6	3	10

2.2 Further legislation and the power of the unions.

Despite the strong signal of desire for something more to be done about mass picketing given in Table 16, it is by no means certain that workers think the way ahead is by more legislation.

The survey raises three doubts about this route:

- There is no clear cut desire shown, for the power of the unions in a general sense, to be cut further or for the Government to take on the job.
- The great majority of workers think that if the object of recent legislation was to deal with the abuses of picketing then it has not worked well.
- **Almost half the employees in the national work force think that on the whole the new laws have made industrial relations worse.**

If it has done nothing else the miners' strike has made a lot of ordinary workers think beyond black and white solutions. Most of them reject the view that the law has failed to deal with the picketing problems because it is not strong enough. Only 17% take that point of view whereas twice as many say that **you can** use the law to deal with serious industrial relations problems.

Most of the rest have come to the conclusion that the law has failed either because the Government is afraid to apply it if a powerful union is involved or because employers will not use the powers that the law has given them for fear of making the strike worse.

Table 17a : Whether workers would like to see trade union power further reduced.

Question:
Would you like to see the trade unions more powerful than they are today, about as powerful in the future as they are now, or less powerful than they are today? (Employee Survey).

	All Employees %	TU Members %	TU Activists %	Non TU Members %
More powerful than they are today	10	15	19	5
About as powerful in the future as they are now	42	51	52	32
Less powerful than they are today	42	29	24	58
Don't know	6	5	5	5

Table 17b : Reasons offered spontaneously for wanting unions to be more powerful than they are today (based on 10% saying "more powerful").

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Need power to fight the Government	33	35	35	25
Have lost power due to legislation	13	13	17	15
To improve conditions for workers	30	31	27	25
To give bigger say in running of company	13	14	17	10
Other	18	20	23	10
Don't know	6	4	2	15

Table 17c : Reasons offered spontaneously for wanting unions to be less powerful than they are today (based on those saying less powerful)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Too powerful	18	19	13	18
Causing trouble for country	17	17	28	17
Should not be able to dictate to workers	14	12	8	16
Too politically motivated	14	13	15	15
Irresponsible	12	11	8	12
Shouldn't have power to stop country	10	11	8	10
Think they run the country	8	6	5	10
Too militant	6	8	3	5
Too many strikes	5	7	10	4
Should have ballot	5	6	11	4
Don't always have members at heart	4	6	8	2
Want to bring Government down	2	2	3	2
Other	6	5	2	7

Table 18 : Approval of the law aimed at reforming picketing practice

Question:
One of the main aims behind the laws was to cut down mass picketing and the practice of picketing works or offices of organisations involved in a strike. Do you approve or disapprove of this aim? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Approve	72	66	59	79
Disapprove	20	25	34	13
Don't know	8	9	8	8

Table 19 : How well the law has worked in this respect

Question:
How well do you think the law, with this aim in view, has worked out in practice? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Very well	1	1	2	1
Quite well	11	10	9	11
Not very well	52	51	50	52
Badly	30	31	35	29
Don't know	6	7	4	7

Table 20 : Whether new legislation has improved industrial relations or made them worse.

Question:
And do you think, on the whole, they have improved industrial relations, made not much difference or made industrial relations worse? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Improved	5	6	6	5
Not made much difference	40	34	28	46
Made industrial relations worse	46	51	58	49
Don't know	9	8	8	9

Table 21 : Reasons offered by those who think the new legislation has failed to control secondary picketing and mass picketing in practice. (Based on those saying the laws have not worked very well or badly, (Employee Survey).

	All Employees %	TU Members %	TU Activists %	Non TU Members %
The law itself isn't strong enough to deal with the situation	17	15	12	20
You can't use the law to deal with serious industrial relations problems	33	37	43	28
Because the Government has been afraid to apply the law when dealing with a powerful union	23	20	22	26
Because employers who have been subject to mass picketing or secondary picketing have been afraid to use the law for fear of spreading the strike	18	18	13	18
Don't know	9	9	10	8

2.3 Desire for reform of the unions

Dissatisfaction among workers, union members and non-union alike, is clearly focussed on specific targets: mass picketing, failure by unions to use secret ballots to consult members, using members as a weapon to support some other union's battle etc. There can be no doubt that most workers would like to see the unions conduct their affairs in a more democratic fashion. But some of the strength of feeling that they should be forced to reform themselves (which was evident in earlier surveys over the last few years) has vanished. Only 37% of workers now agree with the proposition that the Government should force unions to reform (even though a majority of workers freely admit that, left to themselves, the unions will not do it.)

IT SHOULD BE STRESSED THAT WHAT FOLLOWS IS OUR OWN OPINION, BASED ON AN EXTRAPOLATION FROM OUR DATA, AND NOT FULLY BACKED BY CLEAR CUT DATA ITSELF. BUT WE BELIEVE THAT A REASONABLE INTERPRETATION OF SOMEWHAT CONTRADICTORY ANSWERS CAN RECONCILE THEM AS FOLLOWS:-

1. There is a great deal of disapproval of certain undemocratic practices, in particular the violence and intimidation of modern picketing techniques and of the failure of the unions to consult members properly by secret ballot before committing them to industrial action. The great majority of workers would strongly back any reform which dealt with these weaknesses.

2. At the same time there is a fair amount of disillusionment with the way the law has to date dealt with these difficulties in practice. Not necessarily because the law itself is either bad or wrong, but because when faced with a real and serious situation, neither the Government nor employers have dared to use the legislation effectively. (Ironically it is union members themselves alone who have made good use of it).

3. But because of the experiences of recent years with recession and redundancy and continuing anxiety about job security workers are perhaps looking more and more to the unions as their protectors and are therefore not too keen to see their power further cut down.

Table 22 : Whether unions are democratic enough

Question:
I would like to ask you how satisfied you are with the way most trade unions are run. Do you feel they are or are not democratic enough and accountable enough to their members at present? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Unions are democratic enough	24	30	36	15
Unions are not democratic enough	63	60	57	68
Don't know	13	10	8	17

Table 23 : Whether unions will reform themselves if left alone

Question:
And do you think that if they are left alone the unions will or will not reform themselves without pressure from outside? (Employee Survey)

	TU Members %	TU Activists %	Non TU Members %
Unions will reform themselves	29	38	23
Unions will not reform themselves	57	50	62
Don't know	15	12	15

Table 24 : Whether Government should force the unions to reform

Question:
Do you think the unions should be left alone in the hope that they will bring in reforms to make the workings of the movement more democratic or do you think the Government should force them to reform? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Unions should be left alone	45	54	60	33
Government should force unions to reform	37	29	26	46
Don't know	18	17	14	21

3 Levels of satisfaction with trade unions

3.1 How good a job trade union members think their union is doing for them

In general there is not a great deal of dissatisfaction with the job trade union members think their union is doing in looking after their interests: almost two out of ten think that they are doing a very good job and 57% think that they are doing a fairly good job; both figures are up on attitudes in 1982 when we last asked this question. By comparison only 6% think that they are doing not at all a good job.

Table 25

Question:
Overall how good a job do you think your union is doing in looking after your interests? (Employee Survey)

	1984 All TU Members %	1982 All TU Members %
Very good	18	14
Fairly good	57	52
Not very good	15	20
Not at all good	6	11
Don't know	2	4

Table 26 : Spontaneous suggestions for ways in which members think their union is not doing a good job in looking after their interests. (Employee Survey)

	TU Members %
None	53
Lack of communication	10
Frightened of management	8
Not responsive to majority	6
Not getting pay rises	4
Dissatisfied with working conditions	4
Never see union official	2
Politically motivated	2
Called (too many) strikes	2
Other	7
Don't know	8

3.2 Perceived advantages and disadvantages of belonging to a trade union

Advantages are clearly seen – safety in numbers, having someone to negotiate pay and working conditions and fight for job security.

Disadvantages can be summed up as the union having the power to force members into industrial action and failing to consult members adequately.

Table 27 : Spontaneously expressed advantages of belonging to a trade union

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Negotiating on your behalf	19	21	25	15
Working conditions	18	19	24	15
Fighting for pay rises	14	16	17	12
No advantages	13	8	5	19
Job security	12	14	17	9
Strength in numbers	11	12	15	10
Protection	10	12	13	7
Can fight on your behalf	8	9	7	7
Fair wages	8	8	8	7
Prevent victimisation	7	9	12	5
Fair representation with employers	7	8	8	5
Prevent unfair dismissal	6	6	5	5
Legal protection	5	7	6	2
In case of accidents	4	6	4	2
To get fair deal	4	4	5	3
Other	11	10	2	10
Don't know	9	4	3	14

Table 28 : Spontaneously expressed disadvantages of belonging to a trade union

	All Employees %	TU Members %	TU Activists %	Non TU Members %
None	26	38	45	12
Have to do what they say	18	15	13	23
Strikes called which you don't support	16	13	10	19
Don't talk to members	6	5	4	6
Have to join closed shop	5	5	4	5
Dictate to members	5	3	3	5
Militant	4	3	2	7
Undemocratic	4	2	3	5
Cost of subscriptions	3	4	3	2
Don't consult members on strike calls	2	3	2	2
Have too much power	2	2	2	3
Other	11	10	6	12
Don't know	11	6	6	15

4 The damage done by the Miners' strike to various institutions

With the exception of the police, whose reputation appears not to have suffered too badly, it is clear that among the working population, reputations of all the main institutions concerned with the miners' strike have been damaged: the Government, the Labour Party, and the trade union movement.

As we have seen earlier (Table 13) the Government is not thought to have handled the strike well.

It is clear that the same applies to the trade union movement and the Labour Party. A clear majority of workers (56%) think that the strike has done a great deal of damage to the trade union movement generally. **But in addition a majority think that the TUC was wrong to promise the fullest support to the miners, that this vote of support will harm the trade union movement.**

Even more, however, feel that the Labour Party was wrong to promise the fullest support to the miners and that this decision will harm the Labour Party.

Table 29 : What effect the miners' strike will have on the trade unions

Question:
What effect do you think the way the NUM has conducted the miners' strike has had on the reputation of the trade unions generally? (Employee Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Done a great deal of damage	56	49	42	65
Done a certain amount of damage	29	31	32	25
Hasn't really affected their reputation	9	10	12	7
Has strengthened their reputation to some extent	4	6	10	2
Has greatly strengthened their reputation	1	2	3	*
Don't know	1	2	1	1

Table 30 : Whether TUC was right or wrong to support miners

Question:
Could you tell me whether you think the TUC was right or wrong to promise the fullest support to the miners? (General Public Survey)

	All %	TU Members %	TU Activists %	Non TU Members %
Right	33	39	43	31
Wrong	53	49	46	58
Don't know	14	12	11	11

Table 31 : Whether it will help or harm the trade union movement

Question:
And do you think that vote of support will help or harm the trade union movement? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Help	22	29	35	20
Harm	55	53	50	58
Don't know	23	18	15	23

Table 32 : Whether the Labour Party was right or wrong to support miners

Question:
Could you tell me whether you think the Labour Party was right or wrong to promise the fullest support to the miners? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Right	26	32	39	18
Wrong	63	59	51	72
Don't know	11	9	10	10

Table 33 : Whether it will help or harm the Labour Party

Question:
And do you think that vote of support will help or harm the Labour Party? (General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Help	17	25	29	13
Harm	66	65	60	72
Don't know	16	10	11	15

One further question was asked to discover whether people felt the Government had been too tough or too weak in handling the miners' strike; about one in four workers felt that they had been too tough. **But even more, one third of workers felt that they had been too weak. Only about one third felt that they had handled things about right.**

Table 34

Question:
How do you feel the Government has handled the miners' strike so far? Would you say that they had been too tough, handled the situation about right, or been too weak?
(General Public Survey)

	All Employees %	TU Members %	TU Activists %	Non TU Members %
Too tough	26	35	40	23
Handled the situation about right	35	28	26	38
Been too weak	32	28	25	32
Don't know	7	9	9	7

Table 35 : Spontaneous reasons given for thinking the Government handling of the miners' strike was too tough

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Should be give and take on both sides	19	16	14	14
Government tactics have been wrong	16	16	21	12
Too many police/over use of police force	13	10	14	12
Not showing enough compassion	12	13	7	7
Should not have appointed McGregor	7	10	3	9
Have to take into account fears of mining community	6	10	7	3
Other	40	45	52	49
Don't know	6	1	-	7

Table 36 : Spontaneous reasons given for thinking the Government handling of the miners' strike was too weak

	All Employees	TU Members	TU Activists	Non TU Members
	%	%	%	%
Have not done much at all	32	35	22	34
Have allowed strike to go on too long/should have stopped it before now	27	20	28	28
Should have enforced law	16	16	22	17
Should have sacked those on strike	2	2	-	2
Other	19	20	22	18
Don't know	10	11	11	10

Technical Note for Employee Survey

The survey universe: the universe for the survey was the adult population (aged 18+) resident in England, Scotland and Wales, in full time occupation (30 hours or more per week). The self-employed were excluded from the survey universe.

The sample design: A two-stage sample design was used. At the first stage, 100 Parliamentary constituencies were selected with probability proportionate to size. after stratification by region, conurbation and social grade using the % of Labour vote at the 1983 election, being the most up-to-date indication of social grade). Stratification ensures that the sample of constituencies is balanced in terms of region, "urban-ness" and social grade.

At the second stage, an equal-sized quota sample of employees aged 18+ resident in each constituency was set. The quota controls were based on data from the 1981 census, and partly on previous Harris studies based on large nationwide quota samples of this population.

The table below gives a demographic profile of the sample obtained:

		Survey %	Quota set & population %
Sex	Male	64	64
	Female	36	36
Age	18 - 24	19	18
	25 - 44	48	46
	45+	33	36

Fieldwork: All interviews were conducted personally and in the home by Harris interviewers familiar with the sampling procedures described above. All interviewers received a comprehensive written briefing prior to commencing work.

Interviews were conducted with 1000 employees between 14 - 23rd September 1984.

In order to ensure the accuracy of the work conducted, at least 12% of interviews were checked: a minimum 5% by accompaniment and personal backchecks by regional supervisors and 7% by telephone backcheck from Head Office.

Analysis: All questionnaires were edited and coded in Head Office by Harris coders. They were then transferred to punch cards, and mounted to tape for computer analysis. No weights were applied to the data.

Sampling Points: 100 GB Parliamentary Constituencies

SCOTLAND

Glasgow Shettleston
Glasgow Rutherglen
Hamilton
Edinburgh South
Falkirk West
Dundee East
Stirling
Perth & Kinross
Gordon

NORTH WEST

Knowsley North
Blackburn
Altrinchan & Sale
Leigh
Bury South
Birkenhead
Knowsley South
Wallasey
Tatton
Halton
Pendle
Congleton

EAST MIDLANDS

Leicester East
Amber Valley
Chesterfield
Derby North
Northampton North
Daventry
Lindsey East

WEST MIDLANDS

North Shropshire
West Bromwich East
Birmingham Edgbaston
Dudley West
Sutton Coalfield
Stoke on Trent Central
Bromsgrove
Nuneaton
Worcester
Stratford on Avon

WALES

Cardiff West
Vale of Glamorgan
Swansea East
Newport East
Monmouth

SOUTH WEST

Plymouth Devonport
Wansdyke
Swindon
Bath
Christchurch
Dorset West
Tiverton
Truro

EAST ANGLIA

Cambridge
Norfolk South
Huntingdon

NORTH

Newcastle on Tyne East
Tynemouth
Stockton North
Wansbeck
Carlisle
Workington

YORKS & HUMBER

Leeds East
Leeds North West
Rother Valley
Calder Valley
Barnsley Central
Doncaster Central
Hull North
Sheffield Hallam
Selby

SOUTH EAST

Portsmouth South
Thurrock
Oxford West & Abingdon
Tonbridge & Matling
Gosport
Basildon
Brighton Kemptown
Hertfordshire West
Reading West
Colchester North
Bedfordshire Mid
Hove
Hertford & Stortford
Guildford
Arundel
Sussex Mid
Buckingham
New Forest

GREATER LONDON

Brent East
Bow & Poplar
Hornchurch
Enfield North
Chingford
Hammersmith
Brentford & Isleworth
Finchley
Battersea
Sutton & Cheam
Greenwich
Dulwich
Chislehurst

Technical Note for General Public Survey

The Survey Universe: The universe for the survey was the civilian population aged 18+ resident in England, Scotland and Wales.

The Sample Design: A two-stage sample design was used. At the first stage, 100 Parliamentary constituencies were selected with probability proportionate to size, after stratification by region, conurbation and social grade (by using % of Labour vote at the last election). Stratification ensures that the sample of constituencies is balanced in terms of region, "urban-ness", and social grade.

At the second stage, an equal-sized quota sample of individuals aged 18+ resident in each constituency was set, according to the demographic characteristics of that constituency.

The table below gives a demographic profile of the sample obtained.

		Survey %	Quota set & population %
Sex	Male	48	48
	Female	52	52
Age	18 - 24	14	15
	25 - 44	36	34
	45+	49	51
Social Class	ABC1	38	38
	C2DE	62	62

Fieldwork: All interviews were conducted personally and in the home by Harris interviewers familiar with the sampling procedures described above. All interviews received a comprehensive written briefing prior to commencing work.

Interviews were conducted with 1023 individuals aged 18+ between October 5th and 11th, 1984.

In order to ensure the accuracy of the work conducted, at least 9% of interviews were checked: a minimum of 3% by telephone and 5% by accompaniment and personal backchecks by regional supervisors.

Analysis: All questions were edited and coded at Head Office by the Harris team of coders. They were then transferred to punch cards, and mounted to tape for computer analysis. No weights were applied to the data.

Confidence Limits for Percentages Recorded in the Survey.

Sampling Points: 100 GB Parliamentary Constituencies

SCOTLAND

Glasgow Shettleston
Glasgow Rutherglen
Hamilton
Edinburgh South
Falkirk West
Dundee East
Stirling
Perth & Kinross
Gordon

NORTH WEST

Knowsley North
Oldham West
Altrincham & Sale
Leigh
Burnley
Birkenhead
Knowsley South
Wallasey
Tatton
St Helen's South
Ellesmere Port Nelson
Congleton

EAST MIDLANDS

Leicester East
Amber Valley
Chesterfield
Derby North
Northampton South
Daventry
Lindsey East

WEST MIDLANDS

Birmingham Hodge Hill
West Bromwich East
Birmingham Edgbaston
Dudley West
Sutton Coldfield
Stoke on Trent Central
Bromsgrove
Nuneaton
Worcester
Stratford on Avon

WALES

Cardiff West
Vale of Glamorgan
Swansea East
Newport East
Monmouth

SOUTH WEST

Plymouth Devonport
Wansdyke
Swindon
Bath
Christchurch
Dorset West
Tiverton
Truro

EAST ANGLIA

Peterborough
Norfolk South
Huntingdon

NORTH

Newcastle on Tyne East
Tynemouth
Stockton North
Wansbeck
Carlisle
Workington

YORKS & HUMBER

Leeds East
Leeds North West
Rother Valley
Leeds North East
Bishop Auckland
Doncaster Central
Hull North
Brigg & Cleethorpes

SOUTH EAST

Portsmouth South
Thurrock
Oxford West & Abingdon
Tonbridge & Matling
Gosport
Basildon
Brighton Kemptown
Hertfordshire West
Reading West
Colchester North
Bedfordshire Mid
Hove
Hertford & Stortford
Aldershot
Horsham
Sussex Mid
Witney
New Forest

GREATER LONDON

Brent East
Bow & Poplar
Hornchurch
Enfield North
Chingford
Hammersmith
Brentford & Isleworth
Finchley
Battersea
Sutton & Cheam
Greenwich
Dulwich
Chislehurst

Opinion Research & Communication

2 Wesley Street
London W1M 7PT

SP/A8

File 2

Prime Minister:

I asked for this note. The important point — which is not generally appreciated — is that Scargill is required by the Act to be re-elected 10th December 1984 in 1987

11/12

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400
Switchboard 01-213 3000

Tim Flesher Esq
Private Secretary
10 Downing Street
LONDON SW1

Stephen Sherbourne to note

Dear Tim.

You asked which trade union leaders are covered by the Trade Union Act.

As you know, to comply with the Act, trade unions must elect every voting member of its governing body at least every five years by secret ballot of the membership. The attached chart shows, in the left hand column, which major union leaders have a vote on their executive; the list includes the NUM President and Vice-President.

I am also enclosing a chart showing current methods of election in major unions, in case you find this helpful.

Yours,

Peter.

PETER SMITH
Private Secretary

TRADE UNION BILL - POSITION OF GENERAL SECRETARIES IN MAJOR UNIONS

Required to be elected under the Bill	Not required to be elected by the Bill although their office is elected under union rules	Not required to be elected by the Bill. Office not elected under union rules
AUEW(E) - Terry Duffy (President)		
AUEW(Foundry) - Bob Garland		
EETPU - Frank Chapple (to be succeeded by Eric Hammond)	ASLEF - Ray Buckton	
	AUEW(E) - Gavin Laird	
GMBATU - David Basnett	COHSE - David Williams	ACTT - Alan Sapper
NUM - Arthur Scargill	CPSA - Alistair Graham	APEX - Roy Grantham
Mick McGahey	NGA - Joe Wade	ASTMS - Clive Jenkins
NUS - Jim Slater	NUJ - Ken Ashton	AUEW(Tass) - Ken Gill
UCW - Alan Tuffin	NUR - Jimmy Knapp	BIFU - Lief Mills
	SOGAT - Bill Keys	ISTC - Bill Sirs
	TGWU - Moss Evans	NALGO - Geoffrey Drain
		NAS/UWT - Fred Smithies
	UCATT - Les Wood	NUPE - Rodney Bickerstaffe
	USDAW - Bill Whatley	NUT - Fred Jarvis
		POEU - Bryan Stanley*
		RCN - Trevor Clay
		SCPS - Gerry Gillman

* successor will be elected.

ST

METHODS OF ELECTION IN MAJOR UNIONS

General Secretaries or Presidents who are asterisked have a vote on their union's governing body
Unions with less than 100,000 members indicated by Ø

UNION	METHOD OF ELECTION	FREQUENCY OF ELECTION
APEX (Association of Professional, Executive, Clerical and Computer Staffs)		
General Secretary	Appointed for life by Executive Council	-
Executive Council	6 national members elected by branch block votes. 9 Area members elected at Area Council meetings on branch block votes.	Annual
ASLEF Ø		
General Secretary	By branch block votes. Ballot forms available for members who disagree with candidate chosen by branch to forward their choice direct to head office.	Present incumbent elected until retirement. Thereafter every 5 years.
Executive Committee	Elected in same way as for General Secretary	3 years
ASTMS		
General Secretary	Appointed by National Executive Council for life	-
National Executive Council	By ballot at branch meetings. Individual members may obtain a secret postal vote if cannot attend branch meeting	2 years (½ elected annually)
AUEW		
President	Is the person holding office of President in AUEW(E)	
Executive	Consists of President and the 7 full-time executive members of the AUEW(E), 2 members elected by and from the Foundry Section NEC, 2 elected by and from TASS EC and 1 elected by from Constructional Section EC	-
AUEW(E)		
President*	Secret and fully postal ballot	)
General Secretary	" " " " "	) 3 years initially,) thereafter
Executive	" " " " "	) 5 years
AUEW(TASS)		
General Secretary	Appointed for life by a Committee elected at Conference	-
Executive	Regional representatives elected at meetings of Divisional Councils, each branch having one vote, based on preferences decided by show of hands (unless a ballot is requested) at branch meetings. President and Vice-President elected at Annual Conference	3 years (⅓ elected annually)
AUEW (Construction Section) Ø		
General Secretary	Postal ballot of members	6 years
Executive Committee	" " " "	3 years (⅓ elected annually)

ST

UNION	METHOD OF ELECTION	FREQUENCY OF ELECTION
AUEW (Foundry Section) Ø		
General Secretary*	Ballot vote of members, ballot papers issued and collected by shop stewards at the work-place	5 years
Executive Committee	Same as for General Secretary	5 years
BIFU (Banking, Insurance and Finance Union)		
General Secretary	Appointed by executive for life	-
Executive Committee	3 national officers elected at delegate conference. Rest elected by Area and Section Councils.	Annual
COHSE		
General Secretary	Ballot of all members	Elected until retirement
Executive Committee	Elected by vote of members of Regional Councils, by branch block vote : branch delegates have one vote for each 50 members or part thereof	3 years (⅓ elected annually)
CPSA		
General Secretary	Ballots held at workplace meetings or other special meetings organised by branches	5 years
Executive	Same as for General Secretary	Annual
EETPU		
General Secretary*	Secret and fully postal ballot (conducted by Electoral Reform Society)	5 years
Executive	" " "	5 years
GMBATU		
General Secretary*	General Secretary of the General and Municipal Workers is first General Secretary of the union. Thereafter, will be elected by ballot of members of both sections of the union	
Central Executive Council	Composed of Executive Councils of the General and Municipal Workers' Section and of the Boiler-makers' Section	
GMBATU General and Municipal Workers' Section		
Secretary*	Branch block vote, show of hands, although Executive Council has authority to authorise election by individual ballot	Elected until retirement
Executive Council	Lay members elected by Regional Councils from their own number	2 years
	Regional Secretaries - elected by branch block vote - also sit on the Executive Council by virtue of their office	

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UNION	METHOD OF ELECTION	FREQUENCY OF ELECTION
GMBATU Boilermakers' Section		
Secretary	Branch ballot	6 years
Executive Council	Same as for General Secretary	6 years
ISTC ∅		
General Secretary	Appointed for life by executive	-
Executive	Secret workplace ballot	3 years (⅓ elected annually)
NALGO		
General Secretary	Appointed by the Executive	-
Executive Council	Most seats elected by semi-postal ballot on district basis. Each member supplied by branch secretary with an addressed envelope returnable by post or through branch to district officer	Annual
NGA		
General Secretary	Secret ballot of membership	Elected until retirement
National Council	Roughly ⅔ elected by workplace ballot of membership, others appointed by Trade Group Boards	2 years
NUJ ∅		
General Secretary	Secret postal ballot of membership (Ballot papers issued by Head Office accompanied by pre-paid envelopes). Single transferable vote system applies	5 years
Executive Council	Same as for General Secretary	Annual
NUM		
President*	Pithead ballot. Single transferable vote system applies. The Electoral Reform Society counts the votes.	Elected until retirement but successor to present incumbent will be subject to re-election every 5 years
Executive Committee	Method varies from Area to Area but includes indirect election and branch block votes	2 years
NUPE		
General Secretary	Appointed for life by executive	-
Executive	Branch block vote	2 years
NUR		
General Secretary	Branch block vote by ballot single transferable vote system	Elected until retirement
Executive	" " " " " "	3 years (⅓ elected annually)

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UNION	METHOD OF ELECTION	FREQUENCY OF ELECTION
NUS Ø (National Union of Seamen)		
General Secretary*	Secret ballot vote of membership. Members on shore must apply to their branches for a ballot paper. NUS head office checks they are eligible to vote and then sends them a ballot paper to be returned by post. Members at sea have secret ballots on ship, with results usually conveyed to shore by radio transmission	Elected until retirement
Executive Council	Same as for General Secretary	3 years
NUT		
General Secretary	Appointed by Executive	-
Executive	Secret ballot of membership. Rule book provides that voting papers should be supplied to each member eligible to vote by Secretary of his or her Constituent Association not less than 7 days before the latest date for return to the office of the Electoral Reform Society. Reports suggest that in practice postal voting is the method adopted.	2 years
POEU		
General Secretary	Appointed by executive (Successor to present incumbent will be subject to periodic election)	
Executive	Elected at annual conference by secret ballot of delegates, casting block votes	Annual
RCN		
General Secretary	Appointed by National Council for Life	-
National Council	Secret postal ballot	4 years
SCPS Ø		
General Secretary	Appointed for life by Executive Council	-
Executive Council	Elected at annual conference by delegates mandated at spring branch meetings, using branch block vote (1 vote for every 10 members or part of 10)	Annual
SOGAT		
General Secretary	Secret ballot at branches. Branch officers distribute a ballot form and envelope to each member, and subsequently forward sealed envelopes to Head Office	Elected until retirement
Executive Council	Same as for General Secretary	2 years
TGWU		
General Secretary	Ballot at branches, workplace or by post, at the discretion of Regional Committees	Elected until retirement
General Executive Council	40 members : about two-thirds elected in same way as above; rest elected by trade group committees	2 years

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UNION	METHOD OF ELECTION	FREQUENCY OF ELECTION
UCATT		
General Secretary	Branch vote, show of hands	5 years
General Council	Same as for General Secretary	5 years
UCW (Union of Communication Workers)		
General Secretary*	Branch block vote	Elected until retirement but successor to present incumbent will be subject to re-election every 5 years
Executive Council	Elected by Annual Conference	Annual
USDAW (Union of Shop, Distributive and Allied Workers)		
General Secretary	Branch block vote, by show of hands	Elected until retirement
Executive Council	Same as for General Secretary	2 years
NAS/UWT (National Association of Schoolmasters and Union of Women Teachers)		
General Secretary	Appointed by Executive	-
Executive	Membership ballot	Annual

I. R. Legislature.

E.R.

copy to IND PN Pt. 2 Wages Council

MR TURNBULL 5 December 1984

E(A): EMPLOYMENT PROTECTION AND WAGES COUNCILS

1. Employment Protection

We support Tom King's suggestion that the qualifying period for protection against unfair dismissal should be extended to two years for all employers.

Should more be done for small employers and young people? Tom King opposes any such moves but we believe that it would be premature to close off options at this stage because:

i. the Rayner deregulation scrutinies are still being conducted, and will not report until January; they may provide evidence for further action in the case of small firms;

ii. if the 'Passport for a Job' scheme is approved, there will be changes in employment protection for some young people, which might be taken further;

iii. Tom King's jobs paper will be, in part at least, a consultative document in which several options could sensibly be canvassed.

We therefore recommend that the Prime Minister should welcome the proposal to extend the qualifying period for employment protection to two years in all firms, but should not accept Tom King's suggestion that this is the only area of change and should specifically:

a. reserve decisions concerning small firms until after the Rayner Scrutinies report in January; and

E.R.

b. leave open the option of removing young people from employment protection until after the 'Passport' scheme has been examined.

2. Wages Councils

There is no doubt that, if the Government's aim is to maximise employment, it should abolish the Wages Councils wholesale. Tom King's 'conservative' estimate that such a move would create 50,000 more jobs is impressive.

Abolition (and the denunciation of the ILO Convention) will clearly be politically sensitive. It is therefore necessary to consult widely. But we need to be prepared for predictable responses from the CBI and established industry who dislike undercutting competition from small firms; we should actively seek out the views of the smaller employers who will be the main beneficiaries of the change and the principal providers of additional jobs.

Given the sensitivities, the paper should raise the possibility of reforms falling short of abolition. But these should not be represented as panaceas. The Government needs a robust consultative document which invites the wanted response and which emphasises the positive points: it should stress the opportunity for job creation; it should make clear that the wider imperative of solving employment must take precedence over sectional opposition. The Auld Committee's feeble suggestion that the deregulation of shop hours will make Wages Councils more relevant should be firmly rebutted: deregulation will make the Councils less necessary, because Sunday opening will pull wages up. It is better to accept a compromise after consultation than to consult on a compromise.

E. P.

We therefore recommend that the Prime Minister should:

i. support Tom King's proposal to raise all the options in the forthcoming jobs paper, but

ii. remind Tom that everything hinges upon the drafting of the paper and the dexterity of the Department of Employment in presenting it to the media.

OLIVER LETWIN NICHOLAS OWEN PETER WARRY

10 DOWNING STREET

Prime Minister

Mr King has not raised issue of improvements in the procedure of employment tribunals. What happened to ideas about a less legal atmosphere, or more stipendiary chairmen?

AT

5/12

CONFIDENTIAL

P.01451

PRIME MINISTER

Statutory Employment Protections
E(A)(84)67

BACKGROUND

On 24 July you held a meeting of the Ministers mainly concerned in order to review progress on reducing the administrative and legislative burdens on industry and in particular on small firms. Among the conclusions of that meeting were that the Efficiency Unit should conduct a scrutiny of the costs to business of complying with a wide range of Government requirements, and that the Secretary of State for Employment should separately study the effects of employment protection legislation. The study plans for the scrutiny by the Efficiency Unit were agreed between the Ministers concerned (including Mr King) in October. The scrutiny was to examine the costs of compliance with employment protection law; but decisions on the scope and timing of any changes were to be taken on the basis of the separate exercise under the Secretary of State for Employment. However, it was hoped that the scrutiny would make a positive contribution to this separate exercise.

2. Although the scrutiny by the Efficiency Unit has not yet reached conclusions, the Secretary of State for Employment, in E(A)(84)67, brings forward proposals on employment protection legislation. We understand that he is anxious to secure guidance from his colleagues before Christmas, so that he can enter into consultations with interested parties early in the New Year. Mr King proposes increasing by Order the qualifying period for bringing a complaint of unfair dismissal to two years for all employees (at present it is two years for firms employing less than 20 people, one year for others). Other individual rights under employment legislation should be retained (E(A)(84)67, paragraph 4).

FLAG A

CONFIDENTIAL

MAIN ISSUES

3. Main issues are whether, as proposed by the Secretary of State for Employment,

(i) the qualifying period for bringing complaints against unfair dismissal should be raised from one to two years for all employees; and

(ii) other individuals' rights under employment legislation should be retained.

Unfair Dismissal

4. The Sub-Committee will need to consider the proposed change against the background that, as Mr King says, removing established employment rights is a highly sensitive issue (and particularly so after the GCHQ affairs); and that employers do not welcome change for its own sake (E(A)(84)67, paragraph 3). Points they will need to bear in mind include the following:

(i) Would the change be of significant help to employers? There is no indication from the discussion at Annex A to E(A)(84)67 (paragraph 26) that employers have either been consulted or have made their own representations on the point. Firms with less than 20 employees already have the benefit of the longer qualifying period.

(ii) Would the effects of a change be fair on individuals? It might well be argued that one year is long enough to decide in the vast majority of cases whether or not to continue to employ someone, though the two year period for the smallest firms might be thought justified as extra flexibility in recognition of the particular difficulties they face.

(iii) Balancing the considerations at (i) and (ii), does the likely benefit to business from the change appear to outweigh any risk of serious adverse reaction? Paragraph 7 of E(A)(84)67 says that the change would reduce the number of

unfair dismissal cases by about one quarter, or 7000-8000 a year. From one angle, that is a measure of the relief to industry; from another, the measure of individuals with a potential grievance.

5. It might be argued that a decision on changing the unfair dismissal provisions ought to wait until the Efficiency Unit's scrutiny of the costs of compliance with employment law is available at the end of the year. If however the Sub-Committee are satisfied that it will be a worthwhile benefit to industry if the two-year period at present available to the smallest firms was available generally, they may feel that further information on compliance costs is not needed in this particular area of employment law.

Other employee rights

6. The balance of argument is however somewhat different in respect of Mr King's proposal (in paragraphs 4 & 5 of his paper) that employment rights other than protection against unfair dismissal should remain unchanged. The Minister without Portfolio in particular may argue that it would be wrong to close the door now on other changes in employment law without waiting for the Efficiency Unit's scrutiny of compliance costs in this area. The Sub-Committee might therefore conclude that they should return to the question of other employee rights after Christmas. This need not interfere with Mr King's plan to issue an Employment White Paper in the early spring of 1985.

HANDLING

7. You will want to ask the Secretary of State for Employment to introduce his proposals. The Minister of State, Department of Trade and Industry will have views on them. The Minister without Portfolio will probably have views on both substance and timing.

CONCLUSIONS

8. You will want to reach conclusions on:

i. the change proposed by the Secretary of State for Employment to the qualifying period for complaining against unfair dismissal;

ii. whether the other rights of individuals under employment law should:

a. be retained, as proposed by the Secretary of State for Employment; or

b. be held over for further consideration in the light of the outcome of the Efficiency Unit scrutiny.

P L GREGSON

5 December 1984

SECRET

PMC 84
CC. PW.
10

10 DOWNING STREET

From the Private Secretary

3 December, 1984

No Strike Agreement in the NHS

The Prime Minister has seen and noted Mr. Clarke's letter to the Chancellor of 28 November. She looks forward to a further report when officials have completed their current discussions.

I am copying this letter to David Peretz (H.M. Treasury), David Normington (Department of Employment), Michael Reidy (Department of Energy), John Ballard (Department of the Environment), Callum McCarthy (Department of Trade and Industry), John Graham (Scottish Office), Colin Jones (Welsh Office) and Richard Hatfield (Cabinet Office).

TNB.

ANDREW TURNBULL

Stephen Alcock, Esq.,
Department of Health and Social Security

SECRET

MC

SECRET

Copy No 2

CC NO

9

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522

From the Minister for Health

Prime Minister (2)

To note the limited progress

AT
29/11

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury
Parliament Street
London
SW1P 3AG

28.11.84

Dear Nigel.

You and colleagues may like to know the position on my discussions with the NHS Unions about their proposals for a no-strike agreement in return for unilateral access to binding arbitration.

At the meeting at No 10 on 30 April about strikes in essential services I was authorised to meet the Unions for further talks. These were to be exploratory and without commitment to any element of the package. It was to be made clear that unilateral access to binding arbitration would not be acceptable to the Government. The conclusions of the meeting were more fully set out in a letter dated 30 April from the No 10 secretariat to Tom King's Private Secretary.

Talks have been taking place on the basis agreed, ie to discover what the Unions might be prepared to offer and what they would want in return. The Unions have been as anxious as we that the talks should be entirely without commitment and without prejudice. It is evident that they are very doubtful about their ability to carry through a "no strike" agreement of any kind, and are also anxious about prejudicing the TUC's position in relation to any proposals which the Government may produce on essential services generally. For these and other reasons they have also been as anxious as we that very strict confidentiality should be maintained. There must be a good chance that if no agreement materialises the Unions will not wish to give the matter any publicity.

The Unions have accepted as working assumptions that any arbitration arrangements would relate only to disputes arising from general pay claims and would not apply to funding levels, and that access to arbitration would not be unilateral but only by agreement between the parties. These parties would be the two sides of the relevant negotiating body. The Government would not be directly involved, although we have effective control over the Management Sides, whom we appoint. I have made it clear that we could not give up the legal requirement that the Secretary of State should approve settlements, including arbitration awards adopted by the parties. The Unions appear to accept this, but would be looking for some assurance that the Secretary of State would intend to accept awards save in extreme circumstances. Their position is that the stronger their undertaking on industrial action, the stronger the commitment they would be seeking on implementation. This has, so far, simply been registered as a difficult issue which would need further attention in any negotiations.

E.R.

I have also made it clear that the Government would be looking for a solid undertaking to abstain from industrial action so long as agreed procedures were being followed. The Unions recognised this, but from discussions between my officials and the TUC officials it is clear that there is a considerable gap between the best which they currently think they could put to their constituents and what the Government could accept. If the talks were to break down, the best basis would, in my judgement, be that the Unions could not give us an acceptable undertaking. We are still some way from knowing just how far they think they could go in the interests of an agreement.

Other issues which have been discussed include the circumstances in which an agreement would come into play; the place, if any, for conciliation and by whom; the nature of possible arbitration machinery; the nature of arbitration references; and the events which should be regarded as terminating the operation of the agreement in an individual dispute. The discussions have clarified which of these areas are and are not likely to present substantial difficulties, but again, neither side is committed to anything.

At the last meeting on 17 October it was agreed that a very small group of Departmental and TUC officials should discuss whether any progress could be made in translating the discussions so far held into wording which might form a basis for proper negotiations. The purpose of these discussions is to identify more precisely the likely areas of difficulty. My own position remains fully reserved, as is that of the wider Union group.

Officials expect to have taken matters as far as they prudently can in about three weeks' time. It will then be for consideration on both sides whether it is worth continuing the talks. Meanwhile there is no commitment as regards further discussions at Ministerial level.

As to timing, the TUC have already accepted in discussion with officials that no agreement could be finalised in time for the 1985 pay negotiations.

To sum up, talks are continuing on an exploratory basis, with no commitment of any kind on either side. We are doing nothing to force the pace. The Union Side have also been taking matters cautiously, no doubt because of the increasing embarrassment in which they find themselves over the "no strike" issue. As a result we still do not know what their full proposals might be, but the discussions so far suggest that the prospects for a satisfactory agreement are poor. As to our immediate tactics, these talks were a significant element in the settlement of the 1982 strike, and it is important that the Government should not peremptorily terminate them. It is desirable that the Union Side should be the first to suggest termination and that termination should be based primarily on the Unions' inability to propose an acceptable no strike undertaking. I therefore do not propose any immediate steps to bring matters to a head. I shall review the position when I have officials' report on their current discussions.

I am copying this letter to the Prime Minister, Secretaries of State for Employment, Energy, Environment, Trade and Industry, Scotland and Wales, and Sir Robert Armstrong.

KENNETH CLARKE

Ind Pol: Legislation: Pol 1

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

14 November 1984

PART II OF THE TRADE UNION ACT, 1984

The Prime Minister has seen your Secretary of State's letter to the Attorney General of 12 November. She believes that the issue of multiple questions on strike ballots will need to be looked at carefully and she therefore welcomes your Secretary of State's proposal to review the position in about three months' time. This review can also take in any other issues on the operation of the Act which have arisen in the meantime.

I am copying this letter to Henry Steel (Law Officers' Department).

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment.

CONFIDENTIAL

Prime Minister

Policy unit believe that action on multiple issue ballots will be necessary, but agree with Tom King that some time should pass before acting. Tom King suggests a review in 3 months. Agree?

AT 13/11

MR TURNBULL

13 November 1984

PART II OF THE TRADE UNION ACT, 1984

NACODS

Yes MT

We continue to believe that the Attorney General is in principle right. Union members should have the right to vote separately on each issue in a ballot paper. Otherwise, unions will mischievously combine issues to achieve 'strike majorities' for propositions with which most members disagree (as some 'political' unions already do).

Tom King's observation that industrial action could be taken on an issue other than the one attracting a majority is true, but a different point. This is a flaw in the Act as a whole and has nothing to do with multiple-issue ballots. As the Act stands, even if a union gets a strike majority on a single question about a genuinely single issue, it can change track in the middle of a dispute and still use its majority as a cause of immunity.

Austin Rover

The Austin Rover dispute has thrown some doubt on whether unofficial union action is properly catered for under the Acts. Under the 1982 Employment Act any action by an employed official or formal committee of the union is an official act unless it is outside the unions rules, or is immediately repudiated in writing by the President or General Secretary. Thus district officials or district committees of a union cannot give the nod to strike action and still avoid the requirement for a ballot. But wildcat action by lay trade union representatives would escape.

In the case of the AUEW at Austin Rover, it is not clear whether Ken Cure, the national organiser for the Midlands, was present at the meeting that endorsed the strike, or if he was, whether Terry Duffy repudiated his actions in sufficient time. In any event the Court of Appeal have today, with Austin Rover's agreement, accepted that the AUEW are against the strike and need not ballot.

In the case of a more militant union, there might be a conspiracy to inspire legally unofficial action. If this action could be linked to the union itself, then clearly it would be illegal under the 1984 Act; but if not, no realistic modification to that Act could reasonably impose responsibility on such a union. Unauthorised action of this type still has residual legal immunities and these should be removed.

Conclusion

As far as the NACODS dispute is concerned, a one clause amendment to prevent combination issue ballots could be quickly passed through both Houses with little opposition. However, it is clearly too early to start thinking about amending legislation to cover the Austin Rover situation and indeed, on the facts, it is doubtful whether any change is necessary.

On balance, it may be best to defer action a little, provided we do not permit the delay to grow too long.

OLIVER LETWIN

Peter Warry

PETER WARRY

SP/B25

BIR
WB
PM response

CC

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

The Rt Hon Sir Michael Havers QC MP
Attorney General
Law Officers Department
Attorney General's Chambers
Royal Courts of Justice
LONDON WC2A 2LL

12 November 1984

Dear Michael

PART II OF THE TRADE UNION ACT 1984

Thank you for your letter of 29 October drawing my attention to the risk that a union might, as in the recent NACODS ballot, list a series of issues on the ballot paper without enabling its members to make it clear which one they were prepared to make the subject of a strike. You suggest that this could be a means of frustrating the purpose of the strike ballot provisions of the 1984 Act.

There was, of course, no question of NACODS itself exploiting any loophole, because their ballot did not pose any direct question about a strike and completely failed to meet the Act's requirement that the union members must be asked specifically whether they are willing to take industrial action in breach of their contracts of employment. Nonetheless, it was manifestly unsatisfactory that NACODS were able to continue to claim a mandate for a strike when the dispute over one of the issues listed on the original ballot paper had been resolved.

It would of course be possible, as you suggest, to require a union to pose the question about industrial action separately in relation to each issue dealt with in the ballot and to require a 'yes' or 'no' answer to each question. However, it would be necessary to go further than this in order to deal with the potential problem raised by the NACODS ballot. Immunity would have to be made additionally dependant in some way on any subsequent industrial action being undertaken in furtherance (or mainly in furtherance) of the issue or issues which had attracted a 'yes' majority. In many (although not all) cases judgements about the issues uppermost in the minds of the strikers may be difficult (as, for example, when the miners started their overtime ban in November of last year, and both closures and the 5.2% pay offer were at issue). Even if a majority 'yes' vote was required in relation to all the issues mentioned on the ballot paper for immunity to apply to a strike about any of those issues, the union might in fact

call a strike about some further issue which had not been mentioned. The court and, more importantly, the potential plaintiffs would be left in the position of having to show that the strike was not about one of the issues on the ballot paper. I am sure you will agree that we should if possible not put the courts in the position of having to decide what was the "main" motive of the strikers at the time the strike was initiated.

Part II of the Trade Union Act has been in force for only a few weeks and I think it would be wrong to draw any firm conclusion about the need for amending legislation until we have had more experience of its operation. I do not, in any case, have a Bill for this session to provide a vehicle for an amendment.

If, however, the NACODS problem recurs in the context of other strike ballots, and makes the operation of Part II of the Act uncertain, we shall clearly need to tackle the issues you have raised head on. It is therefore essential that we monitor further ballots closely, with a view to closing any loopholes in the legislation that become apparent, and I have asked my officials to ensure that this is done. I propose to review the position in 3 months' time.

I am sending a copy of this reply to the Prime Minister.

Ind Pol Pt 11

legislation

10 DOWNING STREET

From the Private Secretary

1 November, 1984

PART II OF THE TRADE UNION ACT 1984

The Prime Minister has seen the Attorney General's letter to your Secretary of State of 29 October. She will be very interested to hear your Secretary of State's views on whether an amendment to the Act ought to be made at an early date.

I am sending a copy of this letter to Henry Steel (Attorney General's Office).

(Andrew Turnbull)

D. Normington, Esq.,
Department of Employment

E. R.

CONFIDENTIAL

MR TURNBULL 30 October 1984

PART II OF THE 1984 TRADE UNION ACT

We agree with the Attorney General that the 1984 Trade Union Act should be amended in the light of the NACODS fiasco.

Department of Employment officials argue that:

1. The NACODS ballot was unlawful anyway.

2. Other unions probably will not follow the precedent.

3. It would be embarrassing to admit an error.

These are not strong arguments: the fact that NACODS committed other sins does not diminish the general problem; and it is surely worth suffering the slight embarrassment of admitting a mistake if there is even a small chance of nipping a malpractice in the bud. We believe that manoeuvres of the sort used by NACODS are by no means unusual.

We recommend that Tom King should consider either the change recommended by the Attorney General or a requirement to have a new ballot where there is a material shift in the management offer or the union claim .

OLIVER LETWIN

CONFIDENTIAL

Prime Minister

To note and await Mr King's response

AT 30/10

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

29 October 1984

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

Dear Tom

PART II OF THE TRADE UNION ACT 1984

The NACODS' ballot has revealed a defect in Part II of the Trade Union Act 1984. The Act stipulates that the voting paper must contain a question which requires the voter to answer whether he is prepared to take part in industrial action. There is nothing in the Act that prevents the vote relating the call for strike action to more than one issue. In the present case, three different issues were dealt with and it is very likely that while a member would be prepared to strike in support of rejection of the Board's guidelines of 15th August, he would not be prepared to strike in opposition to the Board's cutback plans.

In my view the Act should be amended to require a separate "Yes" or "No" to each issue where more than one issue is dealt with in the same ballot.

I am copying this letter to the Prime Minister.

Yours ever,

Michael

E.R.

SECRET

Bs file

8

27 September 1984

PRIME MINISTER

I attach the paper you asked for on trade unions, written by Peter Warry.

Between us we have experience of negotiating with NALGO, NUT, AUEW, TGWU, APEX, TASS and ASTMS, so it is based on a little more than theory.

JOHN REDWOOD

Prime Minister (4)

To note. X on page 2 may not be correct. On the basis of existing precedents, the 1984 Trade Union Act would not allow aggrieved union members to seek damages. This is a major gap in the law. The only way they could do so at present is to argue that union organised intimidation had taken away their free will.

AT 28/9

We must pursue this point through.

Tom Kelly.

mb

SECRET

TRADE UNIONS, MODERATES, AND THE LAW

1. OPERATION OF THE NEW EMPLOYMENT LAWS

a. Need for a breathing space

With the latest laws on balloting in place it should be more difficult for unions to abuse their power or manipulate their membership. These laws give us most of what trade union democracy required.

A breathing space is now needed to let the dust settle, to allow the barrage of new laws to be assimilated by employers, and for them to be seen to be working.

b. Use of the TU Law

Small employers have used the picketing legislation successfully but the NCB, BR, BSC and the Docks have all so far considered that the commercial risks of using it outweigh the benefits: that it could have united differences within their own unions or brought other unions in. The NGA in the Eddie Shah dispute came close to getting real TUC support which without the scenes of violence at Warrington and good handling could have tipped the other way.

Whilst the non-use of the laws has been unpopular and tarnished their worth, the risks did originally outweigh the benefit. At the same time their successful use by the South Wales Hauliers and Eddie Shah will have helped secure their acceptability and warned wiser union heads of the danger of confrontation. Time is on our side: when the right opportunity arises with a solid union and an unpopular cause a nationalised industry should use it.

c. Balloting

The balloting laws on strikes are likely to encounter a similar slow start. The 1973 rail strike vote has shown that people compelled to vote when there has been no overt manipulation are more likely to vote on the slur against their union than on the issue of the strike. It will again be best if such a vote is tested by small employers and aggrieved union members rather than throwing down the gauntlet in a case that can be seen as Government versus the Unions. (The NUM situation is covered later)

Balloting to elect union officials cannot be perceived in such confrontional terms and the law should be enforced (although only union members are allowed to do this). It is likely to cause a drift towards moderation particularly in some of the worse run unions. Nevertheless, Scargill was once elected on a secret ballot.

The new laws will not prevent management holding ballots on disputes and other issues; indeed some kudos would be gained with union members for doing this in preference to going through the courts (which in any event can only award damages). Such ballots are normally successful if they are called immediately following overt union manipulation: any delay compromises the issue. However, whatever the outcome of the ballot, abhorrence of crossing a picket line is very inbred so a positive vote may often not result in a return to work. Arranging a mass pre-assembly to cross the picket line could be tried to tackle this problem.

2. MINERS' STRIKE

a. Enforcement not Law

The common law graduating through breach of the peace, unlawful assembly, affray, and riot; and the criminal law: Offences Against The Person Act 1861, Criminal Attempts Act 1981, Criminal Damage Act 1971 etc. can cope with all the mob violence. A possible exception is static demonstrations, but if they are static and not obstructing the highway or doing any violence then they can probably be ignored. There is no limitation on the penalty for breaches of the common law and the statute law permits adequate terms of imprisonment.

Although some of these laws are archaic their use does not offend 'fair play' given that the miners are clearly not playing fair. To introduce a new all embracing law would serve no purpose: present laws are adequate, and without panicking a Bill through Parliament it could not be enacted in much under twelve months, by which time the miners strike should be over. As a consequence the new law would be seen as illiberal and oppressive. Much better to enforce the many laws already there than create yet more laws.

b. Monitoring

To enforce the law we need to make arrests and although there have been 5,000, it appears from the television coverage that rioters can throw bricks with impunity. Couldn't the police monitor the number of offences shown each night on the television and make a record of their action in each case? (The NCB have already started some of their own TV monitoring). If the ratio of action to offences is above say 25%, it would show the police are doing a good job in the circumstances, and we could then monitor the actions through to the courts. If the ratio is a much lower figure then it would act as a performance measure and goad.

To discover if the arrests are being made but not followed through by prosecution, the Home Secretary should send weekly figures showing the number of people at each stage of

the prosecution process and the weekly movements between the stages including new arrests and sentences meted out. Stipendiaries should be sent in to dilatory courts.

c. Action against the NUM

Legal action by working miners and small traders (eg South Wales Hauliers) has had a useful financial and publicity effect. The NCB have an injunction against the NUM for secondary picketing from the start of the strike which they could still enforce through contempt proceedings. Better, proceedings could possibly be brought under the new balloting laws, although this will not halt the strike

Such action will bring some TUC rallying to the flag but this is unlikely to be more than financial support which should not make up for amounts sequestered by the courts if the NCB wins. If it loses it will be on a technicality and no lasting damage will be done to the NCB or the new union laws.

3. MODERATES AND MILITANTS

a. Within the Unions

Militants are successful in trade unions despite the overall moderation of their members because of their apathy and herd instincts when forced to an open decision. Secret voting

will be of major help on strike issues but does not extend for example to the mandating of delegates. Secret elections will also aid moderation but will not overcome apathy or a preference for fire eaters.

Militants are not noticeably fewer in moderately led unions such as the AUEW. Moderate officials within the unions can and do temper the success of the militants but their political capital is limited, and especially so if the Government is perceived to be actively hostile to the unions.

The serious militants, unlike the old style communists, are not interested in compromise and it is folly to negotiate with them. The approach has to be to isolate them or appeal to their members over their heads.

b. Dismissing the Militants

Ideally the militant should not be recruited in the first place, or if he slips through he should be dismissed as soon as possible. (There are organisations that have lists of names that prospective employers can access). This is becoming increasingly important to Government due to militant penetration of white collar unions in the public sector.

Michael Edwardes in BL, when facing similar problems, mounted an aggressive attack on the militants: many personnel managers probably felt that it was 'fire or be fired'. BL also took the view that they would take action even where their case was not watertight and were prepared to accept losing at the Industrial Tribunal.

In 1980 I myself sacked David Nellist, now a militant tendency MP. It took six months of careful, forceful preparation before he was dismissed for being consistently late for work. At the end he got no support from the workforce or from the union (of which he was branch secretary) and did not even take it to an Industrial Tribunal.

If the tide is to be stemmed in the Government Service then similar forceful action will be required - this means an acceptance of the policy from top to bottom of the organisation, training in employment law and how to mount a case, then effective action without compromise.

c. Divide and let markets rule

The best answer of all to the nationalised industries is splitting them up and ensuring each business competes in a market place where customers can then exert some countervailing power. Alternatively, where moderates wish

to split off from a larger militant union we should allow them to do so provided they can form an acceptable bargaining unit (eg Police civilians).

4. GOVERNMENT LINE ON UNIONS GENERALLY

Union action can prevent competition in the labour market and so destroy jobs. Union membership and influence is declining. The choice is to leave the militants and economic change to do the job for us, or to support the moderates actively.

Laissez faire has reduced union influence but contains the danger that the Government will be seen as anti-union, antagonistic to the working man and his rights, and uninterested in unemployment.

A more benign approach - Ministers seeing moderate union leaders (as Tom King is doing and David Young wants), using NEDO actively, perhaps the TUC council coming to No 10 to talk about jobs - might contribute to the election of more moderate union leaders and TUC council, and as a consequence to fewer political strikes.

The danger is that it could be the thin end of the wedge to giving away the gains already made in reducing union influence and re-establishing market forces.

Once Scargill is defeated, the militants will be muted: the Government will then be vulnerable to a charge of being aggressively anti-union. Provided it is kept under firm control a more benign approach could be adopted. Such a policy must be reinforced by a campaign to emphasise our commitment to the working man and job creation, to highlight that the new laws give back the real trade union rights that have been hijacked by the anti-democratic militants, and to underline the message that strikes destroy jobs.

5. EDUCATING WORKERS AND MANAGERS

a. Workers

Most people leave school without any idea of how their PAYE will be paid, how companies work, how the rates system works or indeed anything that is of relevance to their existence as a citizen. This is a major problem to reaching a sensible working accord in industry. Priority should be given to in-service training of teachers (perhaps during their four months holidays) to improve their knowledge of the subject. It could include periods of secondment to industry or government departments.

b. Managers

There is an equal need to educate managers about what they can do within the law. Most managers believe that it is not

possible to dismiss employees easily or to regulate their working affairs sensibly. This is untrue, and this myth needs to be attacked right down the management ladder.

6. PAY AND NEGOTIATIONS

a. Level of Rises

The new pay round is about to commence. Over the last round settlements have averaged 5.25% and earnings risen by 7.50% against a background of 5% inflation. Settlements have been similar in both private and public sectors whilst the gap between their wage drifts has narrowed to under 1%.

Proselytising the 3% public sector pay factor for this coming year will be essential if a low climate of expectations is to be generated both in industry and Government. We also need to persuade the CBI and other employers' organisations to join the propaganda battle, and in particular to cease setting national rates and conditions which act as a base camp upon which further wage hikes are built locally. Unfortunately there is considerable support for such minimum rates amongst smaller employers as it is a convenient substitute for their own indecision.

b. Arbitration and Review Boards

Public sector pay negotiations are bedevilled with pay review boards and arbitration rights which by their very nature are uncontrollable and inflationary. Worse, they give the unions a second bite at the cherry. We should aim to limit the recourse to such external bodies only to those essential services, eg nurses, who have given up the right to strike. As a minimum we should end unilateral rights to arbitration.

In general the review boards decline to give weight to what we can afford. We should write affordability into all review board terms of reference. Full account of market forces should also be included otherwise we will have to pay up when we need to recruit and still pay up when we do not.

Pendulum (flip-flop) arbitration is an attractive mechanism for forcing moderation in pay claims. It is not without risk for Government but the unions are likely to consider it even more risky. We should offer it to escape from an existing obligation to arbitration procedure and be prepared to experiment if the offer is accepted.

Proposals are in hand to introduce merit pay to some parts of the civil service, which is a step in the right

direction. The objective must be that all civil servants are paid according to the market price for the contribution they personally make. This means abolishing incremental steps and introducing regional and skill variations.

CONCLUSIONS

a. Action

The NCB should seek a suitable case to test the new Trade Union law. Small employers and union members are gradually establishing the worth of the new laws and should continue to do so. We should delay testing them in any other 'Government versus Unions' clash until the case is right.

The existing laws on picketing and mob violence are adequate, the problem is enforcement. New law is not required. — New ∧ expedited procedures?

Militant penetration of public sector white collar unions is a growing problem and must be countered by strong and concerted management action.

b. Policy

Smaller industrial and bargaining units are needed if we are to divide and let market forces rule.

On the pay front review boards and arbitration should be resisted. Where arbitration is compulsory pendulum could be proposed.

Our children need educating for the real world, syllabuses must include 'civics'.

c. Propaganda

In conjunction with a more conciliatory attitude to unions we need to declare our commitment to the working man and jobs and explain how the new employment laws give him back the union rights that Scargill and others have hijacked.

We also need to emphasise how real wage rises are financed out of lost jobs and in this context to proselytise the 3% public sector pay factor.

Peter Warry

PETER WARRY

10 DOWNING STREET

Prime Minister (1)

Patrick Mayhew's latest letter seems more optimistic on the chances of successful legal action than his first letter - but less forthcoming than the Attorney yesterday.

AT

26/9

SECRET

7

MR TURNBULL

26 September 1984

TRADE UNION ACT 1984

For the NCB to use the 1984 Act the NUM must make a new exhortation which is likely to materially influence the union member. The Solicitor General's example goes considerably further, suggesting it should change the status quo, eg stiffen up the strike. I wonder if this is necessary.

at X

It could be argued that each new day a man turns up for work and is turned away at the picket line is a new act which has clearly influenced his behaviour.

Alternatively we could argue every time a new person tries to go to work, or each time the picketing is materially increased or moves to a new location (whether or not it has been picketed in the past) is a new act.

provided it the union could be shown to have organised it

The Solicitor General argues that the ruling in Boulting v. ACTAT prevents a union member from bringing an action against his own union, as he should resist its blandishments "by strength of will".

Clearly, "strength of will" has been insufficient on its own to penetrate the physical barrier of a mass picket. Doesn't he have an action as the union has procured other members to

SECRET

E.R.

SECRET

bar his path even though his own "strength of will" remains undiminished?

Conclusion

Risk cannot be eliminated from any legal action and the Solicitor General naturally has to be cautious. Ideally we would like union members to make the attempt, but if not, it may still be worth the NCB trying and being seen to try.

Peter Warry

PETER WARRY

SECRET

SOLICITOR GENERAL

01-405 7641 Extn

ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

25th September 1984

S E C R E T

Prime Minister

TRADE UNION ACT 1984

You asked for further advice on the effect of the coming into force of the Trade Union Act 1984 upon existing strikes, taking into account a note of an opinion expressed in conference by Roger Buckley, QC.

He is reported as having advised that the Act will not be applied retrospectively; this is correct. He also advised that any further acts by a union exhorting their members to remain in breach of their contracts of employment, or urging (or intimidating) those who are working to come out on strike, would be without immunity unless supported by a secret ballot.

I agree with the advice concerning urging those who are working to come out on strike; I advised to the same effect in paragraph 8 of my minute about the dock strike.

The position is not quite so simple as regards acts addressed by a union, after 26 September, to those workers who are already participating in the strike. Whether such an act would be deprived of immunity in the absence of a supporting ballot will depend on the circumstances. It must amount to a fresh inducement to workers to continue to break their contracts or an intimidation of them with the same purpose: e.g. "Don't go back to work or you will lose your union card". It is unlikely that a

mere exhortation, for example to "stick it out", would be held to be sufficient. Secondly, in order to be actionable (and thus to permit an employer, supplier or customer to claim an injunction) it would have to be shown that it was at least likely to have had the desired effect: for example that the strike was crumbling locally but that the renewed inducement stiffened it up. If a court were not persuaded of the probability of this, it is doubtful that it would grant an injunction.

You asked who might successfully bring an action and whether this would include union members who are on strike, but feel unable to return to work. A union member could not bring an action. This is because section 10 is framed in such a way that the effect of not holding a ballot is that the immunity from legal action given by section 13 of the Trade Union and Labour Relations Act 1974 to Trade Unions is lost. It is generally accepted that a union member cannot bring an action against his union for inducing him to break his contract. In Boulting v. Association of Cinematograph, Television and Allied Technicians [1969] 2 WLR 529 Upjohn L. J. said at page 551 -

> "If A procures B to break his contract with C, C can complain because A commits a well established tort against C. But B has no right at law to restrain A from attempting to suborn him from his duty to C. He must resist A's efforts by strength of will. If B succumbs to A's blandishments and contracts with him in breach of his duty to C, B can have no right to complain of A's conduct if A performs his contract with B, which the latter has so wrongly entered into."

An action could be brought by the union member's employer, or by a person whose commercial contract has been broken

SECRET

or interfered with by the union, or threatened with such breach or interference. Such a person could be a supplier of goods or services to the employer or a customer of the employer.

Although a union member might not be able to bring an action under the Trade Union Act 1984, he might have a cause of action at common law; he might be able to prove, for example, the torts of intimidation or besetting his home.

I have discussed this minute with the Attorney General and he agrees with it.

PM.

25.9.84

IND Pol: Relations A 11

10 DOWNING STREET

From the Private Secretary

19 September 1984

Dear Henry,

TRADE UNION ACT 1984

In his minute to the Prime Minister of 11 September the Solicitor General gave his views on the way in which Part II of the Trade Union Act 1984 would be likely to operate after coming into force on 26 September. The Prime Minister has subsequently received a copy of a note setting out the legal advice received by a private sector company in relation to the dock strike. A copy is attached.

It seems to the Prime Minister that paragraph 3 of the note appears to hold out greater possibility of successful legal action where there are acts by the union to keep an existing strike going.

She would be grateful for further advice from the Attorney General and the Solicitor General which takes account of the opinions expressed in the note. Could this also consider the question of who might successfully bring such action and whether this would include union members who are on strike but who, for one reason or another, feel unable to return to work.

I am copying this letter to David Normington (Department of Employment) and Peter Gregson (Cabinet Office).

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Henry Steel, Esq., C.M.G., O.B.E.,
Law Officers Department.

SECRET AND PERSONAL

CONFIDENTIAL NDPA AT 18/9 cc A/G

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

18 September 1984

Dear Barney,

1982 EMPLOYMENT ACT: CLOSED SHOPS IN GOVERNMENT ESTABLISHMENTS

Thank you for sending me a copy of your letter of 13 August to Tom King.

I can see the potential difficulties in the circumstances you describe. Fortunately there are no closed shops in my Department and we detect no trade union interest, either nationally or locally, in promoting them. Unless there is some dramatic change in industrial relations I would not therefore expect any trouble on this score.

I am copying this to the Prime Minister, Michael Heseltine, Norman Fowler, Tom King and Grey Gowrie.

Yours ever
Patrick

PATRICK JENKIN

CONFIDENTIAL

Barney Hayhoe Esq MP

TO: The Chairman

FROM: W.R. Mann

Copy to A.K. Black
R. Leach
W.F. Hunt
H.C. Scrimgeour
P. Thomas

DATE: 12th September, 1984

Re: Dock Strike

I had a further Conference with Roger Buckley, Q.C. this afternoon, with particular reference to Sections 10 and 11 of the Employment Act 1984 with regard to secret ballots before industrial action:-

1. He confirmed the view, previously expressed, that once the Act comes into effect on 26th September, 1984, the immunity which trade unions have under Sections 13 of the 1974 Act is not available to them in respect of acts committed on and after 26th September unless those acts are committed in the course of a strike or other industrial action which has been taken with the support of a valid ballot.

2. Strikes in existence on 26th September: the Act will not be applied retrospectively to remove immunity which was otherwise available (i.e. inducing a person to withdraw his labour in furtherance of a trade dispute) to cover their acts prior to that date. For this reason, continuing payment of strike benefit to those already on strike, without any other 'acts' would probably remain immune; but

3. Any further acts by the union in question e.g. exhorting their members to remain in breach of their contracts of employment, or urging (or intimidating) those working to come out on strike, would be without immunity unless supported by secret ballot.

4. Claims: as before there is the need to establish a cause of action at common law - the torts of actionable interference with contractual rights, or of interference with trade or business, to demonstrate that the relevant union is responsible, and that the damages ensued from their actions.

Because of the limits on damages recoverable from a union, the more effective remedy is to seek an injunction. It might be appropriate therefore to write to a union already in strike, just before the commencement of the Act, seeking an assurance that they would take no action on or after 26th September in furtherance of the strike without the support of a ballot under the Act.

W.R. Mann

WRM/30R

A

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3407

11 September 1984

PRIME MINISTER

TRADE UNION ACT 1984
SECRET BALLOTS BEFORE INDUSTRIAL ACTION

1. The question is the effect of the Act upon a strike (for example) starting after the Act comes into force at a port where dockers have not previously complied with the global strike call already issued by the TGWU.

2. The relevant Part of the Act is Part II.

3. Part II comes into force on 26 September 1984.

4. For simplicity I will refer throughout to a strike call. It will be recalled that the Act operates upon any act done by a trade union inducing a person to breach his contract of employment or to interfere with its performance, e.g. blacking. Such an act will lose immunity after 26 September if it is done "without the support of a ballot".

5. It will have the "support of a ballot" only if

(a) the majority of those voting in the ballot have answered Yes, and

(b) it is done not later than 4 weeks after the date of the ballot.

6. Unusually, the Bill contains no transitional provisions.

/If

7. If no further strike call had been made, so that in the individual port the eventual strike constituted a belated compliance with the global strike call, the Act will probably be held not to bite.

8. If, after 26 September, a further strike call had been made (by a "responsible person" as defined by section 15 of the Employment Act 1982, i.e. officially) and the strike took place in consequence of that, then immunity would be lost unless Part II had been complied with. This consequence would apply whether the further strike call was of a global nature or was addressed solely to dockers at the individual port, and whether it was identical in its terms and effect to the first one or different from it.

9. An "unofficial" strike call would not be caught by the Act.

10. In paragraph 5 I am able only to state the probable effect of Part II. This is because it is open to argument whether, if Part II did operate so as to deprive the pre-26 September global strike call of immunity in respect of a consequential strike occurring after 26 September, this would be a retrospective effect. The better view is that it would. (The contrary argument is that after 26 September it is open to the TGWU, who are presumed to know the law, to cancel their strike call and thereafter take steps to comply with Part II.) The matter is important because the courts will only construe a provision so as to have retrospective effect if its language plainly requires it, which is not the case here.

11. I am circulating this Note to members of MISC 101 and to Sir Robert Armstrong.

P.M.

CONFIDENTIAL

NRBM
AT 415 CC NO

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

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

MO 20/17/6

3rd September 1984

1982 EMPLOYMENT ACT - CLOSED SHOPS IN GOVERNMENT ESTABLISHMENTS

Thank you for letting me have a copy of your letter of 13th August to Tom King.

It is extremely unlikely that any of the MOD's recruitment or employment practices will present any difficulties internally or compromise us publicly, when the closed shop provisions of the Employment Act 1982 come into force in November.

With one exception there are no closed shop arrangements in the Department, formal or otherwise. Our declared policy is to encourage staff to join trade unions and obviously the unions themselves are anxious to secure, for maximum bargaining advantage, the highest level of individual membership they can. There is no instance where union membership is a requirement either for entry into the Department or in the assignment of conditions of service.

The exception is in the case of the crews of the Royal Fleet Auxiliary (RFA) whose vessels are classified at present as part of the Merchant Navy. The crews are covered by a closed shop agreement with the Merchant Navy Officers' Association and the National Union

Barney Hayhoe Esq MP

of Seamen, the employer for this purpose being the National Maritime Board. We are considering at present whether the RFAs should be de-registered, a development which would affect the status of the vessels and also, possibly, the basis on which the crews are employed. But this is for the future and a good deal of consultation and discussion will be necessary before any change could be made.

I am copying this letter to the Prime Minister, Patrick Jenkin, Norman Fowler, Tom King and Grey Gowrie.

Yours ever

Michael Heseltine

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

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

13 August 1984

Dear Tom,

1982 EMPLOYMENT ACT - CLOSED SHOPS IN GOVERNMENT ESTABLISHMENTS

When the 'closed shop' provisions of the Employment Act 1982 come into force in November, we must ensure that our actions as employer are consistent with our words as Government. As you know 'de facto' closed shops exist in a number of Government establishments amongst industrial employees in trades such as printing.

Our basic approach is perfectly clear: we are against closed shops in principle and there can be no question of a civil servant being dismissed for not holding a union card, as I made clear in the recent dispute at HMSO's Manchester Press.

However, as you know, closed shops are sanctioned under the 1982 Act provided there is an appropriate ballotted majority and a UMA is agreed. No doubt some private employers who may well oppose the closed shop in theory will end up deciding to maintain one on purely pragmatic grounds - perhaps as the lesser of two evils against the alternative of strikes, disruption and deteriorating industrial relations.

I hope we can avoid such difficulties in our industrial areas where, as I say, some closed shops operate in practice already, and have done so for a very long time. No doubt the unions will seek to maintain the status quo especially if a dispute arises about the continued employment of someone who has resigned or been expelled from a union, or who will not join it. When we make it absolutely clear that we will not dismiss such a person we are likely to face damaging industrial action - for example the loss

of Hansard. We will have to meet these problems as they come and I have asked for any potential difficulties to be reported to me. As I have said, I think it essential that our actions as an employer are fully in accord with the aim of our legislation and I would of course be grateful for any advice you can offer to this end.

I am copying this to the Prime Minister, Michael Heseltine, Patrick Jenkin, Norman Fowler and Grey Gowrie.

Yours ever

Barney

BARNEY HAYHOE

File

Department of Employment PRESS NOTICE

Caxton House Tothill Street London SW1H 9NF
Telephones: Direct lines – Press Office 01-213 7439 (24 hour answering service) Public Enquiries 01-213 5551
Exchange – 01-213 3000 Telex 915564 DEPEMP

July 27, 1984

If N.U.M.

STATEMENT BY TOM KING,
SECRETARY OF STATE FOR EMPLOYMENT

Mr King said: "The Trade Union Act which is now law is a major advance for the cause of union democracy. For the first time ordinary union members will have a legal right to a secret ballot in national union elections and in deciding whether to have a political fund. And from the end of September any union that calls a strike without first obtaining the support of those concerned in a secret ballot, will lose its immunity from court action.

"All these measures have one common aim - to return the unions to their members. In the light of the present dispute I doubt that anyone can seriously question the value of that.

"The decision by Parliament that in future all strikes must be sanctioned by a secret ballot if they are to retain immunity, is particularly important. It raises, once again, the question, 'When will the National Union of Mineworkers give their members a ballot?'

"There can be no doubt that that is now the way to end all the misery. The vast majority of miners want to return to work. It is only the intimidation that is keeping them out.

"This provision in our Act is designed to ensure that in future this sort of tragedy is not repeated, that union members have the right to a vote on issues that are of such importance to them and their families.

"The NUM leadership maintain that their followers are solidly behind them. But if they seriously think that, they should have the confidence to call a ballot and prove it. If they do not, then they have no right to keep their people out any longer.

"It is time for all the membership of the NUM at last to have their say."

DE

Department of Employment **PRESS NOTICE**

Caxton House Tothill Street London SW1H 9NF
Telephones: Direct lines – Press Office 01-213 7439 (24 hour answering service) Public Enquiries 01-213 5551
Exchange – 01-213 3000 Telex 915564 DEPEMP

July 27, 1984

TRADE UNION ACT 1984

The Trade Union Act 1984 has now received Royal Assent.

Its main purposes are to:

provide for the members of trade union governing bodies to be directly elected by individual secret ballot of the union's members;

make trade unions' immunity for organising industrial action conditional on the holding of secret and properly conducted strike ballots;

enable members of trade unions with political funds to vote at regular intervals on whether their union should continue to spend money on party political matters.

Timing of implementation

The Act's provisions come into force as follows:-

provisions requiring trade unions to begin work on compiling a register of their members' names and addresses for use in union elections come into force immediately; trade unions are under a duty to complete the register by the time the remaining provisions on union elections come into force which will be towards the end of 1985 (the exact date to be determined by a commencement order this autumn);

the strike ballot provisions will come into effect on September 26, 1984 and will apply to any industrial action which is initiated by a trade union after that date;

the political fund provisions will come into effect on March 31, 1985 and will mean that all trade unions with political funds will need to hold review ballots by March 31, 1986 unless they have already balloted their members in the previous ten years.

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In more detail the Act

- requires trade unions to ensure that all voting members of their executive committees are directly elected at least once every five years;

- provides that all elections for voting members of union executives must be conducted by secret postal ballot unless the trade union can be satisfied that a workplace ballot (the only permitted alternative to a postal ballot) will:-

  - be secret and free from any interference or constraint;

  - provide a convenient opportunity for members to vote during, or immediately before or after, working hours without direct cost to themselves;

  - be one in which voting is by the marking of a ballot paper and in which votes are fairly and accurately counted;

- requires trade unions to compile and maintain an accurate and up to date register of their members' names and addresses;

- makes it a condition of legal immunity that trade unions do not organise strikes or other industrial action without first ascertaining by means of a ballot held not more than four weeks before the action begins that a majority of those voting wish to take such action;

- provides that ballots on strikes and other industrial action must be conducted by post or at the workplace, must involve the marking of a ballot paper, must be secret and must be followed by an announcement of the voting figures to the members concerned;

- provides that any trade union which has adopted a political fund resolution under the Trade Union Act 1913 must pass a new resolution by means of a secret ballot of all its members at intervals of not more than ten years if it wishes to continue to spend money on party political matters;

- updates the balloting provisions of the 1913 Act by providing that the Certification Officer will not approve rules for political fund ballots unless they provide for postal or workplace ballots;

- updates and clarifies the 1913 Act's definition of the "political objects" on which a trade union may spend money only if it does so from a separate political fund;

- places a duty on employers who have "check-off" arrangements for deducting trade union subscriptions from their employees' pay not to continue to deduct the political levy from any employee who certifies that he has contracted out of paying the levy.

TRADE UNION ACT: SECTION BY SECTION ANALYSIS

DS
27/7

Part 1 - Secret ballots for trade union elections

Section 1 of the Act requires the principal executive committee of a trade union to be elected by secret ballot of the union's members. The section provides that every person who has a vote or casting vote on this committee (such persons are referred to in the Act as 'voting members') must owe his position on the committee at any given time to an election fulfilling the requirements in section 2 held within the last five years. The section also provides that office holders in the union whose office gives them a vote or casting vote on the committee (such as the union's General Secretary or President) must have been similarly elected to that office. The section futher provides that there can be such reasonable hand-over period as may be required, but one not exceeding six months, in which to give effect to an election result; and that any term in the contract of employment of an employee of the union (eg the General Secretary) which might prevent his being elected as required by the Act is to be disregarded.

Section 2 lays down that all elections to the principal executive committee of a trade union must comply with the following requirements:-

(i) entitlement to vote at the election must be accorded equally to all members of the union unless they are in certain listed groups, such as newly joined or student members, which are also excluded from voting under union rules; (the Act also allows unions under their rules to restrict the electorate for particular seats on the executive to members in particular occupations, geographical areas and/or constituent sections within the union);

(ii) voting in the election must be by the marking of a ballot paper and without interference from, or constraint imposed by, the union of any of its members, officials or employees;

(iii) so far as is reasonably practicable, every person entitled to vote must:-

- be enabled to do so in secret;
- be sent a voting paper by post;
- be given a convenient opportunity to return it by post; and
- be enabled to vote without incurring any direct cost;

(iv) votes cast in the election must be fairly and accurately counted (although accidental inaccuracies not affecting the outcome are to be disregarded);

(v) no member of the union is to be unreasonably prevented from standing for election nor required to belong to a particular political party in order to do so; (however, the Bill allows unions to exclude particular classes of members from standing for election through their rules).

The requirements of the section do not apply to overseas members of a union nor in relation to uncontested elections.

Section 3 of the Act allows a union to hold a workplace rather than a postal ballot where it is satisfied that there are no reasonable grounds for believing that a workplace ballot would not meet the requirements of section 2 (other than those relating to voting by post). In those circumstances the section entitles a union to substitute in place of the requirements in section 2 that every person be sent a voting paper by post and be given a convenient opportunity to return it by post the requirements that, so far as is reasonably practicable, every person entitled to vote:

(i) must be supplied with a ballot paper, or have one made available to him during his working hours (or immediately before or after his working hours) either at his workplace or at a place more convenient to him; and

(ii) must be given a convenient opportunity to vote by post or an opportunity to vote during his working hours (or immediately before or after his working hours) at his workplace or at a place more convenient to him or a choice between these two methods of voting.

Section 4 places a duty on trade unions to compile and thereafter maintain, by means of a computer or otherwise, a register of the names and addresses of their members. The section provides that the register must have been compiled by the time the remaining sections of Part I of the Act come into effect (see section 22 below). It also requires a union to ensure, so far as is reasonably practicable, that the entries in its register are accurate and are kept up-to-date. The section exempts branches of unions which are trade unions in their own right from the duty to compile and maintain a register to the extent that this duty is discharged by the parent union.

Section 5 provides that a member of a union can apply to the Certification Officer or to the High Court (or, in Scotland, to the Court of Session) for a declaration that the union has failed to comply with one or more of the provisions of Part I of the Act. It further provides that where the application is made to the court and the court grants the declaration that is sought, the court is to make an order (unless it considers this inappropriate) setting out the action which the union must take as a consequence of its failure to comply with Part I of the Act. Such an order must normally specify a time limit within which the union must comply with the requirements of the order. The section further provides that where the court orders a fresh election to be held it shall order it to be conducted by postal ballot unless it considers this inappropriate. Finally, the section provides that at the end of the period given for compliance with a court order any member of the union who was also a member when the order was made can pursue enforcement proceedings if the union has failed to comply with the requirements of the order.

Section 6 contains supplementary provisions concerning the situation where an application for a declaration under section 5 is made to the Certification Officer. It provides that on receipt of an application the Certification Officer is to make such enquiries as he thinks fit and, where he considers it appropriate, give the applicant and the trade union an opportunity to be heard; that where the Certification Officer makes a declaration to the effect that a union has breached one or more of the requirements of Part I of the Act he must specify any steps which the union has taken or agreed to take with a view to remedying the breach; and that the Certification Officer is to give reasons in writing for his decision to make or not to make a declaration which he may accompany by written observations on any matter relevant to his proceedings. The section further provides that the making of an application to the Certification Officer is not to prevent a subsequent application being made to the court in respect of the same matter; and that where such a subsequent application is made the court must have regard to any declaration, reasons or observations made by the Certification Officer. The section also requires the Certification Officer, so far as is reasonably practicable, to determine applications to him within six months of their being made.

Section 7 provides exemption from the requirements of Part I of the Act for:-

- trade union federations which have no individuals as members;

- trade union federations which have individuals as members but only where all of the individual members are merchant seamen and a majority of them ordinarily reside outside the UK;

- newly formed or amalgamated unions for a period of one year from their formation;

- unions to which another union has transferred its engagements, but only for a period of one year from the date of transfer and only in respect of certain members who joined the principal executive committee as a consequence of the transfer.

Section 8 provides limited exemption from Part I of the Act in respect of certain voting members of trade union executives who are within five years of retirement age and who are full-time employees of the union. The exemption is from the five year limitation on the length of time for which a person may remain a voting member of an executive without being re-elected.

Section 9 defines certain expressions used in Part I of the Act and provides a transitional provision. The effect of the latter is that, following commencement of Part I, a voting member of the principal executive committee of a trade union will not be required to have been elected in accordance with the requirements of section 2 until five years have elapsed since the date of the election by virtue of which he currently holds his seat on the committee so long as that election took place prior to commencement. Where the election has occurred after commencement it will, however, need to have been conducted in conformity with the requirements in section 2.

Part II: Secret Ballots Before Industrial Action

Section 10 removes immunity from legal action in cases where trade unions do not hold a ballot before authorising or endorsing a call for a strike or any other form of industrial action which breaks or interferes with the contracts of employment of those called upon to take part in it. It also makes it a condition of immunity that a majority of those voting vote in favour of the action, that the ballot is held no more than four weeks before the industrial action begins and that the ballot satisfies the requirements of section 11.

Section 11 sets out the conditions which strike ballots must satisfy. Entitlement to vote must be given to those, and only those, whom it is reasonable for the union to believe will be called upon to take or to continue to take strike or other industrial action. Immunity will be lost if any member is called on to strike after being denied entitlement to vote. The question on the ballot paper must invite a "Yes" or "No" answer and specify whether the action involves a strike or other type of industrial action involving the voter in a breach of his contract of employment. So far as is reasonably practicable, every person entitled to vote:

(i) must be supplied with a ballot paper, or have one made available to him during his working hours (or immediately before or after his working hours) either at his workplace or at a place more convenient to him; and

(ii) must be given a convenient opportunity to vote by post or an opportunity to vote during his working hours (or immediately before or after his working hours) at his workplace or at a place more convenient to him or a choice between these two methods of voting.

The detailed results of the ballot must also be made known to those entitled to vote.

Part III - Political funds and objects

Section 12 provides that trade unions, which have in the past balloted their members under the provisions of the Trade Union Act 1913 to enable them to spend money on "political objects" (see note on section 17) must in future ballot their members at least every ten years if they wish to continue to do so. It means in particular that any of these trade unions which have not held a ballot in the nine years before 31 March 1985 will need to do so before 31 March 1986.

Section 13 updates the existing provisions in the 1913 Act which require the approval of the Certification Officer for political fund ballot rules. It provides in particular that the Certification Officer must satisfy himself that the rules provide for ballots either by post or at the workplace. The section also makes clear that ballot rules must be approved by the Certification Officer before each ballot and enables trade unions to adopt ballot rules by a decision of their principal executive committee in the case of the first review ballots to be held under the provisions of the Act (before 31 March 1986).

Section 14 deals with the assets and liabilities of the separate political funds which, under the 1913 Act, trade unions must have if they wish to spend on political objects. In cases where a union has lost its authority to spend on political objects, the section provides that only contributions to the political fund received before the loss of the authority may be added to the political fund, it prevents union members from being required to contribute to the fund, and it enables unions to transfer assets of their fund to another fund of the union without being in breach of trust or of their rules. The section also provides explicit statutory clarification that no political fund deficits may be paid off from union funds other than the political fund and that unions must not at any time transfer into their political funds money not appropriate to those funds.

Section 15 deals with the situation where a trade union no longer has the authority to spend on political objects. It provides that trade unions must immediately take steps to ensure that collection of the political levy ceases as soon as is practicable, and that any levy contributions which are received in the meantime may be paid into another fund of the union but must be refunded to union members on request. In cases where a union has held a ballot under the provisions of the Act and a new political fund resolution has not been passed, the section enables the union to continue to spend on political objects for not more than six months from the date of the ballot. It provides for union rules made to comply with the Trade Union Act 1913 to lapse and protects members previously contracted out of the levy from possible discrimination. It also provides that where unions have lost but subsequently re-established their authority to spend on political objects, they may not transfer into a political fund money received before the new authority was established but not held in the political fund on that date.

Section 16 gives a trade union member the right to apply to the High Court (Court of Session in Scotland) for a declaration that the union has failed to take the steps required by section 15 to ensure that collection of the political levy ceases. Where the court decides that the union has failed to do so, the section provides that it may make an order specifying the steps which the union must take and the timescale within which they must be taken. The section also makes provision for the enforcement of an order by members of the union.

Section 17 contains an updated definition of the aspects ("political objects") on which, under the 1913 Act, trade unions are only allowed to spend money if they have authority from their members to do so. The section deems any references to the old definition in trade union rules to be to the new definition and repeals section 1(2) of the Trade Union Act 1913 (definition of statutory objects) in consequence of the redefinition of political objects.

Section 18 places a duty on employers who have "check-off" arrangements for deducting trade union subscriptions from their employees' pay to vary the level of check-off deductions by the amount of the political levy if they are informed by a trade union member in writing that he is exempt from paying the levy or has put in a request to be exempt to his union.

Section 19 defines certain terms used in Part III of the Act and applies it with any necessary modifications to employers' associations.

Part IV - Supplementary

Section 20 enables the Secretary of State for Employment to make certain changes to the scheme, set up under section 1 of the Employment Act 1980 and subsequent regulations, which provides for payments out of public funds to be made by the Certification Officer towards the cost of postal ballots held by trade unions in respect of certain matters specified in the 1980 Act. The section extends the matters provided for in the 1980 Act so that, in respect of ballots conducted by post, the scheme will, once the necessary regulations are made, cover all election ballots required by Part I of the Act and political fund review ballots required by Part III (but not ballots on the establishment of a political fund). The scheme is already wide enough to cover ballots required by Part II of the Act where these are held by post.

Section 21 provides for any additional expenditure which may arise under the scheme established under section 1 of the Employment Act 1980 (funds for trade union ballots) as a consequence of the provisions of the Act.

Section 22 provides for commencement. Apart from section 4 of the Act, which comes into effect on Royal Assent, the provisions of Part I will come into effect on a day to be appointed by order. Part II will come into effect two months after Royal Assent. Part III will come into effect on 31 March 1985. The section further provides that Parts I and II and sections 18 and 20 of the Act do not extend to Northern Ireland and that the remainder of Part III does not apply to any trade union based in Northern Ireland.

CONFIDENTIAL

AT

File

Ref. No: EM(84)7

Date: 13.7.84.

A BRIEF FOR THE DEBATE ON THE

TRADE UNION BILL - LORDS AMENDMENTS,

HOUSE OF COMMONS,

TUESDAY, 24th JULY 1984

Conservative Research Department,
32 Smith Square,
London SW1
Tel. 222 9000

Enquiries on this brief to:
NIGEL HAWKINS
Ext. 2527

House of Lords Amendments to the Trade Union Bill

When the Trades Union Bill reached the House of Lords a group of peers, led by Lords Beloff, Renton and De La Warr, proposed an amendment making postal ballots compulsory for all the elections to union executives that are covered by the bill. This amendment was carried against the wishes of the Government which considered that it was impractical, that it represented an unexceptable degree of state interference in union affairs in contravention of our obligations to the ILO, and finally that it would have the undesirable effect of reducing the turnout in many union elections.

The Government, however, accepted the concerns over intimidation and malpractice that were voiced by the movers of the amendment. It therefore produced a series of amendments of its own to cover these points, and these amendments were subsequently carried, with the support of the Conservative peers, at Report Stage.

The Government's Amendments will have the following effect:

1 Elections to union executives will be by postal ballot, except where a union can provide for fair, secret, free and convenient workplace ballots.

Postal ballots will thus become the norm against which workplace ballots must be judged.

2 The conduct of both postal and workplace ballots is subject to challenge in the courts (see also 4 below). But where a court finds evidence of intimidation or malpractice in a workplace ballot and annuls the result, it must order a new <u>postal</u> ballot unless it considers this to be impractical.

The effect of this will be to make postal ballots mandatory in nearly all cases where a court finds that a workplace ballot was in breach of the Act's strict provisions regarding secrecy, fairness etc.

3 All unions must compile accurate registers of their members' names and addresses, and these must be kept up to date.

Once this is done a union that is ordered, by a court, to hold a postal ballot will not have the excuse that it is impractical to comply.

4 Union members will have an entirely new statutory right to complain to the Certification Officer (CO) - without cost or the need to prepare a formal legal case - that an election has not been conducted in accordance with the Act. The CO will have a duty to investigate the complaint, and where he finds evidence of malpractice or intimidation he will issue a declaration that the election was in breach of the Act. The complainant can then take this declaration to the High Court and seek an order to enforce it.

This provision will make it much easier and cheaper for a union member to pursue his case in the courts. The preliminary investigation and gathering of evidence will have been carried out by the CO whom the court will accept as an authoritative and responsible figure, it will have been done at no cost to the complainant and he will have been protected from possible intimidation or harassment.

5 Previously any court order relating to union elections under the bill was subject to a six month stay of execution. This has now been removed the time given to unions to comply will be up to the courts discretion.

This package will greatly advance the cause of postal ballots, but at the same time avoid the pitfalls of making them mandatory in all cases. They will be accepted as the standard against which workplace ballots should be judged, they will be enforced in nearly all cases where workplace ballots are declared invalid and the necessary registers for them will have to be maintained by all unions.

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SECRETARY OF STATE FOR EMPLOYMENT

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

9TH July 1984

Dear Andrew,

Attached are copies of the amendments to the Trade Union Bill which were agreed in principle by the Prime Minister and others last Thursday; they have been tabled today.

I am copying this to Oliver Letwin in the Policy Unit.

Yours sincerely,

Peter Smith

PETER SMITH
Private Secretary

10/14

TRADE UNION BILL

AMENDMENTS TO BE MOVED ON REPORT

BY THE EARL OF GOWRIE

(iii)

CLAUSE 2

Page 3, line 31, leave out subsection (6) and insert -

("(6) Every person who is entitled to vote at the election must -

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(6A) So far as is reasonably practicable, every person who is entitled to vote at the election must -

(a) have sent to him, at his proper address and by post, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and

(b) be given a convenient opportunity to vote by post.")

AFTER CLAUSE 2

Insert the following new Clause:-

("Modification of section 2 requirements.

.-(1) Where a trade union proposes to hold an election and is satisfied that there are no reasonable grounds for believing that the requirements of section 2 of this Act would not be satisfied in relation to that election if subsection (6A) of that section were to apply as modified by this section, it may proceed as if for paragraphs (a) and (b) of subsection (6A) there were substituted -

"(a) have made available to him -

(i) immediately before, immediately after, or during, his working hours; and

(ii) at his place of work or at a place which is more convenient for him;

or be supplied with, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates;

(b) be given -

(i) a convenient opportunity to vote by post (but no other opportunity to vote);

(ii) an opportunity to vote immediately before, immediately after, or during, his working hours and at his place of work or at a place which is more convenient for him (but no other opportunity); or

(iii) as alternatives, both of those opportunities (but no other opportunity).")

AFTER CLAUSE 2

Insert the following new Clause:-

("Register of members' names and addresses.

.-(1) It shall be the duty of every trade union -

(a) to compile and maintain a register of the names and proper addresses of its members; and

(b) to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(3) Any duty falling upon a branch under this section by reason of its being a trade union shall be treated as having been discharged to the extent to which the union of which it is a branch discharges that duty instead of the branch.")

CLAUSE 3

Page 4, line 32, after ("the") insert ("Certification Officer or to the")

Page 5, line 1, after ("the") insert ("Certification Officer or, as the case may be, the")

Page 5, line 19, at end insert -

("(7A) In making an enforcement order which requires the union to hold a fresh election, in any case where the application relates to an election which has been held, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the fresh election to be conducted -

(a) in accordance with such provisions as may be made by the order; and

(b) with a postal ballot (that is to say, as if section (Modification of section 2 requirements) were omitted from this Part).")

Page 5, line 23, leave out from ("of") to end of line 26 and insert ("such period as the court considers appropriate")

AFTER CLAUSE 3

Insert the following new Clause:-

("Proceedings before Certification Officer: supplementary provisions.

.-(1) Where the Certification Officer makes a declaration under section 3 of this Act and is satisfied that -

(a) steps have been taken by the union with a view to remedying the declared failure or securing that a failure of the same, or any similar kind as that of the declared failure does not arise on the part of the union; or

(b) the union has agreed to take such steps;

the Certification Officer shall, in making the declaration, specify those steps.

(2) On an application to him under section 3, the Certification Officer (whether or not he makes a declaration) shall give reasons for his decision in writing; and any such reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(3) The making of an application to the Certification Officer under section 3 shall not be taken to prevent the applicant, or any other person, from making a subsequent application to the court under that section in respect of the same matter.

(4) Where such a subsequent application is made, the court shall have due regard to any declaration, reasons or observations of the Certification Officer in the proceedings before him which are brought to the notice of the court in the proceedings before it.

(5) On an application made to him under section 3, the Certification Officer shall -

(a) make such enquiries as he thinks fit; and

(b) where he considers it appropriate, give the applicant and the trade union an opportunity to be heard.

(6) The Certification Officer may regulate the procedure to be followed on applications to him under section 3.")

CLAUSE 6

Page 8, line 5, at end insert -

("'the Certification Officer' means the officer appointed under section 7 of the Employment Protection Act 1975;")

Page 8, line 12, at end insert -

("'post' means a postal service which -

(a) is provided by the Post Office or under a licence granted under section 68 of the British Telecommunications Act 1981; or

(b) does not infringe the exclusive privilege conferred on the Post Office by section 66(1) of that Act only by virtue of an order made under section 69 of that Act; and")

Page 8, line 14, at end insert -

("'proper address' in relation to any member of a trade union, means his home address or any other address which he has requested the union in writing to treat as his postal address;")

Page 8, line 30, at end insert -

("and

'working hours', in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.")

FILE RAMAAE

R M

B/C Mr. Letwin

CC Master

SUBJECT

10 DOWNING STREET

From the Private Secretary

5 July, 1984

TRADE UNION BILL:POSTAL BALLOTS

The Prime Minister held a meeting today to discuss the Government's response following the adoption in the House of Lords of the amendment put down by Lord Beloff et al. Present were the Lord Chancellor, Lord President, the Lord Privy Seal, Chancellor of the Exchequer, Secretaries of State for Trade and Industry and Employment, Chancellor of the Duchy of Lancaster and Lord Gowrie. Also present were Sir Robert Armstrong, Mr. Gregson and Mr.Letwin.

The Secretary of State for Employment said he had spoken to the sponsors of the amendment to establish what form of Government amendment they would be prepared to accept. He had put forward the following proposals which were to be regarded as a package.

(i) There should be a presumption that ballots would be by post unless the union was satisfied workplace ballots were equally or more likely, in the circumstances of that union, to meet the requirements of secrecy, convenience, freedom from interference etc. specified in the Bill.

(ii) A new statutory right would be created for a union member to complain to the Certification Officer that an election had not been conducted in accordance with the Act. The CO would have a duty to investigate the complaint and a power to make a legal declaration if he found there had been a breach. The declaration would not itself be enforceable but, if the union

ignored it, the complainant could take it to Court which would have to take it into account in considering an application for an enforceable order.

(iii) There would be a new statutory duty on trade

unions to compile and keep up-to-date a register of their members' names and addresses (a member would not, however be required to give his home address for this purpose).

(iv) The amendment to be tabled at the Committee stage empowering the Court to order the holding of a postal ballot where a workplace ballot had fallen short of the Bill's requirements would be strengthened. The Court would be required to order the holding of a postal ballot unless it considered this impracticable as opposed to the discretionary power in the amendment as currently drafted.

The Secretary of State for Employment said these proposals put into workable form the principles embodied in the Beloff amendment. They were consistent with the Government's objective that the responsibility for enforcement should lie with those taking part in the elections and they would avoid putting the Government in the position of determining which unions should be exempt from postal ballots. Those whom he had consulted were prepared to support these amendments which he intended to table next Monday, for debate on Thursday.

In discussion it was pointed out that the original objection to mandatory postal ballots in all circumstances was that many unions did not have and could not establish adequate registers. If they were to be required to do this, this argument lost its force. Against this it was argued that the keeping of registers was not the only argument against universal postal ballots. It was noted the major advance represented by these proposals was the outlawing of branch ballots.

Your Secretary of State confirmed that the facility to approach the Certification Officer was an option - the complainant could still go direct to the Court if he wished. He could also challenge the decision by the union to go for workplace ballots as well as the results of elections held under that system.

Summing up, the Prime Minister said these proposals had been skilfully put together to turn the principles of the Beloff amendment into workable form. The Lord President was optimistic that sufficient support for the proposals could be obtained. He offered to speak to Lord Marsh. The Secretary of State for Employment stressed that good press coverage immediately after the amendments had been tabled

was essential and he would be giving extensive briefing next Monday to editors and correspondents. He would also speak to those, such as Aims of Industry, who had been pressing for universal postal ballots.

I am sending a copy of this letter to Richard Stoate (Lord Chancellor's Office), Janet Lewis-Jones (Lord President's Office), David Morris (Lord Privy Seal's Office), David Peretz (HM Treasury), Callum McCarthy (Department of Trade and Industry), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Mary Brown (Lord Gowrie's Office) and to Richard Hatfield and Michael Buckley (Cabinet Office).

(A. Turnbull)

D. Normington, Esq.,
Department of Employment

CONFIDENTIAL

cc AT

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5574
Switchboard 01-213 3000

P L Gregson Esq
Cabinet Office
70 Whitehall
LONDON SW1

5 July 1984

Dear Peter,

TRADE UNION BILL

When we spoke yesterday I told you that it was highly unlikely that my Secretary of State would be able to circulate any paper before the Ministerial meeting this evening. It is now entirely clear that he will not be able to do so. A series of meetings is still continuing and will do so throughout this afternoon. It cannot yet be certain that a firm conclusion will be reached.

2. However, I thought you might find it helpful to have the enclosed note of the ideas now being discussed, the objective being to substitute this package for the offending amendment. In effect, unions would remain free to hold workplace and semi-postal ballots, always providing that the tests of secrecy, etc were met whilst a further push would be given towards full postal balloting. A new investigatory role would be given to the Certification Officer.

3. It is of course possible that the package will be modified or more drastically changed in the course of the day. Agreement may prove impossible.

Yours sincerely,

Douglas.

D B SMITH

CONFIDENTIAL

A.

POSTAL BALLOTS

THE SECRETARY OF STATE'S PROPOSALS TO PUT TO THE PEERS

1. The Secretary of State's proposals are

(i) to recast the basic provisions of Clause 2 so there is a presumption that ballots will be postal unless the union is satisfied that workplace ballots are equally or more likely (in the circumstances of that particular union) to meet the requirements of secrecy, convenience, freedom from interference or constraint etc in the legislation.

(ii) to put an entirely new statutory duty on all trade unions to compile and keep up to date a register of their members names and addresses; and a second duty to report to the Certification Officer on the arrangements they have made to carry out this duty.

(iii) to reinforce the power for the High Court to order the holding of a postal ballot (in amendment 42 at Committee Stage): the Court would be required to order the holding of a postal ballot (unless it considered this wholly impracticable) in every case where a workplace ballot had fallen short of the Bill's requirements and the Court ordered the election to be rerun (amendment 42 gave the Court only a discretionary power to order a postal ballot).

(iv) an entirely new statutory right for a union member to complain to the Certification Officer (CO) - without cost or the need to prepare a case with legal formality - that an election has not been conducted in accordance with the Act; and a duty on the CO to investigate the complaint and a power for him to make a legal declaration if he finds that there has been a breach. The declaration would not be enforceable in itself but, if the union ignored it, the High Court would have to take it into account in considering any subsequent application for an enforceable order. (This right would run in parallel with the right of/ complaint directly

to the High Court already in the Bill, so that anyone wishing to go directly to the High Court could still do so).

(v) removal of the 6 month delay in obtaining an enforceable order from the High Court (now in Clause 3(8)).

2. The proposals represent an interlocking package of measures. In the first place, a presumption that ballots will be postal (i) together with the requirement for the High Court to order a postal ballot (where a workplace ballot has been found defective) (iii) will bring the Bill close to the Peers' demand that postal ballots should be the "norm" but that there should be a potentially quite wide scope for exempting workplace ballots where these are unavoidable or justifiable. Furthermore, the power for the High Court to order a postal ballot would operate as a form of "exemption in reverse" ie unions would know that if they were still using non-postal methods, they would have to get it right first time or face being compelled to re-run the election with a postal ballot.

3. Secondly, the register of names and addresses (ii) would remove the most significant argument of practicality which can be advanced against postal ballots, and in particular it would ensure that where a court ordered the holding of a postal ballot it would be possible for the union to do this in a short time (iii).

4. Finally, the new right of complaint to the Certification Officer (iv) will provide an informal and inexpensive means of seeking redress and, in effect, drawing public attention to breaches of the Act without putting the operation of

Part I of the Bill at risk of a union boycott (ie the route of complaint directly to the High Court will still be open and only the High Court will be able to make enforceable orders). The removal of the 6 month delay in the enforceability of High Court orders (v) will mean that a union will know that it will be at risk of early contempt proceedings if it makes no effort to remedy a breach of Part I of the legislation and will not simply be able to delay taking any action until the next election is anyway due.

AT.

Yes
to the P.M.
representations
A.

10 DOWNING STREET

At TU Bill mtg.

this pm — wh. I
hope you will allow
me to attend — TK
will probably announce
a compromise wording
close to his original
amendment: his negotiations
have gone 'well' so far.
Oliver 5/7

10 DOWNING STREET

Prime Minister

Whitings negotiations with the dissident Peers will continue tomorrow. He will not be providing a paper but will report orally on the outcome.

AT

4/7

MR TURNBULL 27 June 1984

TRADE UNION BILL

1. Tom King is worried that Trade Unions will use the Beloff amendment as a means of ridiculing the Government.

2. He points out that NALGO, for example, have already voted to ignore any legislation on the nature of ballots. Following the passage of the Bill, he thinks that NALGO may hold an unimpeachably proper work-place ballot for a Union election, certified by neutral observers, and with a high turnout. If the election is quashed in court on the grounds that it is not postal, Tom guesses that the Union will then hold a postal ballot, with the same result, but with a very small turnout because most members will have been told not to vote. This would provide the unions with a major propaganda victory.

3. These fears may be justified. Powerful unions in a monopoly position cannot always be brought to heel by the law: they will see the Bill as another part of the fight.

4. But the chance of future embarrassment does not make it sensible to reject the Beloff amendment. The amendment is in principle correct. And the Government would appear utterly foolish if it used Opposition help in the Commons to defeat an amendment favoured not only by its own supporters in the Lords but also - we have no doubt - by many Conservative MPs. (We believe that the business managers in both Houses are still under-estimating the extent of Conservative support for the Beloff position).

5. Nor do we favour Lord Cockfield's suggestion. A "semi-postal" ballot, in which members receive their voting papers at the work-place, would be open to as much abuse as an ordinary work-place vote. One can all too easily imagine a shop-steward "asking" a member whether he would "like to fill in his voting-card at work and have it posted for him". And the suggestion would probably fail to placate Lord Beloff.

6. We recommend that the Prime Minister should urge Tom King to satisfy Lord Beloff and his allies by accepting the principle of their amendment. The Government should draft an amendment that would reassert its parliamentary authority, including clauses to:

i. exempt Unions with peripatetic members from postal ballots;

ii. provide for a solicitor or accountant to certify the postal ballot, instead of setting up a new quango.

JMGAAK OLIVER LETWIN

ANNEX

AMENDMENT MOVED SUCCESSFULLY IN THE LORDS

"Every person who is entitled to vote at the election shall be allowed to vote without interference and have a fair and convenient opportunity to vote. // Such elections shall be held by postal ballot, with the voting papers being sent to all members recorded as being eligible to vote in the latest available central register of membership. Responsibility for the surveillance of the distribution, return and counting of voting papers shall be in the hands of an independent body."

LORD BELOFF
LORD RENTON
LORD MARSH
LORD HARRIS OF GREENWICH

CONFIDENTIAL

P.01324

PRIME MINISTER

The Trade Union Bill:
E(A)(84)35

BACKGROUND

Flag A — At their meeting on 12 June (E(A)(84)13th Meeting) the Sub-Committee agreed that Parliament should be invited to amend the Trade Union Bill so as to provide:

(i) that individual trade union members should be given the right, on request, to a postal vote in particular elections to union executives or, if they wished, on a permanent basis for all such elections; and

(ii) that in a case where a complaint had been made to the Court that election procedures had been in breach of the requirements in the Bill, there should be a power for the Court at its discretion to require a postal ballot.

The hope was that these amendments would satisfy those in the House of Lords who wanted compulsory postal ballots in all trade union elections.

2. This hope has been dashed. An amendment has been carried during Committee Stage in the House of Lords by 85 votes to 65 requiring postal ballots in all cases, and surveillance of elections by an independent body.

Flag B — 3. The memorandum by the Secretary of State for Employment (E(A)(84)35) discusses what should now be done.

It is clear that the Lords amendment is technically defective, omitting much essential detail, and could not be accepted as it stands. Mr King says that he would prefer to hold to the Sub-Committee's previous decision. However, he recognises that this might create serious problems in the House of Lords. He therefore puts forward alternative possibilities for consideration:

(a) Mandatory semi-postal ballots: ballot papers could be delivered either by post or at the work-place; but members would vote at home and return voting papers by post.

(b) Mandatory postal ballots subject to

- provision for exemption of some trade unions;

- provision for independent surveillance (which could also be incorporated in (a)).

4. Regarding the provision for exemption, Mr King argues for setting criteria in the Bill, rather than giving powers of decision to either a Minister or the Certification Officer. Regarding independent surveillance, Mr King argues for requiring that a solicitor or accountant must certify that a union has accurately recorded the number of voting papers sent out, the number returned, the number spoilt and the number of votes cast for each candidate. Without such certification, the ballot would be exposed to challenge, presumably by an aggrieved member of the trade union.

MAIN ISSUES

5. The main issues before the Sub-Committee are as follows.

(i) Do Ministers wish to stand firm on the decisions taken at E(A)(84)13th Meeting?

If they do, the remaining proposals in the paper will not need to be discussed. If Ministers take a different view, however, it will presumably be because they regard the Parliamentary difficulties as too severe. It will therefore not be possible to take final decisions until soundings have been taken in the House of Lords. The question for the Sub-Committee tomorrow will then be:

(ii) which of the alternative approaches discussed in paragraph 5 to 15 of E(A)(84)35 do they regard as most promising?

Stand firm

6. The Sub-Committee took their decisions on 12 June after full discussion and consideration of the alternatives. Even if it were technically satisfactory, the amendment passed in Committee by the House of Lords would both be impractical and require the setting up of a 'Quango' which Ministers and trade unions alike would find highly objectionable. For the Government to acquiesce in the imposition of impractical requirements at the insistence of the House of Lords could give the trade unions a much better rallying call than they have so far had during the passage of successive trade union measures. These are good arguments of substance for standing firm.

7. On the other hand, it is clear that to try to insist on the amendments previously agreed by the Sub-Committee is unlikely to be regarded as a satisfactory response by relevant opinion in the House of Lords. There could be serious implications for the timetable not only of the Bill itself but also of other parts of the Government's legislative programme.

Alternative approaches

8. Several possibilities and combinations are discussed in E(A)(84)35; the Sub-Committee will wish to measure them against the underlying objectives of the legislation. These are:

(a) to maximise the chances of a representative ballot;

(b) to minimise the chances of malpractice, intimidation and the like; while

(c) avoiding imposing clearly unreasonable or impractical requirements on the trade unions.

Semi-postal ballots

9. The presentation of this option in paragraphs 8 to 10 of E(A)(84)35 is a little unexpected. It is suggested that semi-postal ballots would help maintain the high level of turnout associated with ballots at the work-place, while not meeting fears about intimidation and malpractice at the work-place. But it seems more plausible that it is because in a work-place ballot voting is conducted at a convenient place in or around working hours that turnout tends to be high; and the distribution of voting papers at work, to be completed and returned by post, may well not do much to improve the low turnout associated with postal ballots. Against this, it is not clear why, if the actual voting takes place at home, there should be intimidation and malpractice in a semi-postal ballot.

10. These points apart, semi-postal ballots seem to go a long way towards meeting one of the main practical objections to mandatory postal ballots - the difficulty of distributing papers. It does not meet one of the

other main objections (that many trade unions have out of date records); but most members of the Sub-Committee are likely to regard this objection as having little force, so long as unions are given a reasonable time in which to improve their records.

Independence surveillance

11. The Sub-Committee may well agree that it would not be right to go further than Mr King proposes towards independent supervision of elections. But it is not clear that going as far as he proposes would have much advantage. It is not obvious that most solicitors or accountants would have great expertise in detecting malpractice in trade union elections: in practice, they would probably have little alternative to accepting figures provided for them by officers of the trade union. The figures which it is proposed that they would certify would have no bearing on the important question of intimidation. Any independent check on the conduct of a semi-postal ballot (which would allow distribution of papers at many scattered work-places) could well prove to be either impractical or prohibitively expensive.

Exemptions

12. It seems clear that if full postal ballots were made mandatory there would have to be provision for exemptions. The Sub-Committee are likely to accept readily enough that decisions on requests for exemption should not be taken by a Minister. It is less clear why the job should not be given to the Certification Officer, especially as it would presumably be possible to lay down criteria to guide him, whether in statute, statutory instrument, or a formal code of practice.

13. One point which the Sub-Committee may wish to clarify is whether Mr King's actual proposal - establishing criteria in the Bill - would allow a trade union to secure exemption in advance. This seems desirable, since otherwise a union would face the risk of having an election, conducted in good faith, subsequently over-turned. Would it be possible, say, for a union to apply to the Court for a declaration, in advance of an election, that it satisfied the criteria?

HANDLING

14. You will wish to invite the Secretary of State for Employment to open the discussion. The Minister of State, Privy Council Office (Lord Gowrie), who is responsible for the Bill in the House of Lords, will be able to give an assessment of sentiment in the Lords. The Lord Chancellor will also be able to comment on this, and to deal with any legal points.

CONCLUSIONS

15. You will wish the Sub-Committee to reach conclusions on the following.

(i) Should the Government stand firm on the amendments agreed by the Sub-Committee at their meeting on 12 June and invite Parliament to reject the amendment passed during Committee Stage in the House of Lords?

(ii) If not, which of the approaches discussed in paragraphs 5 to 15 of E(A)(84)35 seems most promising?

(a) Semi-mandatory postal ballots (allowing distribution of papers at the work-place, but requiring actual voting to be by post); or

(b) Mandatory postal ballots?

(iii) Should the favoured approach be coupled with a requirement for independent surveillance by an accountant or solicitor on the basis outlined in paragraph 15 of the memorandum?

(iv) If the Sub-Committee favour mandatory postal ballots, would any necessary exemptions be granted by

- a Secretary of State;
- the Certification Officer;
- criteria in the Bill?

Unless the Sub-Committee favour standing firm on their previous decision it will be necessary to invite the Secretary of State for Employment to report again in the light of his soundings of opinion.

PLG

P L GREGSON
Cabinet Office.

27th June, 1984

CONFIDENTIAL

CeNO

Chancellor of the Duchy of Lancaster

PRIME MINISTER

TRADE UNION BILL

I may have some difficulty over the meeting of E(A) tomorrow (Thursday) as crucial amendments to the Paving Bill will be taken to a Division in the course of Thursday afternoon.

But if I am prevented from coming, or have to leave the meeting, there are two points I would make:

First I very much agree with the Lord President and the Chief Whip that there would be great difficulty in restoring the Bill to its original form. Many - if not most - of our supporters who voted for us did so out of loyalty rather than conviction.

Second If we proceed with a proposal on the lines I suggested to Tom King, it would be better to avoid the phrase "semi-postal ballot" which suggests "half a loaf". It is in fact a "postal ballot with distribution of ballot papers through the post or at the workplace". If we described it in these terms I would think it would be more acceptable to our own supporters.

I am copying this to the other members of E(A) and to the Secretary of the Cabinet.

A.C.

A C

27 June 1984

CONFIDENTIAL

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CONFIDENTIAL

cc NO

PRIME MINISTER

Trade Union Bill

I have seen the memorandum E(A)(84)35 by the Secretary of State for Employment, but I shall not be able to attend the meeting of E(A) tomorrow at which the memorandum is to be discussed.

I do not think it would be wise to seek to reverse the amendment. I am in favour of seeking to get the agreement of Lord Beloff and his supporters to an amendment on the lines suggested by the Secretary of State for Employment.

I am sending copies of this minute to members of E(A) and to Sir Robert Armstrong.

how

27 June 1984

CONFIDENTIAL

SECRET

4

Prime Minister (4)
message of this is that changes in the law help but more important is to change the conditions in which union power grows and can be exploited.

PRIME ~~MINISTER~~ AT 15/6

15 June 1984

You asked what could be done about unreasonable trade union power.

General Principles

Some people join trade unions because the conditions in the industry in which they work are unattractive, there is a common feeling that only by sticking together will any improvements be made, and where managements are remote or unskilled in leading their people. Some join because they are under pressure to do so in order to get the job or in order to conform with their peer group. A minority join as part of a wider political struggle, and they seek to use unions as a means for extra Parliamentary opposition to the Government.

Problems in union relations can occur where the management are managing the industry badly. It can occur where a militant minority in the union set out to exploit the views and actions of the others, sometimes backed up by intimidation. Unions may have too much power over their members or over the employers.

General Remedies

There are several remedies:

SECRET

The first is to encourage structural change in the economy, hastening the day when more people are employed in new industries where conditions are better, where morale is higher, where relations between managers and men are improved, and where there is no tradition of heavy unionisation. This is already happening as a matter of economic and commercial logic. The Government can assist the process by disengaging more rapidly from heavily unionised failing activities, and by concentrating its economic policies on encouraging new enterprises and denationalising old businesses. This is the general stated intention of policy, but there are still great difficulties in making reality accord with intentions.

The second is to limit the industrial power given to those heavily-unionised sectors. The main culprit in delivering monopoly powers, and therefore monopoly bargaining levers to unions, is of course the Government. The main difficult monopolies are coal, gas, electricity, water, post and telecommunications. These are all Government-owned industries, where either they still possess a statutory right to monopoly powers, or a de facto monopoly power because the statutory provisions have only been changed recently. If you aggregate large numbers of workers into publicly-owned industries, stop them ever being fully involved in the management or ownership of those businesses, allow morale to sag, and allow unionisation to creep right up to the level just below the Board, you then have trouble.

SECRET

The first rule in tackling this problem is to bust monopolies. Even the threat under Keith Joseph's postal legislation to suspend the postal monopoly acts as a powerful incentive to the union side in the Post Office to behave more reasonably in the way in which unions in the segmented engineering industry would do. In the cases of gas and electricity where others now have the right to route gas through the pipelines or to generate power and supply through the grid, further action is needed as the monopoly is still intact de facto. Here the businesses will have to be split up to encourage more producers into the market.

As more competing businesses are created, market pressures will limit unreasonable monopoly union power. Different unions will spring up. This has already happened with open cast coalmining where everyone is in the TGWU and not in the NUM and for this reason open cast sites are still operating at full tilt.

The third is to encourage the moderates within the remaining unionised sections of the economy. You will have already given them heart by taking away the monopoly powers which are the main strength of the militant activists in the politicised unions. There are many other ways, however, to give them even more heart.

For too many years in this country we have been dogged by lousy management that has been insensitive to the legitimate aspirations of its workforce, has failed to take an interest in the development of its employees and in a thousand little ways has encouraged the existence or retention of a "them" and "us" attitude. The Government can help change the tone. The more successful businesses that are growing up are ones which do take the views and wishes of their workforce more into account.

Changes in the law help, but of itself changes in the law cannot change attitudes. The 1980 and 1982 Acts have given managers an opportunity to tackle secondary picketing. They have been particularly helpful in strengthening management resolve in the private sector, and in limiting the ability of unions to tyrannise their private sector membership.

There are clearly cases where at the moment people are brought out on strike because their views are not polled by their unions and where the existence of a mandatory strike ballot would reveal the disagreement within the union and maybe prevent official action. This is why this is a necessary development. However, there are probably even more cases where people do agree on the desirability of strike action and the problem before management is to find ways of making their workers happier.

To further this end the Government does have to be radical in its small business policies, in its share option and employee option policies and in its privatisation programme. All these devices are ways of extending the share owning habit which in its turn is the best way of creating a community of interest between employers and employees. Through shared ownership comes partnership: through a segregation of ownership, control and worker may well come conflict even with the best laws in the world.

Recommendation

1. Strengthen the law (as intended) to ensure that members are committed before strikes.

2. Concentrate on the structural problems of the large public monopolies:
   (a) break all monopoly powers;
   (b) split up the businesses - review electricity now that you have decided on gas;
   (c) encourage competitors.

3. Continue the run-down in Government support for ailing heavily-unionised activities.

4. Press on with wider share ownership through tax, privatisation and savings policies.

5. Seek good-quality managers for the public sector through appointments and remuneration policy, who will inculcate company not union loyalty.

JOHN REDWOOD

Trade Union Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill places a duty on every trade union, with the exception of certain trade union federations, to ensure that all voting members of the principal executive committee of the union are elected by secret ballot. It specifies the requirements which must be satisfied in relation to such elections and provides a right of complaint to the courts for union members when a union fails to comply with Part I. It also provides that immunity from legal action will be removed from trade unions which call a strike (or other industrial action which puts those taking part in it in breach of their contracts of employment) without first holding a secret ballot of the members concerned. Further provisions make the continued expenditure by a trade union in furtherance of political objects dependent on an affirmative ballot of the members of the union every ten years and amend the definition of political objects in section 3(3) of the Trade Union Act 1913.

Clause 1 places a duty on a trade union to ensure that every voting member of its principal executive committee owes his position on the executive at any given time to an election held within the previous five years and conducted in conformity with the requirements of *Clause* 2. The union is placed under a similar duty in relation to the holder of any position in the union which carries with it a vote on the principal executive committee.

Clause 2 provides that all the members of a trade union are to be entitled to vote in an election for a voting member of the principal executive committee unless they are members of certain specified groups. It also provides that unions may in their rules confine the electorate in elections of certain specified voting members of the principal executive committee to members in particular occupations, geographical areas or separate sections within the union, or to classes determined by reference to a combination of these factors. The clause provides that, so far as is reasonably practicable, those voting are to be supplied with a voting paper and given a fair and convenient opportunity to vote in secret without direct cost to themselves; that voting in the election is to be by the marking of a voting paper and without interference or constraint; and that every member of the union is entitled not to be unreasonably excluded from standing as a candidate at the election unless he belongs to a class of members all of whom are excluded from candidature under the union's rules. The clause also makes provision in relation to overseas members.

Clause 3 enables a member of a trade union to apply to the High Court or, in Scotland, to the Court of Session for a declaration that the union has failed to comply with the requirements

in *Clauses* 1 and 2. It provides that the court, where it makes such a declaration, will in addition normally make an order imposing requirements on the union and, where these requirements oblige the union to take specified steps, stating a period of not less than six months within which these steps must be taken. If at the end of that period the union has failed to take the required steps, the clause provides that any member of the union who was also a member when the order was made can pursue enforcement proceedings.

Clause 4 exempts from Part I certain trade unions which are federations and also exempts newly formed trade unions (including unions formed by amalgamation) for a period of one year following their formation. There is a similar temporary exemption in relation to certain voting members of the principal executive committee of a trade union to which another trade union has transferred its engagments.

Clause 5 provides limited exemption from Part I of the Bill in respect of certain voting members of trade union executives who are within five years of retirement age and who are full-time employees of the union. The exemption is from the five year limitation on the length of time for which a person may remain a voting member of an executive without being re-elected.

Clause 6 contains provisions as to interpretation and a transitional provision. The effect of the latter is that, following commencement of Part I, a voting member of the principal executive committee of a trade union will not be required to have been elected in accordance with the requirements of *Clause* 2 until five years have elapsed since the date of the election by virtue of which he currently holds his seat on the committee so long as that election took place prior to commencement. Where the election has occurred after commencement it will, however, need to have been conducted in conformity with the requirements in *Clause* 2.

Clause 7 removes from trade unions the immunities from legal action provided by section 13 of the Trade Union and Labour Relations Act 1974 if they do not hold a ballot before authorising or endorsing (within the terms of section 15 of the Employment Act 1982) a call for strike or other industrial action which has the effect of breaking, or otherwise interfering with, the contracts of employment of those taking part in it. It also has the effect that immunity is removed if the ballot is held more than four weeks before the industrial action begins or if it does not satisfy the requirements of *Clause* 8.

Clause 8 specifies certain requirements which strike ballots must satisfy. It defines the constituency as those members whom it is reasonable for the trade union to believe will be called on to take, or to continue to take, industrial action which breaks, or otherwise interferes with, their contracts of employment; and provides that, if any members at the time of the ballot are denied their entitlement to vote and are subsequently called on to take such action, the requirements will not have been satisfied. It contains requirements concerning the nature of the question to be asked on the ballot paper and provides that, so far as is reasonably practicable, those voting are to be supplied with a voting paper and given a fair and convenient opportunity to vote in secret without direct cost to themselves; that voting is to be by the marking of a ballot paper and without interference or constraint; and that those voting are informed of the results. The clause also makes provision in relation to overseas members.

Clause 9 provides that trade unions, which have adopted resolutions under the provisions of the Trade Union Act 1913 to enable them to spend money in furtherance of the political objects defined in that Act, must have new resolutions passed by a ballot of their members at least every ten years if they wish to continue to do so. It means in particular that any such trade unions which have not held a ballot in the nine years before commencement of Part III will need to do so within twelve months of that date.

Clause 10 makes certain provisions relating to the rules which trade unions must adopt for ballots under the 1913 Act, and which under that Act must comply with certain requirements concerning secrecy and the right to vote; and relating to the rules which trade unions must adopt under the 1913 Act for giving notice to their members following the adoption of a political fund resolution of their right to be exempt from contributing to the political fund. It provides that ballot rules must be approved by the Certification Officer before each ballot. The clause also makes provision in relation to overseas members.

Clause 11 makes provision with respect to the assets and liabilities of political funds. It provides that no assets of a trade union other than political fund assets shall be used to discharge any liability of a political fund, and that assets which do not relate to the political fund may not be added to that fund.

Clause 12 deals with the position where a resolution is no longer in force. It enables trade unions, in cases where a ballot has been held under the provisions of the Bill as a result of which a resolution has failed to pass, to continue to incur expenditure on political objects for not more than six months from the date of the ballot. The clause also provides that trade unions must take steps to ensure that the collection of contributions for the political fund ceases as soon as practicable; that any contributions which are received may be paid into any other fund of the union; and that refunds of any contributions collected must be made to union members who apply for them. It also deals with trade union rules adopted under the 1913 Act.

Clause 13 gives a trade union member the right to apply to the court for a declaration that the union has failed to take the steps required by *Clause* 12 to ensure that collection of contributions ceases. Where the court decides that the union has failed to do so, the clause provides that it may make an order specifying the steps which the union must take and the time within which they must be taken. The clause also makes provision for the enforcement of an order by members of the union.

Clause 14 provides that when, after a resolution has ceased to have effect, a new resolution is subsequently adopted the trade union may not transfer into the political fund any money acquired before the resolution was passed.

Clause 15 contains a revised definition of the political objects expenditure on which must come from the political fund of a trade union. The clause deems any references to the present definition in existing resolutions and rules of trade unions to be to the new definition.

Clause 16 contains provisions as to the interpretation of Part III and applies it, with necessary modifications, to employers' associations.

Clause 17 provides for any increased expenditure under section 1 of the Employment Act 1980 (payments in respect of secret ballots) attributable to provisions of the Bill to be paid out of money provided by Parliament.

Financial effects

The provisions on secret ballots for trade union elections and strike ballots have no direct public expenditure implications. However, such ballots may—depending on the method by which they are conducted—qualify under the Scheme contained in the Funds for Trade Union Ballots Regulations 1980 (S.I. No. 1252), as amended, in which case payments may be claimed towards the postal and certain other costs of a ballot. It is estimated that expenditure under the Scheme could rise in consequence by up to £1m annually. In addition, there is likely to be a small increase in the expenses of the Certification Office arising out of increased claims under the above-mentioned Scheme and out of the provisions of Part III of the Bill relating to ballots on trade unions' political funds. There are likely to be no other significant effects on public expenditure.

Effect of the Bill on public service manpower

The increased workload at the Certification Office referred to above is likely to require a small increase in the staffing requirements of the Office. There are likely to be no other significant effects on public service manpower.

Trade Union Bill

ARRANGEMENT OF CLAUSES

PART I

SECRET BALLOTS FOR TRADE UNION ELECTIONS

PART II

SECRET BALLOTS BEFORE INDUSTRIAL ACTION

PART III

POLITICAL FUNDS AND OBJECTS

Resolutions under 1913 *Act*

Political objects

Interpretation

PART IV

SUPPLEMENTARY

A

BILL

INTITULED

An Act to make provision for election to certain positions in trade unions and with respect to ballots held in connection with strikes or other forms of industrial action; and to amend the law relating to expenditure by trade unions on political objects. A.D. 1984.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

SECRET BALLOTS FOR TRADE UNION ELECTIONS

Duty of trade union to hold elections for certain positions.

1.—(1) Subject to the following provisions of this Part of this Act, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure—

(*a*) that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member

PART I

at an election in relation to which section 2 of this Act has been satisfied; and

(*b*) that no person remains such a member for a period of more than five years without being re-elected at such an election.

(2) Where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position.

(3) Where a person—

(*a*) was a voting member of the principal executive committee of a trade union immediately before an election; and

(*b*) is not elected at that election as such a member or, as the case may be, as the holder of a position in the union by virtue of which the holder is such a member;

nothing in this section shall be taken to require the union to prevent him from continuing to be such a member, or continuing to hold that position, at any time before the expiry of such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

(4) Any term or condition upon which a person is employed by a trade union shall be disregarded in so far as it would otherwise prevent the union from complying with any provision of this Part.

(5) In this section "principal executive committee", in relation to a trade union, means the principal committee of the trade union exercising executive functions, by whatever name it is known.

(6) Nothing in this Part shall affect the validity of anything done by the principal executive committee of a trade union.

(7) For the purposes of this section a person is a voting member of the principal executive committee of a trade union if he is entitled in his own right to attend meetings of the committee and to vote on matters on which votes are taken by the committee (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

Requirements to be satisfied to relation to elections.

2.—(1) Entitlement to vote at the election must be accorded equally to all members of the trade union in question other than those who belong to a class—

(*a*) which is, or which falls within, one or other of the classes mentioned in subsection (2) below; and

(*b*) all the members of which are excluded by the rules of the union from voting at the election.

PART I

(2) The classes are—

(*a*) members who are not in employment;

(*b*) members who are in arrears in respect of any subscription or contribution due to the union;

(*c*) members who are apprentices, trainees or students or new members of the union.

(3) Where the conditions mentioned in subsection (4) below are satisfied, nothing in subsection (1) above shall be taken to prevent a trade union from restricting entitlement to vote at an election to members of the union who fall within—

(*a*) a class determined by reference to any trade or occupation;

(*b*) a class determined by reference to any geographical area;

(*c*) a class which is by virtue of the rules of the union treated as a separate section within the union; or

(*d*) a class determined by reference to any combination of the matters mentioned in paragraphs (*a*), (*b*) and (*c*) above.

(4) The conditions are that—

(*a*) entitlement to vote is restricted by the rules of the union;

(*b*) no member of the union is denied entitlement to vote at all elections held for the purposes of this Part otherwise than by virtue of belonging to a class mentioned in subsection (1) above.

(5) The method of voting must be by the marking of a voting paper by the person voting.

(6) Every person who is entitled to vote at the election shall be allowed to vote without interference or constraint and shall, so far as is reasonably practicable,—

(*a*) be supplied with, or have made available to him at a time and place convenient to him, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates;

(*b*) be given a fair and convenient opportunity to vote; and

(*c*) be allowed to vote without incurring any direct cost to himself.

(7) The ballot shall be conducted so as to secure that—

(*a*) so far as is reasonably practicable, those voting do so in secret;

PART I

(*b*) the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting (nothing in this paragraph being taken to prevent the system of voting used for the election being a single transferable vote); and

(*c*) the votes given at the election are fairly and accurately counted.

(8) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election.

(9) No candidate at the election shall be required, whether directly or indirectly, to be a member of a political party.

(10) A member of a trade union shall not be taken to have been unreasonably excluded from standing as a candidate at the election if he has been excluded on the ground that he belongs to a class all the members of which are excluded by the rules of the union.

(11) For the purposes of subsection (10) above, any rule which provides for a class to be determined by reference to those members which the union chooses to exclude from so standing shall be disregarded.

(12) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at the election; and nothing in the preceding provisions of this section shall apply in relation to any overseas member or in relation to any vote cast by such a member.

(13) Nothing in this section shall be taken to require a ballot to be held at an uncontested election.

Remedy for failure to comply with Part I.

3.—(1) Any person who claims that a trade union has failed to comply with one or more of the provisions of this Part may apply to the court for a declaration to that effect if—

(*a*) in a case where the application relates to an election which has been held, he was a member of the trade union at the date when the election was held and is such a member at the time when the application is made; and

(*b*) in any other case, he is a member of the union at the time when the application is made.

(2) An application relating to an election which has been held must be made before the expiry of the period of one year beginning with the date on which the result of the election is announced by the trade union.

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(3) On an application under this section the court may make or refuse to make the declaration asked for.

(4) A declaration made under this section shall specify the provisions with which the trade union has failed to comply.

(5) Where the court makes such a declaration it shall also make an enforcement order unless it considers that to do so would be inappropriate.

(6) In this section "enforcement order" means an order which imposes on the trade union one or more of the requirements mentioned in subsection (7) below.

(7) The requirements are—

(*a*) to secure the holding of such an election as may be specified in the order;

(*b*) to take such other steps to remedy the declared failure as may be so specified;

(*c*) to abstain from such acts as may be so specified with a view to securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the trade union.

(8) An enforcement order under this section which imposes requirements by virtue of paragraph (*a*) or (*b*) of subsection (7) above shall be so expressed as to require the trade union to comply with those requirements before the expiry of—

(*a*) the period of six months beginning with the date on which it is made; or

(*b*) such longer period as it may specify.

(9) The remedy of any person for a failure of a trade union to comply with one or more of the provisions of this Part shall be by way of application under this section and not otherwise.

(10) Where an enforcement order has been made, any person who satisfies the requirements of subsection (11) below shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.

(11) The requirements are that—

(*a*) he is a member of the union at the time when the proceedings to enforce obedience to the order are begun; and

(*b*) he was such a member at the time when the order was made.

(12) The court having jurisdiction for the purposes of this section shall be the High Court or, in Scotland, the Court of Session.

PART I
Exemption for certain trade unions.

4.—(1) This Part does not apply to any trade union which—

(*a*) falls within section 28(1)(*b*) of the 1974 Act (unions which consist wholly or mainly of, or of representatives of, constituent or affiliated organisations); and

(*b*) has no members (other than such representatives) who are individuals.

(2) Subsection (1)(*b*) above shall not apply where—

(*a*) a trade union has members ("special members") who are individuals but who are not such representatives as are mentioned in subsection (1)(*a*) above; and

(*b*) the conditions mentioned in subsection (3) below are satisfied.

(3) The conditions are that—

(*a*) all of the special members are merchant seamen;

(*b*) a majority of the special members are ordinarily resident outside the United Kingdom.

(4) This Part does not apply to a trade union at any time when the conditions mentioned in subsection (5) below are satisfied in relation to it.

(5) The conditions are that—

(*a*) the trade union was formed after the commencement of this Part; and

(*b*) not more than one year has elapsed since its formation.

(6) In subsection (5) above "formed" includes formed by amalgamation under the 1964 Act.

(7) Where a trade union is formed otherwise than by amalgamation under the 1964 Act, the date of its formation shall be taken, for the purposes only of this section, to be the date on which the first members of its principal executive committee are first appointed or, as the case may be, elected to that committee.

(8) Where one trade union (the "transferring union") has transferred its engagements to another trade union (the "receiving union") then, during the period of one year beginning with the date of the transfer, this Part shall not apply in relation to any person who—

(*a*) was a member of the principal executive committee of the transferring union immediately before the transfer; and

(*b*) became a member of the principal executive committee of the receiving union in accordance with the instrument of transfer.

PART I
Exemption for certain persons nearing retirement.

5.—(1) Section 1(1)(*b*) of this Act does not apply to any voting member of the principal executive committee of a trade union at any time when the conditions mentioned in subsection (2) below are satisfied in relation to him.

(2) The conditions are that—

(*a*) he holds his position as such a member by virtue of having been elected (whether as such a member or as the holder of another position in the union) at an election in relation to which section 2 of this Act has been satisfied;

(*b*) he is—

(i) in the case of a person who has been elected as such a member, a full-time employee of the union by virtue of being such a member; or

(ii) in the case of a person who has been elected as the holder of another position in the union by virtue of which he is such a member, a full-time employee of the union by virtue of holding that other position;

(*c*) he will reach retirement age within five years;

(*d*) he is entitled under the rules of the union to continue as the holder of the position in question until retirement age without standing for re-election;

(*e*) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years; and

(*f*) the period between the day on which the election referred to in paragraph (*a*) above took place and the day immediately preceding that on which paragraph (*c*) above is first satisfied does not exceed five years.

(3) For the purposes of this section "retirement age", in relation to any person, means the earlier of—

(*a*) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question;

or

(*b*) the age which is for the time being pensionable age for the purpose of the Social Security Act 1975. 1975 c. 14.

(4) Where the election referred to in paragraph (*a*) of subsection (2) above was held before the commencement of this Part, that paragraph shall apply as if it did not require section 2 of this Act to be satisfied in relation to that election.

PART I

Interpretation of Part I and transitional provision.

1964 c. 24.

1974 c. 52.

6.—(1) In this Part—

"the 1964 Act" means the Trade Union (Amalgamations, etc.) Act 1964;

"the 1974 Act" means the Trade Union and Labour Relations Act 1974;

"merchant seaman" means a person whose employment, or the greater part of it, is carried out on board seagoing ships;

"overseas member", in relation to a trade union, means a member of the union (other than a merchant seaman) who is outside Great Britain throughout the period during which votes may be cast;

"principal executive committee" has the meaning given in section 1(5) of this Act;

"section", in relation to a trade union, includes any part of the union which is itself a trade union;

"single transferable vote" means a vote capable of being—

(*a*) given so as to indicate the voter's order of preference for the candidates; and

(*b*) transferred to the next choice—

(i) when it is not required to give a prior choice the necessary quota of votes; or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates;

"trade union" has the same meaning as it has in the 1974 Act by virtue of section 28; and

"voting member" shall be construed in accordance with section 1(7) of this Act.

(2) For the purposes of this Part, the date on which a contested election is held is, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

(3) Where a voting member of the principal executive committee of a trade union was elected as such a member, or as the case may be as the holder of a relevant position, at an election held within the period of five years ending with the commencement of this Part—

(*a*) section 1(1)(*a*) of this Act shall have effect, as if it did not require section 2 of this Act to be satisfied in relation to that election; and

(*b*) the period of five years mentioned in section 1(1)(*b*) shall be calculated from the date of that election.

(4) In subsection (3) above "relevant position" means a position in the union by virtue of which the holder is a voting member of the principal executive committee of the union.

PART I

PART II

SECRET BALLOTS BEFORE INDUSTRIAL ACTION

Industrial action authorised or endorsed by trade union without reference to a ballot.

7.—(1) Nothing in section 13 of the 1974 Act shall prevent an act done by a trade union without reference to a ballot from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break his contract of employment or to interfere with its performance.

(2) Nothing in section 13 of the 1974 Act shall prevent an act done by a trade union from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break a commercial contract or to interfere with its performance where—

(*a*) one of the facts relied upon for the purpose of establishing liability is that the union induced another person to break his contract of employment or to interfere with its performance; and

(*b*) by virtue of subsection (1) above, nothing in section 13 of the 1974 Act would prevent the act of inducement referred to in paragraph (*a*) above from being actionable in tort.

(3) For the purposes of subsection (1) above, an act shall be taken as having been done with reference to a ballot if, but only if—

(*a*) the trade union has held a ballot in respect of the strike or other industrial action in the course of which the breach or interference referred to in subsection (1) above occurred;

(*b*) the first authorisation or endorsement of any relevant act, and in the case of an authorisation the relevant act itself, took place after the date of the ballot and before the expiry of the period of four weeks beginning with that date; and

(*c*) section 8 of this Act has been satisfied in relation to the ballot.

(4) In this Part—

"the 1974 Act" means the Trade Union and Labour Relations Act 1974; 1974 c. 52.

PART II

1982 c. 46.

" authorisation or endorsement " means an authorisation or endorsement of an act which, by virtue of section 15 of the Employment Act 1982, causes the act to be taken, for the purposes mentioned in that section, to have been done by the trade union ;

" commercial contract " means any contract which is not a contract of employment ;

" contract of employment " has the same meaning as it has in the 1974 Act by virtue of section 30 ;

" the date of the ballot " means, in the case of a ballot in which votes may be cast on more than one day, the last of those days ;

" relevant act " means an act (done in the course of the action mentioned in subsection (3)(*a*) above) of inducing a person to break his contract of employment or to interfere with its performance ;

" tort ", as respects Scotland, means delict ;

" trade union " has the same meaning as it has in the 1974 Act by virtue of section 28 ;

and any reference to a breach or interference occurring in the course of a strike or other industrial action includes a reference to a breach or interference which, taken together with any corresponding action relating to other contracts of employment, constitutes that action.

(5) An act shall not be taken to have been done without reference to a ballot solely on the ground that it is inconsistent with the result of the ballot.

Requirements to be satisfied in relation to ballots.

8.—(1) Entitlement to vote in the ballot must be accorded—

(*a*) equally, to all those members of the trade union who it is reasonable at the time of the ballot for the union to believe will be called upon in the strike or other industrial action in question to act in breach of, or to interfere with the performance of, their contracts of employment or, as the case may be, to continue so to act ; and

(*b*) to no others.

(2) Where a person who was a member of a trade union at the time when a ballot was held for the purposes of this Part—

(*a*) was denied entitlement to vote at the ballot ; and

(*b*) is induced by the union, in the course of the action in respect of which the ballot was held, to break his contract of employment or to interfere with its performance (" in the course of " having the same meaning as in section 7 of this Act) ;

PART II

this section shall be taken not to have been satisfied in relation to that ballot.

(3) The method of voting in the ballot must be by the marking of a voting paper by the person voting.

(4) The voting paper must contain at least one of the following questions—

(*a*) a question (however framed) which requires the voter to say, by answering " Yes " or " No ", whether he is prepared to take part, or as the case may be to continue to take part, in a strike involving him in a breach of his contract of employment ;

(*b*) a question (however framed) which requires the voter to say, by answering " Yes " or " No ", whether he is prepared to take part, or as the case may be to continue to take part, in industrial action falling short of a strike but involving him in a breach of his contract of employment.

(5) Where the industrial action in respect of which a ballot has been held is, or includes, a strike, this section shall not be taken to have been satisfied in relation to the ballot unless the voting paper contained the question referred to in subsection (4)(*a*) above.

(6) Every person who is entitled to vote in the ballot shall be allowed to vote without interference or constraint and shall, so far as is reasonably practicable—

(*a*) be supplied with a voting paper or have a voting paper made available to him at a time and place convenient to him ;

(*b*) be given a fair and convenient opportunity to vote ; and

(*c*) be allowed to vote without incurring any direct cost to himself.

(7) The ballot shall be conducted so as to secure that—

(*a*) so far as is reasonably practicable, those voting do so in secret ; and

(*b*) the votes given in the ballot are fairly and accurately counted.

(8) As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—

(*a*) votes cast in the ballot ;

(*b*) individuals voting " Yes " ;

(*c*) individuals voting " No " ; and

(*d*) spoiled voting papers.

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(9) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in the ballot; and nothing in subsections (1) to (7) above shall apply in relation to any overseas member or in relation to any vote cast by any such member.

(10) Where overseas members have voted in the ballot, subsection (8) above shall be read as requiring the information in question to be provided to all those entitled to vote in the ballot other than overseas members and to distinguish between overseas members and other members.

(11) In this section—

"overseas member" has the same meaning as is given in section 6(1) of this Act; and

"strike" means any concerted stoppage of work.

PART III

POLITICAL FUNDS AND OBJECTS

Resolutions under the 1913 *Act*

Political fund resolutions: periodical ballots. 1913 c. 30.

9.—(1) In this Part of this Act references to a "resolution" are to a resolution under section 3 of the 1913 Act (restriction on application of trade union funds for certain political purposes).

(2) A resolution shall, if it has not previously been rescinded, cease to have effect—

(*a*) on the expiry of the period of ten years beginning with the date (whether before or after the commencement date) of the ballot on which it was passed; or

(*b*) if a ballot is held before the expiry of that period and the result of the ballot is that a new resolution is not passed, on the expiry of the period of two weeks beginning with the date of the ballot.

(3) For the purposes of this section, any resolution which—

(*a*) is in force on the commencement date; and

(*b*) was passed more than nine years before that date;

shall be deemed to have been passed nine years before that date.

(4) Where a trade union holds a ballot at a time when a resolution (the "old resolution") is in force in respect of that union and the result of the ballot is that a new resolution is passed, the old resolution shall be treated as rescinded on the passing of the new resolution.

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(5) Where two or more trade unions have amalgamated under the 1964 Act and by virtue of section 5(4) of that Act the amalgamated union is treated as having passed a resolution immediately after the amalgamation, that resolution shall, for the purposes of this section, be treated as having been passed on the date of the earliest of the ballots on which the resolutions in force immediately before the amalgamation with respect to the amalgamating unions were passed.

Ballots: suppementary provisions.

10.—(1) Where it is proposed to hold a ballot, section 4(1) of the 1913 Act (ballots to be in accordance with rules approved by the Certification Officer) shall have effect so as to require the rules of the trade union to be approved in relation to the proposed ballot notwithstanding that approval has been given under that section in relation to a ballot previously held by that union.

(2) If the Certification Officer is satisfied, and certifies, that rules made for the purposes of complying with the provisions of section 4(1) or section 5(1) of that Act (rules relating to giving to members of notice of right to be exempt from contributing to political fund) have been approved by the principal executive committee of a trade union, those rules shall have effect as rules of the trade union for the purposes of section 4(1) or, as the case may be, 5(1) as it applies in relation to the first review, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(3) Subsection (2) above applies only where a resolution was in force with respect to the union at the commencement date.

(4) In subsection (2) above "first review" means a ballot which—

(*a*) is held before the expiry of the period of one year beginning with the commencement date; and

(*b*) is the first ballot held during that period.

(5) Where a resolution is in force with respect to a trade union—

(*a*) rules made by the union for the purpose of complying with section 4(1) of the 1913 Act in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot; and

(*b*) rules made by the union for the purposes of complying with section 5(1) of the 1913 Act may provide for notice not to be given by the union to its overseas members.

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(6) Where subsection (5) above applies—

(*a*) in a case where rules have been made by virtue of paragraph (*a*) of subsection (5), the Certification Officer shall not withhold his approval under section 4(1) of the 1913 Act on the ground that the rule in question makes such provision in relation to overseas members of the union as is mentioned in subsection (5); and

(*b*) in a case where rules have been made by virtue of paragraph (*b*) of subsection (5), section 5(1) of the 1913 Act shall be taken not to require notice to be given by the union to its overseas members.

(7) Where, following a notice given by a trade union under subsection (1) of section 5 of the 1913 Act on the passing of a new resolution, a member of the union gives notice of his objection to contribute to the political fund of the union, subsection (2) of that section (effective date of exemption) shall have effect as if the words from " or, in that case " to the end were omitted.

(8) In this section—

" new resolution ", in relation to a trade union, means a resolution passed on a ballot held at a time when a resolution is in force in respect of that union; and

" overseas member " has the same meaning as is given in section 6(1) of this Act.

Assets and liabilities of political fund.

11.—(1) At any time when there is a resolution in force with respect to a trade union, no property shall be added to the union's political fund other than—

(*a*) sums representing contributions made to the fund by members of the union or by any person other than the union itself; and

(*b*) property which accrues to the fund in the course of administering the assets of the fund.

(2) At any time when there is no resolution in force with respect to a trade union which has a political fund—

(*a*) subject to section 12(5) of this Act, no property shall be added to the fund other than that which accrues to the fund in the course of administering the assets of the fund;

(*b*) no rule of the union shall be taken to require any member of the union to contribute to the fund;

(*c*) the union may, notwithstanding any of its rules or any trusts on which the political fund is held, transfer the whole or any part of the fund to such other fund of the union as it thinks fit.

PART III

(3) No liability of a political fund shall be discharged out of any other fund of the trade union (whether or not any asset of that other fund has been charged in connection with that liability).

(4) Subsection (3) above shall have effect notwithstanding any term or condition on which any liability was incurred, but shall not have effect in relation to any liability incurred before the passing of this Act.

(5) In section 6 of the 1913 Act, the words from "and in that case", where they first occur, to "that fund" (which are superseded by subsection (1) above) are hereby repealed.

Position where resolution has ceased to have effect.

12.—(1) Where on the holding of a ballot a resolution has ceased to have effect by virtue of subsection (2) of section 9 of this Act, in the circumstances mentioned in paragraph (*b*) of that subsection, the trade union may at any time—

(*a*) when the political fund is not in deficit; and

(*b*) before the expiry of the period of six months beginning with the date of the ballot;

make payments out of the political fund as if the resolution were still in force.

(2) Nothing in subsection (1) above shall be taken to authorise any payment which would cause the political fund to be in deficit.

(3) On a resolution ceasing to have effect, the trade union—

(*a*) shall take such steps as are necessary to ensure that the collection of contributions to the political fund is discontinued as soon as is reasonably practicable; and

(*b*) may, notwithstanding any of its rules, pay any such contribution which is received by it after the date of cessation into any of its other funds.

(4) Where a resolution has ceased to have effect but the trade union has continued to collect contributions to the political fund from any of its members, it shall pay to any member who applies to it for a refund of his contribution the amount collected from him by way of such a contribution after the date of cessation.

(5) Where a resolution has ceased to have effect, any contributions to the political fund paid to the union or to any person on behalf of the union, before the date of cessation, may be paid into the political fund notwithstanding section 11(2)(*a*) of this Act.

PART III

(6) Where a resolution has ceased to have effect, any provision made by any rule of the trade union for the purpose of complying with the 1913 Act shall cease to have effect—

(*a*) in a case where the resolution has ceased to have effect by virtue of subsection (2) of section 9 of this Act in the circumstances mentioned in paragraph (*b*) of that subsection, on the date on which the period of six months beginning with the date of the ballot expires; and

(*b*) in any other case, on the date of cessation.

(7) Nothing in subsection (6) above shall be taken to affect—

(*a*) any provision made by any rule of the union which is required to enable the union's political fund to be administered at a time when there is no resolution in force with respect to the union;

(*b*) the operation of section 3(2) of the 1913 Act (complaint to Certification Officer in respect of breach of rules) in relation to any breach occurring before the date on which the rule in question ceased to have effect.

(8) Where a resolution has ceased to have effect, no member of a trade union who has at any time been exempt from the obligation to contribute to the political fund of the union shall, by reason of his having been so exempt be—

(*a*) excluded from any benefits of the union; or

(*b*) placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund).

(9) In this section "date of cessation" means the date on which the resolution which was last in force ceased to have effect.

Remedy for failure to comply with s. 12(3)(*a*).

13.—(1) Any person who claims that a trade union has failed to comply with section 12(3)(*a*) of this Act may apply to the court for a declaration to that effect if he is a member of the union at the time when the application is made.

(2) Where, on an application under this section, the court is satisfied that a trade union has failed to comply with section 12(3)(*a*) it may, if it considers it appropriate to do so in order to secure that the collection of contributions to the political fund is discontinued, make an order requiring the union to take, within such time as may be specified in the order, such steps as may be so specified.

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(3) Where an order has been made under this section, any person who satisfies the requirements of subsection (4) below shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.

(4) The requirements are that—

(*a*) he is a member of the union at the time when proceedings to enforce obedience to the order are begun; and

(*b*) he was such a member at the time when the order was made.

(5) The remedy of any person for a failure of a trade union to comply with section 12(3)(*a*) of this Act shall be by way of application under this section and not otherwise; but nothing in this subsection shall be taken to prejudice the right of any person to recover any sum payable to him by the union under section 12(4) of this Act.

(6) The court having jurisdiction for the purposes of this section shall be the High Court or, in Scotland, the Court of Session.

Restriction on transfers into political fund after passing of new resolution.

14. Where, at any time after a resolution has ceased to have effect—

(*a*) the trade union in question holds a ballot; and

(*b*) the result of the ballot is that a new resolution is passed;

no sum representing contributions made to the union's political fund at any time before the date of the ballot shall be added to that fund.

Political objects

Political objects.

15.—(1) For subsection (3) of section 3 of the 1913 Act (which defines the political objects expenditure on which must be met out of the political fund of the trade union) there shall be substituted—

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

(*a*) on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;

(*b*) on the provision of any service or property for use by or on behalf of any political party;

(*c*) in connection with the registration of electors, the candidature of any person or the selection of any candidate;

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(*d*) on the maintenance of any holder of a political office;

(*e*) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting at which business of a political party is transacted;

(*f*) on the production, publication or distribution of any literature, document, film, sound recording or advertisement which, taken as a whole (any one forming part of a collection or series being considered on its own) seeks to persuade any person to vote or, as the case may be, not to vote for a political party or candidate.

(3A) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (3)(*e*) above, be taken to be expenditure incurred on the holding of the conference or meeting.

(3B) In determining, for the purposes of subsection (3) above, whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union.

(3C) In this section—

"candidate" means a candidate for election to a political office and includes a prospective candidate;

"contribution", in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

"electors" means electors at any election to a political office;

"film" has the same meaning as in section 38 of the Films Act 1960; 1960 c. 57.

"local authority" means a local authority within the meaning of section 270 of the Local Government Act 1972 or section 235 of the Local Government (Scotland) Act 1973; and 1972 c. 70. 1973 c. 65.

"political office" means the office of member of Parliament, member of the Assembly of the European Communities, or member of a local authority or any position within a political party."

(2) Where a resolution is in force with respect to a trade union at the commencement date, that resolution and any rule of the union made in pursuance of section 3 of the 1913 Act which is in force at that date shall have effect as if for any reference to the political objects to which that section applied immediately before the commencement date there were substituted a reference to those objects as amended by this section.

PART III

(3) Section 1(2) of the 1913 Act (which defines "statutory objects" and which is spent in consequence of this section) is hereby repealed.

Interpretation

Interpretation of Part III.

16.—(1) Expressions used in this Part and in the 1913 Act have the same meaning in this Part as they have in that Act.

(2) In this Part— 1913 c. 30.

"the 1913 Act" means the Trade Union Act 1913; 1964 c. 24.

"the 1964 Act" means the Trade Union (Amalgamations, etc.) Act 1964;

"the date of the ballot" means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

"the commencement date" means the date on which this Part comes into force;

"principal executive committee", in relation to a trade union, means the principal committee of the trade union exercising executive functions, by whatever name it is known; and

"resolution" has the meaning given by section 9(1) of this Act.

(3) References in this Part to the holding of a ballot are to the holding of a ballot for the purposes of the 1913 Act.

(4) This Part applies, with the necessary modifications, in relation to unincorporated employers' associations as it applies in relation to trade unions.

PART IV

SUPPLEMENTARY

Expenses.

17. There shall be defrayed out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under section 1 of the Employment Act 1980 (payments in respect of secret ballots). 1980 c. 47.

PART IV

Short title, commencement and extent.

18.—(1) This Act may be cited as the Trade Union Act 1984.

(2) Part I shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(3) Part II shall come into force on the expiry of the period of two months beginning with the day on which this Act is passed.

(4) Part III shall come into force on 31st March 1985.

(5) Parts I and II do not extend to Northern Ireland and Part III does not apply in relation to any trade union which has its head or main office in Northern Ireland.

Trade Union

A

B I L L

INTITULED

An Act to make provision for election to certain positions in trade unions and with respect to ballots held in connection with strikes or other forms of industrial action; and to amend the law relating to expenditure by trade unions on political objects.

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CONFIDENTIAL

P.01309

PRIME MINISTER

The Trade Union Bill:
E(A)(84)34

BACKGROUND

FLAG A At its meeting on 28 April 1983 (E(83)4th Meeting) the Ministerial Committee on Economic Strategy considered proposals for legislation following consultations on the Green Paper 'Democracy in Trade Unions'. It took the following decisions among others.

(i) Official industrial action should not enjoy legal immunity unless it was preceded by a ballot of those members who had been or were to be called on to take the action. Although details of ballotting would not be prescribed by law, the ballot must be secret, and every member must have a fair and reasonable opportunity to vote. There would be no requirement for a particular size of majority: it would be up to the membership to enforce the results of ballots; and it would be difficult for a union to proceed with a strike which did not command majority support (Annex 2 to E(83)9).

FLAG B

(ii) All trade union governing bodies should be required to be directly elected through the marking of a ballot paper in secret voting, allowing all members an equal and unrestricted opportunity to vote. Unions would not be required to conduct their elections by postal ballot: some union records were badly out of date; and for some unions, for

example those with a high proportion of itinerant workers, properly conducted work-place ballots were an effective method (paragraphs 3 and 4 of E(83)9).

2. These decisions are embodied in the Trade Union Bill now before Parliament. The Secretary of State for Employment proposes (E(A)(84)34) to modify them in the following ways.

FLAG C

(i) It would be made a condition of legal immunity that a majority of those voting in a strike ballot (but not of those entitled to vote) should be in favour of the proposed industrial action.

(ii) In certain circumstances postal voting in union elections would be required: individual members would be given the right to a postal vote on demand; and the courts would have discretion to order a postal ballot if an election had been improperly conducted. These changes would not extend to voting in strike ballots.

In addition, Mr King proposes that it should be unlawful for an employer to refuse a request from an employee not to have the political levy deducted from his pay by 'check-off'.

MAIN ISSUES

3. The main issues before the Sub-Committee are as follows.

(i) Do they agree that it should be a requirement of legal immunity for official industrial action

that a simple majority of those voting in a strike ballot should be in favour?

(ii) Do they agree with the other proposals regarding -

(a) postal votes in trade union elections; and

(b) the 'check-off'?

Requirement for majority in strike ballot

4. Despite what is said in paragraph 2 of E(A)(84)34, previous collective Ministerial discussion has given little explicit consideration to the arguments for and against requiring a majority, or a majority of a particular description, in strike ballots. Presumably most Ministers have accepted the general argument that it would be tactically unwise to impose too many new statutory requirements on trade unions, and assumed, as E(83)9 did, that no trade union executive would proceed with a strike in defiance of the wishes of a majority of its members. As Mr King suggests, the current coal-miners' dispute makes that assumption open to question.

5. In reaching their conclusions, Ministers will wish to consider the following.

(a) It could be argued that, in fact, the behaviour of the NUM National Executive does not rebut the earlier assumption: Mr Scargill is presumably anxious to avoid a national ballot precisely because he fears that it will not produce a majority for strike

action. Under the new legislation he will not be able to avoid a ballot, unless the NUM is willing to forgo legal immunity.

(b) On the other hand, it could well seem odd to make conducting a ballot a legal condition of immunity, but to treat its result as a matter of (legal) indifference. It would be even harder to defend this oddity if there are grounds for believing that some trade union executives will try to find ways of frustrating the wishes of a majority of their members.

(c) Some Ministers may argue for the imposition of a more stringent requirement than a bare majority of those voting. But this would be open to attack as 'anti-democratic'. Moreover, the fact that a bare majority of those voting was the condition for legal immunity would not prevent the membership of a union from laying down a higher requirement as a matter of the unions'own internal management.

(d) It may be argued that the legal requirement should be based on whatever is the unions' own requirement (provided, of course, that it is for at least a bare majority). But that would give unions a strong incentive to reduce their own requirements to the legal minimum.

Postal voting

6. Mr King says that he does not believe that it would be practicable to move immediately to compulsory postal ballots for all trade union elections, but that two changes should be made to meet some of the concerns which have been expressed:

i. any union member should have the right to demand a postal vote for himself (without any need to show cause on grounds of personal inconvenience etc);

ii. the courts would have the power to order a postal ballot if an election had been improperly conducted.

7. The issues likely to arise over the proposal at i. are:

a. if it is not practicable to move immediately to compulsory postal ballots for all trade union elections (eg because of poor membership records and unions with a high proportion of itinerant workers), why not legislate to go as far as we can and as fast as we can (eg by giving time for adequate membership records to be established and by allowing an exception to be granted by the courts where there is a problem about itinerant workers)?

b. if postal ballots are desirable for trade union elections (whether on the individual option basis proposed by Mr King or on a wider basis), why are they not equally desirable for strike ballots, where the possibility of intimidation may be even greater?

8. On ii., the issue may be raised of whether the remedy for an improperly conducted election should be available only ex post facto. Should a union member be able to apply to the court ex ante, for example on the grounds that in previous elections there had been widespread intimidation, and ask the court either to require a postal ballot or to insist that the union should give assurances regarding the conduct of the forthcoming election? It is not obvious from E(A)(84)34 why this should be excluded.

'Check off'

9. The proposal that an employee who has decided to contract out of the political levy should not be made to pay it through the 'check off' is likely to be accepted without demur by the Sub-Committee.

HANDLING

10. It will probably be convenient to divide the discussion into two main parts.

i. Majority requirements for strike ballots; and

ii. other proposals.

You will wish to invite the Secretary of State for Employment to introduce each part. The Lord Chancellor will be able to deal with any legal points. Any of your colleagues may have general and political points to raise.

CONCLUSIONS

11. You will wish the Sub-Committee to reach conclusions on the following.

Mr Jenkin has written registering his opposition — letter enclosed. AT

i. Should it be a condition of illegal immunity for official industrial action that a bare majority of those voting in a strike ballot should be in favour?

ii. Should postal voting in trade union elections be mandatory -

a. for any individual member at his request;

b. at the discretion of the court if there has been a breach in the requirements for a particular election?

AT (ii) Should whatever is decided for postal ballots for elections be extended to strikes?

iii. Should it be made unlawful for an employer to refuse a request from an employee not to have the political levy deducted from his pay thorugh the 'check off'?

PLG

11 June 1984

P L GREGSON

CONFIDENTIAL

Prime Minister

TRADE UNION BILL - DISCUSSION AT E(A) ON 12 JUNE 1984

I regret that I shall be unable to attend this meeting.

On the issue of a majority requirement for strike ballots. I do not think we should lose sight of the position of GMBATU. This union holds about two-thirds of the membership of the manual workers in the Water Industry and is the largest of the three unions representing the Local Authority Manuals. It requires a 66% majority for strike action, and it is of course uncertain whether it would be encouraged to reduce this requirement to a bare majority if the issue was exposed through the introduction of the proposed amendment. But I would not wish to give the union any encouragement or excuse. The Bill cannot be expected to come into effect until October and I do not believe that the possible benefits of the introduction of the amendment outweigh the risks.

I have no comment to make on the other amendments proposed.

I am copying this to E(A) committee members and Sir Robert Armstrong.

PJ

P J

\\ June 1984

3

Prime Minister (2)

AT 8/6

SECRET

MR TURNBULL

TRADE UNION BILL: E(A) MEETING (Tuesday)

Tom King needs to have firm decisions from E(A) on four amendments. He proposes:

a. to make union immunities in a strike dependent on backing from a majority of those voting in a ballot;

b. to give individual members the right to opt, permanently or on a given occasion, for postal ballots in union elections; but not to require postal ballots for all members in elections.

c. to give the courts power to order a postal ballot if there is evidence of malpractice in elections;

d. to prevent employers deducting the political levy from the pay-packets of those who have 'contracted out'.

1. Majority voting. Yes. The proposed amendment may or may not be a good thing in itself: there are strong arguments both ways. But there is now the overriding consideration that Tom King's credibility depends upon the amendment being made. If E(A) rejects the proposal, it will be giving the press a golden opportunity to ridicule the Goverment.

2. Permanent right to a postal ballot in union elections. Yes. Tom King has changed his mind on this, following the Prime Minister's intervention: the amendment is now thoroughly sensible.

3. Power for the court to order postal ballots in an election. Yes. It is obviously right for there to be a postal ballott if there is evidence of electoral malpractice in the workplace vote.

4. Prevention of deductions for those who opt out of the political levy. Yes. Again this is a thoroughly sensible amendment that will please our supporters.

OMISSIONS

Tom King does not, however, offer any amendment enabling individuals to obtain postal ballots in strike votes. This is disastrous, because such ballots are the

SLHAAJ

SECRET

only real protection against intimidation of the sort that we have witnessed in the miner's strike.

Despite Tom's arguments, we continue to believe that it would in principle be useful to give courts the power to order postal ballots in strike votes. But Department of Employment officials and legal experts tell us that the construction of Part II of the Bill makes it technically impossible to achieve this result in the allotted time.

We therefore suggest that the Prime Minister should argue for union members to be given a right to opt for postal ballots in strikes, just as in elections. We are told that it would be technically feasible to introduce such an amendment at this stage. The result would be to make immunities in strikes dependent upon the union obtaining a majority where it had: (a) held a proper ballot, and (b) provided a postal vote for any member who demanded one.

Tom King may well argue that giving individuals this right would delay strike ballots and make wildcat strikes more likely. But that is a less severe problem than intimidation. If the Government is serious about democracy in the unions, it should surely give individuals the right to vote in the privacy and safety of their own homes.

CONCLUSION

We recommend:

i. that the Prime Minister should endorse all of Tom King's proposed amendments;

ii. that she should press for union members to be given a right to postal votes in strike ballots.

AT

pp OLIVER LETWIN

8 June 1984

SECRET

SLHAAJ

10 DOWNING STREET

Prime Minister

This is the minute Mr King should have circulated before the weekend. The logic of his argument is sound but he could have been more aware of his colleagues. Mr Walker was particularly incensed at being taken by surprise - see attached.

AT
4/6

'KS/Wd

cc NO
B 1

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

4 June 1984

Dear Andrew,

TRADE UNION BILL : STRIKE BALLOTS

You will have seen the reports in yesterday's and today's press that my Secretary of State proposes to amend the Trade Union Bill at Committee Stage in the House of Lords to make immunity for calling industrial action dependent on a trade union achieving majority support in a secret ballot for that industrial action.

As you know, the present Trade Union Bill contains a requirement that for a union to have immunity there must be a secret ballot before industrial action is called. It makes no stipulation, however, about the specific majority which is required in that ballot. The amendment which my Secretary of State is now proposing would insert in the Bill a requirement that there should be a majority in favour of the strike, before industrial action had immunity.

The reason the original Bill was drafted without a majority requirement was two-fold. First a number of unions, specifically GMBATU and NUM require more than a simple majority (ie two-thirds and 55 per cent respectively) before industrial action can be called. It was originally thought that a lesser requirement in legislation would provide an excuse for Scargill and others to reduce the majority requirement in their own union's rules. Secondly when the Bill was being drafted it seemed scarcely credible that a union leader would embark on a strike after having taken a ballot in which a majority had voted against strike action.

Recent events have significantly changed this position. The NUM Special Conference in April finally agreed to change to a bare majority rule for strike ballots; and the coal dispute has provided several examples of union leaders calling strikes despite the fact that ballots of union members have shown a majority, in some cases a decisive majority, against a strike.

The previous arguments against inclusion of a majority requirement in the Bill were finally balanced. But my Secretary of State believes that in the new circumstances it will be almost impossible to explain how the Bill allows industrial action to have immunity, even though in a ballot only a minority of union members have voted in favour. The proposed change to the Bill, to which my Secretary of State referred at the weekend, is intended to deal with these changed circumstances. It will require the ballot to show that a majority of those voting (not, as reported in some papers, a majority of those entitled to vote) have voted in favour of industrial action, before that industrial action has immunity.

... I attach some briefing notes for Prime Minister's Questions tomorrow. In view of the publicity this proposal has received I am sending copies of this letter to the Private Secretaries to Members of the Cabinet, the Attorney General and Lord Gowrie.

Yours sincerely

David Normington.

D J NORMINGTON
Principal Private Secretary

PRIME MINISTER'S QUESTIONS: 5 JUNE

TRADE UNION BILL: STRIKE BALLOT MAJORITY

Line to take

Was the Prime Minister aware that the Secretary of State for Employment was proposing to erect an impossible hurdle for trade unions to surmount? Does she not accept that this will mean that all industrial action will be unofficial in future?

The amendment which my rt hon Friend proposes will simply make it a condition of immunity that a majority of those voting in a secret ballot vote in favour of industrial action. Does the Leader of the Opposition think unions should have immunity even when a majority of their own members have voted against a strike? Is that his idea of trade union democracy? He was a late convert to the idea of a ballot in the current miners' strike. If he is now saying that the result of a ballot is irrelevant I wonder if he is a convert at all.

But won't this proposal encourage unofficial action?

I do not believe so. Unions will not lightly give up the power to organise strikes themselves. Does the Rt Hon Gentleman really imagine that a national strike of several thousand trade unionists could be entirely unofficial. If a strike is official unions can put pressure on their members to strike by threats of suspension or expulsion. There are very recent examples. Those sanctions are not available to unions in the case of unofficial action. It is intolerable that unions should be able to intimidate their members into striking against their will when those members have been denied any chance to express their own views in a ballot. That is why the Bill makes ballotting a condition of immunity for official industrial action.

Does the Prime Minister not realise that this proposal is irrelevant to the miners dispute and can only prolong the strike? It will join the 1980 and 1982 Acts on the scrapheap of unused legislation

(NB The Trade Union Bill is unlikely to come into effect until October and hence the new majority requirement is unlikely to be an issue in the miners strike). It is and always will be for those who are damaged by unlawful industrial action to decide whether or not to use the remedy of the civil law. The Opposition would like to deny people any civil remedy at all: they are

committed to returning to unlimited immunity for each and every bit of industrial action, however destructive, however irresponsible, however remote from the original dispute. That is their policy for industrial relations: a return to the legislation of 1974 and 1976 which led directly to the winter of discontent.

The Opposition ignore the distinction between the civil law and the criminal law. It has always been a criminal offence to obstruct, to intimidate and to use violence on the picket line. The job of the police is to enforce the criminal law. That has always been their job and they have been doing it magnificently. And they have had no support from the Labour Party. All we have heard from Rt Hon Gentlemen opposite are ritual and all purpose condemnations of violence, laced with innuendo directed against the police.

It is ridiculous to suggest that the police are enforcing the criminal law because civil law remedies have not been invoked. The police are enforcing the <u>criminal</u> law because/ the <u>criminal</u> law has been broken. It is as simple as that. No amount of sophistry or special pleading from Rt Hon Gentlemen opposite can obscure that simple fact. The job of the police is exactly the same <u>whether or not the civil law is being used</u>.

01 211 6402

The Rt Hon Tom King MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON SW1

4 June 1984

STRIKE BALLOTS

I was shocked when the media contacted me over the weekend for my views on your pronouncement in Birmingham about majority voting in pre-strike ballots.

Obviously this has stirred things up a great deal in the Trade Union movement. Given its potential impact on attitudes in the coal dispute I believe it is precisely the sort of issue that colleagues collectively should have been able to discuss in MISC 101 before any kind of public pronouncement was made. I certainly wish I had been consulted beforehand about your intentions. As you may know, I have to spend a good deal of time briefing the press on the coal dispute. To have them, out of the blue, raising questions about major changes in employment legislation, on which I was completely unsighted, was highly embarrassing, as I am sure you will appreciate.

PETER WALKER

FCS

cc O Letwin

10 DOWNING STREET

From the Private Secretary

31 May, 1984

Balance of Power in Trade Unions

The Prime Minister has seen your Secretary of State's minute of 25 May and the paper attached to it. She will want to discuss it before it is circulated more widely, and I will be in touch about a time for this. In general, her reaction was that it was too complacent about the extent to which the balance of power, particularly in the nationalised industries, has been redressed, and the extent to which the new laws have given employees effective rights to protect themselves from oppression by their union. Although the Government's policy has been to avoid putting itself in the front line, the effect has been to put individual trade union members under enormous strain.

Specifically, the Prime Minister feels that the paper does not take adequate account of recent developments in the coal dispute. For example, the codes of practice on picketing endorsed by both the TUC and the Department of Employment have been largely ignored; and intimidation has been widely used and appears to have been effective in preventing many miners from expressing their views. The Prime Minister feels, therefore, that this whole area will need to be looked at afresh in the light of the dispute.

More immediately, the Prime Minister has noted the changes which it is proposed to make to the Trade Union Bill in the House of Lords. While these move in the right direction, she has asked for your Secretary of State's views on two further suggestions. First, union members could be given a general right to register as postal voters in union elections rather than a specific right to demand a postal ballot on each occasion. Being permanently registered as a postal voter might make a member less conspicuous and less vulnerable to pressure from within the union than if he had to express an intention to vote by post in a particular election. Secondly, the principle of postal balloting in

/cases

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NR

cases of improper practice could be applied not only to elections but also to strike votes, where there is certainly room for intimidation. Such an amendment would give the High Court powers to order a postal strike ballot in any area where there is evidence of malpractice or intimidation, and to lift immunities if the voting in that postal ballot causes a national majority against a strike.

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment

SAHAAI

Prime Minister

Agree that we ask the Department to consider the suggestions at a) and b), and to report back?

SECRET

MR BARCLAY

29 May 1984

THE BALANCE OF POWER IN TRADE UNIONS

Tom King rightly points out that union power is generally declining. This can be pushed further and faster by a vigorous policy of deregulation and privatisation: only by breaking producer cartels can one hope to break monopoly union power.

Tom King's minute does not, however, contain any new proposals to combat either the closed shop or secondary picketing. Once the miners' strike is over, the Government should consider the lessons that emerge: it may well be necessary to take further action on picketing, probably in the civil law. For example, the law might be more useable if all secondary picketing were clearly unlawful.

The most important part of the minute is Tom King's proposal to amend the Trade Union Bill in favour of postal ballots. He offers:

i. a reserve power for the High Court to order a postal ballot if there is any hanky-panky in union elections;

ii. a right for union members to demand a postal vote in elections.

These proposals would greatly improve the Bill. The chances of malpractice and intimidation in elections would markedly decrease; and the essential simplicity and good sense of the Tebbit step-by-step approach would be retained.

It should not be forgotten that the Bill already constitutes a major advance in union democracy; this should not be jeopardised by introducing excessively detailed changes at this stage. But we have two further suggestions:

a. It would be sensible to give members a general right to register as postal voters in union elections rather than a specific right to demand a postal ballot on each occasion. Intimidation is far more likely to occur if union 'heavies' know that someone intends to vote postally in a particular election than if the person in question is permanently registered as a postal voter.

SECRET

b. The principle of postal balloting in cases of improper practice should be applied not only to elections, but also to strike votes - where there is certainly room for intimidation. This would not pose any technical problems, since the Bill already makes union immunities in the case of a strike dependent on the holding of a properly conducted ballot. The new amendment could give the High Court powers (1) to order a postal strike ballot in any area where there is evidence of malpractice or intimidation, and (2) to lift immunities if the voting in that postal ballot causes a national majority against a strike.

We recommend that the Prime Minister should welcome Tom King's paper, but that she should argue both for a right of permanent registration as a postal voter in union elections and for a High Court power to order postal ballots in strike votes where there is evidence of impropriety.

OLIVER LETWIN

10 DOWNING STREET

Prime Minister

This has just arrived. You will wish to read it before dinner on Saturday. The Policy Unit will comment [illegible] week. I expect you will want a meeting in due course.

Paras 19-24 of the paper are relevant to the paper expected from the Attorney General on legal aspects of the canal dispute.

Mr King appears not to have copied this to colleagues. Agree he should do so?

AT
25/3

10 DOWNING STREET

THE PRIME MINISTER

Andrew - not to be pulled on -

but we shall need a more

intellectually rigorous paper than

this.

MT

KS/WD

CC NO

CONFIDENTIAL

PRIME MINISTER

THE BALANCE OF POWER IN TRADE UNIONS

1 You asked for a paper on what we are doing to alter the balance of power within trade unions and the further steps we might take in the future.

2 Altering the balance of power in trade unions requires a continuing struggle, although we have already seen some clear successes. The growth of the closed shop has been halted; it is now in decline. From November virtually all closed shop dismissals are likely to be "unfair". Moreover, it has been demonstrated, particularly during the Warrington dispute, that the new powers in the 1982 Act to sue trade unions themselves for acting unlawfully can have a major effect on the outcome of disputes. I believe that the current Trade Union Bill will provide many trade union members with an opportunity for the first time to get fair elections for their leaders and to have a say before they are called out on strike.

3. In addition to the legislative changes there has been a profound shift in the balance of power between employers and trade unions, best reflected in the frequent comment, that "management is now again able to manage". A significant aspect of the previous imbalance was the degree to which employers failed to maintain proper communications with their workforces, and allowed the unions to become the sole channel

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of information. The tough challenges of the recession have forced employers to talk to their people and this has led to a significant reduction in the power of many of the union representatives and helped the position of the moderates.

4 Our agreed policy since coming to office has been to follow a step by step approach to trade union reform. Each step has been of limited application designed to ensure changes that will endure. This approach has been shown to command widespread public support not least because it has worked with the grain of existing practice. Moreover, by giving those affected by abuses of trade union power discretion as to whether they invoke the law (eg to employers in relation to secondary action and to trade union members under the Bill if they judge that their rights have been infringed in an unlawful way) we have avoided "boxing" the Government in, as occurred under the 1971 Act.

5 There is of course pressure on us at present to go even faster, particularly on the specific question of introducing mandatory postal ballots, not only for union elections, but also before strike action. This is an approach that was canvassed in the Green Paper on Trade Union Democracy but specifically rejected in the proposals for legislation that Norman Tebbit subsequently put to you. I agree entirely with the arguments that he put forward at that time, and I have set out a number of other relevant considerations in the attached paper, all of which point against imposing mandatory postal ballots for all circumstances. Such a step would, I believe, run the real risk of over-reaching what it is practical to achieve at the moment. At the same time I am certain that we

must do more to encourage postal ballots and I therefore propose in the attached paper two changes to the Bill which I intend to make in the House of Lords. The first would give the Courts (in connection with any complaint about a ballot) a reserve power to order a postal ballot in union elections; the second would give every union member the right to a postal vote on request in elections for the union leadership.

6 I know that part of your concern in asking for this paper was to see what more could be done to get a fairer balance between the moderate majority and their subjugation by a militant intimidating minority. What has emerged clearly during the miners dispute is that so much of the intimidation, whether or not it involves grounds for action under the civil law on which our trade union legislation is based, constitutes first and foremost a clear offence under the criminal law. In combatting these offences, the response has to be a robust one from the police in firmly upholding the rights of the citizen, whether it is in being freely able to go to work, in not being picketed at his home, or in seeing that those who commit offences of assault or criminal damage are arrested and properly dealt with by the Courts. The response must also involve the maximum mobilisation of public opinion by the fullest reporting of offences of intimidation which are wholly repugnant to the vast majority of people . It must also ensure that those on the receiving end of intimidation are aware of their rights and of the remedies that may be available to them, and that they feel able freely to exercise such rights. While I know that there are concerns about this aspect, the present indications are that in serious cases, people are prepared to take legal action. Indeed as I write this minute we have the case before the Courts of the 3 Notts

This is not to be confused with violence

Notts miners were successful too.

miners taking the NUM to Court and Lancashire miners have just obtained an injunction preventing their union area executive from imposing a five year suspension from membership for crossing picket lines.

7 I am sure you would like to discuss the issues raised in the attached paper and I should welcome this.

T K

25 May 1984

CONFIDENTIAL

THE BALANCE OF POWER WITHIN TRADE UNIONS

1 The combination of our economic policies, the Employment Acts of 1980 and 1982 and the steps we have taken to reduce the financial resources of strikers has substantially redressed the imbalance of bargaining power between employers and trade unions which we inherited in 1979. This is evident both in the decline in the number of days lost through strikes and the much lower level of pay settlements. At the same time we have taken steps, specifically through legislation, to strengthen the hand of moderate union members against their more militant leaders at local, regional and national level.

2 The trade union movement has undergone some profound changes since 1979. After a decade of steady growth which reached a peak of 13,212,000 at the end of 1979, trade union membership has fallen sharply, and by the end of 1982 was down to 11,744,000. The decline in the numbers of TUC affiliated unions has been even sharper: from 12.5m in 1979 to 10.8m in 1982. The TUC are reported to be expecting this figure to fall to 9.6m by the end of 1984. This represents only some 36% of the estimated labour force for mid-1984.

3 Furthermore, it seems unlikely that these trends will be substantially reversed. Trade unionism is strongest in those sectors of employment - primarily the older manufacturing industries in the Midlands and the North - which have experienced the sharpest decline in employment. The growth sectors for employment - the new technology and the service industries - are those where trade unionism is weakest and where, given the inability of trade unions to extend the closed shop and the absence of statutory recognition procedures, employers' resistance to trade unionism is likely to be strongest and most effective. The growth in self employment and the employment of women both full time (from 41% in 1978 to 44% at the end of 1983) and part time (from 40% in 1978 to 42% in 1982), the location of new industries in areas such as the South West where trade union organisation has historically been weak, all these are major obstacles in the way of a general recovery in trade union membership.

4 Knowledge of declining membership inevitably affects the thinking of trade union leaders. The same is true of the manifestly greater reluctance of most trade unionists to take industrial action - even when "instructed" to do so by their unions. The lesson that earnings lost through industrial action can take years to recoup is, I believe, getting through to many trade unionists. In particular union leaders may be finding it harder to get their members to stay out on strike when the average level of settlements is well down into single figures and therefore the most that can be extracted by prolonging industrial action is likely to be an additional 1% or 2%. Furthermore, the financial commitments of trade unionists have continued to grow. The proportion of skilled manual workers with mortgages increased from 27% in 1974 to 41% in 1981. The comparable figures for semi skilled and unskilled manual workers show the same pattern: respectively from 12% to 22% and from 6% to 13%. As a result most trade union leaders are now much less confident of their ability to persuade their members to strike. Nor should we discount the psychological effect of the change in voting patterns at the last General Election when for the first time only a minority of trade unionists supported the Labour Party. The review ballots for political funds required under the Trade Union Bill should provide an important step towards the de-politicisation of the trade unions.

5 However, these gains will be of little account if management lacks the skill or confidence to make use of them. In particular, the failure of many employers to communicate directly with their employees has allowed trade unions to fill the vacuum and to become the sole channel of information at the workplace. There are welcome signs that more employers now understand the value of direct communication with their employees and have recognised, from the experience of BL and others, how important it can be in reducing the power of small, but well entrenched, groups of union militants.

6 Another factor underpinning this power can be the excessive number of employees who are allowed by some employers to spend their entire time on union duties. Not infrequently these posts are held by activitists with the motives and the opportunity to cause trouble. British Leyland is a good example of how shop floor militancy can be sharply reduced by drastic

reductions in the number of employees enjoying 100% "facility time" for union business. At the peak there were 118 shop stewards and other employees with 100% facility time at the Longbridge plant alone. The figure is now 2. Despite the recent revision of facility agreements in the Civil Service, I believe that our own arrangements are still too generous.

7 The Government can have some influence on management attitudes and behaviour both by the example it sets as an employer in the public services and by the policies it pursues in relation to the public trading sector. Our policies for the liberalisation of public sector monopolies, for extending privatisation and for increasing competitiveness across the whole economy can also play a direct role in counteracting the monopoly power of trade unions - particularly in the public sector - and this in turn can have an important effect on the balance of power within trade unions.

8 I believe, therefore, that our approach should continue to be governed by two prime considerations

(i) the need to work with and not against the powerful influences which are already changing the balance of power within trade unions

(ii) the need to ensure that legislation is supplemented by the necessary changes in employer attitudes and practice.

Trade Union Democracy

9. We have agreed on a step by step approach for the progressive elimination of the abuses that have grown up in trade union practice. The present Trade Union Bill is specifically targetted on two of the worst features of current trade union practice. First, to tackle the use of branch meetings attended by only a tiny minority of the membership as the voting place for leadership elections, with the proceedings taking place at an inconvenient time and place and voting often by show of hands using a block

vote system. Secondly, to tackle the glaring abuse of the strike vote at the car park rally where the views of the moderate majority are all too often drowned-out or simply ignored by an aggressive minority.

10. The way in which we have constructed the Trade Union Bill to provide for basic improvements in trade union practice and to protect the democratic rights of union members is not to specify the particular method of balloting to be used - as some of our supporters who favour mandatory postal ballots would like - but to establish the minimal tests of fairness, convenience and secrecy that are unassailable in public argument and which are the essential ingredients of any genuinely democratic process.

11. To illustrate this point more clearly I would cite as the obvious example the NUM. The NUM has traditionally used the workplace ballot for both elections and strike ballots. While there have been allegations of intimidation in relation to these ballots the fact remains that Mr Scargill has found it far from easy to get the results that he wants out of workplace ballots, as his avoidance of a national ballot in the current dispute clearly bears out. If we were now to impose a rigid requirement for postal ballots as the only permitted method of voting in all circumstances, I would anticipate that the NUM would simply continue with their workplace ballots, continue to secure average turnouts of around 75 per cent, and then wait to be taken to court to face an action requiring them to hold postal ballots (regardless of whether there had been any allegation of impropriety at a workplace poll). They would then proceed to demonstrate both to the court and to their members that they were being required to set aside a ballot in which turnout compared favourably with Parliamentary elections in favour of a postal system whose average turnout could be demonstrated to be unlikely to exceed 30 per cent. I think that that would serve only to discredit the legislation in the eyes of ordinary union members and the public generally.

12. Having said this I recognise that there is continuing concern that trade union elections may be conducted improperly and votes manipulated in one way or another. But it needs to be borne in mind the postal ballots administered by unions themselves are not necessarily a guarantee against malpractice:

there is still the possibility of falsifying returns or making fraudulent use of unused voting forms. The only way of avoiding the possibility of malpractice would be to take the whole conduct of elections away from trade unions and make it the responsiblity of a new statutory agency. This agency would need to maintain lists of all union members, send out voting forms, receive them and count the votes - a task going well beyond what is now done by the Electoral Reform Society who simply count votes sent to them and do not hold a list of members, distribute or collect voting papers or supervise the process of voting in any way. Most importantly, the agency would have to be given the power (backed up with fines) to compel unions to co-operate by (for example) disclosing the names of members.

13. The decisive argument against this course is not the cost and complexity of the task the agency would have to perform - although both would be considerable. I believe it would be a mistake because the agency would provide the militants with the same focus for resistance that the Registrar and the Industrial Relations Court provided under the 1971 Act. Instead of unions having to defend their undemocratic practices against their members who are seeking to enforce their rights in the ordinary courts, unions would become locked in conflict with a Government sponsored institution which could be portrayed as usurping the unions' basic functions. In short, it would run counter to the principle - which has underlain all our legislation since 1979 - of creating rights which are for union members and employers to use as and when they choose. It was interesting that when I discussed the need for such an agency with Frank Chapple he himself felt that this would represent an unacceptable intrusion of the State into the conduct of trade union affairs.

14. Nevertheless, I accept that in general terms there is less chance of rigging and intimidation in postal ballots and I believe we should work towards getting them more widely established. As the first step towards this objective, I am proposing to introduce two amendments to the Bill in the House of Lords. The first will allow the High Court, if it finds a union to be in breach of the Bill's basic balloting requirements, at its discretion to order the holding of a postal ballot. This will mean that the Courts can require a postal ballot where a workplace ballot has been found wanting. I have

discussed this with the Lord Chancellor who is content that an amendment on these lines should be introduced. It will make postal ballots a real possibility where unions have been shown to be incapable of conducting a properly run workplace ballot but at the same time it will not give union leaders the argument that we are imposing postal ballots on them irrespective of whether existing workplace ballots produce democratic results.

15. The second amendment which I am proposing to introduce would give every union member the right to a postal vote on request in any election to his union's executive. This will go a long way towards meeting the concern of those of our supporters who are worried about intimidation at workplace ballots. It will provide an alternative means of voting for any union members who fear that they will not be able to vote freely at their workplace.

The Closed Shop

16 It is a basic principle of our approach to industrial relations that trade unions should have to win their members' support voluntarily by the quality of the service they offer, not by making a union card the price of obtaining a job. The rapid expansion of the closed shop in the 1970s, encouraged by the legislation of 1974 and 1976 was an important factor in extending union membership into white collar employment, particularly in the public sector. That expansion has now been halted and put into reverse. Since the 1980 Act came into force there has been a sharp decline in the total closed shop population. The fall has been from a highpoint of some 5.2m in 1978 to 4.5m in 1982. Since then it is likely that a further fall has taken place. Moreover, there is no evidence that the closed shop is gaining a foothold in any of the new growth areas of the economy. No major new closed shop agreements in any sector have been reported since 1980. At the same time some existing agreements have been unilaterally terminated by employers. The refusal of British Rail to sack any employee who lost their union card for disobeying their union's call to strike in 1982 may well prove to have been a watershed in the decline of the closed shop. NCB may extend this precedent. AF

17 Furthermore, from 1 November this year, no closed shop will have any protection in law unless it has the genuine support - demonstrated by a substantial majority voting in a secret ballot - of the people working in it. After that date the dismissal of any employee for non-membership of a trade union in a closed shop will be automatically unfair - thus entitling him to substantial compensation or reinstatement where practicable - if the closed shop has not been overwhelmingly approved in a secret ballot of the employees concerned.

18 The indications are that few ballots will have taken place before November. Those that do take place are likely to be confined to smaller companies with a high proportion of employees in traditional craft occupations. The vast majority of trade union members in closed shops - for example those in the Nationalised Industries - are unlikely to be ballotted at all. TUC policy, is of course, to refuse to co-operate with any closed shop ballots. This does not disturb me because the effect in law of not holding a ballot is exactly the same as the effect of holding a ballot and failing to secure the necessary majority. If an employee has not been ballotted by November it will be open to him to leave his union whenever he wishes in the knowledge that he cannot be fairly dismissed as a result. Given the substantial compensation for which both employers and trade unions will be liable in the event of a dismissal, the effect should be a gradual but nonetheless real and steady undermining of the closed shop.

Protecting the right to go to work

19 The current NUM action has demonstrated very clearly how militants within trade unions try to use picketing to spread the effects of industrial action to those - even a majority - of their fellow members who want to work. There are two aspects to such picketing

(i) physically preventing access to the place of work by obstruction or intimidation (ie "mass picketing")

(ii) exploiting the traditional reluctance of trade union members to cross picket lines - however peaceful - which are seen as manifestations of "solidarity".

Recent events suggest that the second factor may have become less potent but it would be wrong to underestimate its residual force in industries with a strong trade union tradition.

20 Picketing which physically prevents access to a place of work is a matter for the criminal law and hence for the Home Secretary. Clearly we shall need to evaluate the lessons of the current NUM dispute but from an industrial relations point of view there is no reason to think that the existing powers of the police are less than adequate to deal with even the most serious instances of mass picketing.

21 The civil remedies available under the 1980 Act for use against any picketing away from the pickets own place of work (ie so called "secondary picketing") apply whether or not there are breaches of the criminal law. In fact, secondary picketing often involves violence or obstruction: employees are likely to resent the efforts of strangers to prevent them from working normally and hence secondary picketing tends to be mass picketing. But it is essential that there should be a remedy against secondary picketing even when it is peaceful because of the traditional reluctance to cross any picket lines. That is what the 1980 Act was designed to provide. The 1982 Act has now provided a remedy against the trade union itself and hence removed the danger of creating martyrs and the difficulty of identifying individual picket organisers. The Stockport Messenger dispute showed very clearly how effective the civil remedies against secondary picketing can be. Again, we shall need to consider the lessons of the NUM dispute, but there is no evidence so far that the existing civil remedies against secondary picketing are inadequate.

22 The same is true of the remedies against other forms of secondary action (primarily blacking and "sympathetic strikes"). In all the cases (such as that recently brought by Dimbleby Newspapers against the NUJ) under the 1980 Act secondary action has been found to be unlawful and it is clear that trade

unions have so far found it impossible to organise secondary action within the very narrow limits which still have immunity. However, we should be ready to act if any serious loopholes in the law appear.

23 Finally, the law now gives considerable protection to union members in closed shops against the threat of having their union card taken away from them - and hence having their jobs put at risk - for refusing to take industrial action, including disobeying instructions not to cross picket lines. If the industrial action is unlawful or taken without a ballot, any union member in a closed shop who loses his union card will be held, on complaint to an industrial tribunal, to have been "unreasonably expelled" from his union. If he loses his job as a result of his expulsion he will be held to have been unfairly dismissed and will be eligible for the enhanced "closed shop" levels of compensation.

24 But better, of course, than compensation for a job lost, is not to lose the job at all. And here again there are real signs that employers are becoming much less willing to respond to union demands for a dismissal of a non-union employee. The lead taken by Peter Parker at British Rail, in guaranteeing the jobs of any who came to work in spite of the union, was an important breakthrough, and it is vital that the National Coal Board keep repeating, and more loudly, the assurances that have been made that no miner's job will be at risk for coming to work in the present dispute. This reinforcement of the British Rail precedent will be most valuable for all other employers in the future.

Ind Pol : Legislation

Pt 11(3)

Industrial Relations file

Mr. Alison

Lord Bruce-Gardyne

Mr. Redwood

Mr. Turnbull

The Prime Minister referred briefly to this paper by Jack Peel when we discussed the Scottish Conference speech today and I thought you might like to see it.

SS.

STEPHEN SHERBOURNE

8.5.84

NEW PATTERNS OF WORK AND LEISURE

Outline of a speech given by Jack Peel (Industrial Relations Consultant) at Birmingham, to the Society of Chief Personnel Officers in Local Government. Thursday March 15th, 1984.

Predicting the future of industrial relations in Europe is about as scientific as future telling with tea leaves. My task is to stretch your mind and I make no apologies for making a generalist approach - remember the "Titanic" was built by specialists! I wish to speak about the -

1. Present Industrial Relations situation
2. why changes are necessary
3. what changes will come.

1. The present situation is symbolized by the four main Euro-industrial relations systems -

The German system - is marked by works councils, codetermination and industrial unionism. The system is based on cooperation, rather than confrontation and was reconstructed after the last war.

The Benelux system - is linked to joint consultative commitees and works councils, which concentrate on information, productivity and safety matters.

The French/Italian system - relies more on political pressures on governments than conventional collective bargaining. This politicisation gives a special turbulence to industrial relations on occasions, despite overall low membership density.

The British system - is a kind of happy chaos, the chief elements being multi-unionism, voluntary agreements, the closed shop and the shop stewards' system.

In fact, each of the ten countries in the European Community has its own IR system and if you remember that there seven languages involved, the complications are obvious. Moreover, you cannot transplant an industrial relations system to another country - unless by some magic you can also transplant the historical and cultural fertilizer.

Works councils operate in most Community countries and are quite separate from negotiating procedures. In the UK, works councils are rare and where they do exist they are regarded with suspicion by the unions who prefer their own shop steward system of representation. Agreements are invariably legally binding on the Continent though non-binding in the UK, where voluntary agreements are preferred.

On the other hand, compulsary trade unionism (the closed shop) is peculiar to the UK and covers approximately 4 million of the 10 1/2 million members in unions affiliated to the TUC. Despite this arrangement, membership density is only 50 per cent in the UK, whereas Belgium and Denmark show membership density of 65 - 70 % - without the closed shop!

Against this diverse and confusing background the European Commission has its own industrial relations strategy, which involves the development of a minimal standard of Euro-labour legislation (protective), a chain of tripartite and bipartite committees in the key industries (consultative) and regular exchange visits to allow employers and trade unionists to meet and exchange views (educative).

Despite this diverse and confusing background, the systems work though economic pressures are emphasising the adversarial aspects of industrial relationships.

2. Why changes are necessary?

The great paradox of our times is man's technological brilliance existing side by side with our ramshackle social machinery. The two issues which transcend everything else and will ensure that industrial relations changes out of all recognition in the next ten years - are

a) High unemployment
b) micro-technology.

The pressure of these factors will lead to a redistribution of work and leisure, a wider sharing of power and responsibility and a review of the welfare state and our educational systems.

Unemployment

Here are two traps - the first is political - to believe that by changing a particular government full employment can be restored without undue difficulty. The widespread nature of unemployment under various types of government following different policies, show this argument to be naive in the extreme.

The industrial trap is to assume that shorter hours will automatically reduce unemployment. It is not so simple. Other factors, such as labour costs, demand and productivity, play a crucial role in this area. Unemployment is likely to remain high, due to a combination of structural and demographic trends and the inability of member states to reach and sustain adequate rates of economic growth (economists calculate that

an average growth rate for the whole Community of 6 per cent per annum would be required to really reduce current levels of unemployment - it would need a 4 per cent average rate of economic growth to hold unemployment at its present level of 12 million in the Community.

Micro-technology

Its full impact and significance is still unclear - it can and does generate, as well as liquidate jobs but it is still too early to pass judgment. The initial tendency, however, of microtechnology, has been to save labour. For example, the Siemens (office 1990) report speaks of 25 per cent of office jobs going out of existence in the next few years and half of all clerical jobs in West Germany being affected during 1990 (by micro-technology). On this basis 16 million jobs in the European Community would be at risk during the same period.

Something big is happening. The 1st Industrial revolution took people out of the fields and their homes and put them into factories, giving them work. This 2nd industrial revolution we are experiencing is doing the reverse thing - taking people out of factories and offices and putting them back into their homes, giving them leisure. These developments have wide political and social significance, but in terms of industrial relations, they give a new and chilling relevance to the search for more cooperative and less conflictual industrial relations systems.

The historian Arnold Toynbee in his book "Surviving the future" said "The destiny of the great majority of this planets' doubled and trebled population might be to live unemployed in shanty towns, subsisting on inadequate dole which would be given grudgingly by the productive minority, who would themselves be living in fear of being massacred by the resentful unemployed majority".

And Francis Pym, former British Foreign Secretary said recently, "The whole process of micro-technology will have a profound influence on the working lives of everyone in this country and indeed in the developed world. We are at the dawn of a change so momentous that it will force us to completely revise our traditional attitudes to employment and to how it is structured and organised".

These dramatic statements from the quite different sources remind us why drastic changes are necessary in the way we conduct our industrial affairs.

a) The composition of the Euro labour force will be significantly changed.

b) More and more people will be unemployed. Can they cope with unlimited leisure time?

c) Should educational systems be strongly orientated towards locations or more widely based. Should education be a "once for all" package, or should "serial careers" be encouraged.

d) Most people have a 40 or 45 year working life. Why not a 20 year working life, with the entry and departure points being a matter of individual choice?

e) But then comes the welfare question - who pays for all this - and how? Do we tax the few who are working to punitive levels to provide the welfare payments for those who are not working? Is the work ethic still relevant in these new circumstances? If everyone in society receives an adequate basic income, perhaps work will be seen as a service to be given to society - a duty to be performed and a good to be shared, rather than a means of securing income?

These few mind-bending questions pose the need for changed attitudes and fresh thinking about social affairs. In particular, they show that our collective bargaining systems, because of their adversarial nature, are unlikely to be adequate in dealing with the problems of work and leisure redistribution which are coming our way.

3. What changes will come?

The key word in my (rather cloudy) crystalball is "SHARING". The sharing of work, profits, power and responsibility. For labour and management in Europe to cope successfully with the universe consequences of social, economic and technological change, it is essential that employee participation systems are developed quickly, as something valuable in themselves and as instruments to greater efficiency and productivity. Collective bargaining should also become "resource related" and not a mere "numbers game" leading to predictable strife. Collective make belief is no solution to the hard problems facing us. A wider use of arbitration would be consistent with this raw philosophy and the way in which the strike weapon is used in today's highly interdependents society, should be considered.

In short, there are nine changes which should be put in train immediately if we are to cope with the advancing technological revolution.

1. Participative management styles

2. More information disclosure to employees

3. Review of collective bargaining systems

4. Shorter working life 20/25 years?

5. Transnational collective bargaining

6. Guaranteed income for everyone

7. Work guarantee (for youth)

8. Review of welfare facilities

9. Review of educational facilities

Two thousand years ago, the Greeks were looking at work and leisure patterns. Plato's "Republic" described work as a "drudge" - an activity for the lower orders of society only. Leisure was noble and for the privileged classes. How interesting that we should once again be looking at the distribution of work and leisure in society - at the time Greece has joined the European Community.

Maybe this has a divine significance. Perhaps we are being told that to solve these problems we shall need the wisdom of Plato, the stoicism of Socrates and the political insight of Aristotle.

JAP

SUBJECT
cc Master

CONFIDENTIAL

file
bc John Redwood

BM/SH.

10 DOWNING STREET

From the Private Secretary

30 April, 1984

Dear David.

Strikes in Essential Services

The Prime Minister held a meeting today to discuss strikes in essential services. Present were the Chancellor of the Exchequer, the Secretaries of State for Energy, Trade and Industry, the Environment, Social Services, Employment, Mr. Clarke and Mr. Waddington. Also present were Sir Robert Armstrong and Mr. Gregson.

The Secretary of State for Employment said the Government needed to fulfil its Manifesto commitment to "consult further about the need for relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". The original plan had been to produce a Green Paper in the autumn, preparing the way for legislation in 1985, thereby maintaining the pattern of major industrial relations legislation every two years or so. In discussions on the method of pay determination which had been set up following the 1982 strike, the NHS unions had put forward a proposal for a no strike agreement in return for unilateral access to binding arbitration. These proposals had been discussed in E (PSP) where it was felt that negotiations with the NHS unions could set precedents elsewhere before Ministers had been able to consider the general policy. One possibility was to tell the NHS unions that the Government would be issuing a Green Paper later in the year and would not be able to respond to their proposals until the consultation process was completed.

The Secretary of State for Social Services said the no strike proposal had been made by the TUC unions in the NHS only after considerable internal debate. It was not clear how strongly the different unions endorsed this idea. It was, however, a proposal which would appeal to the public as reasonable and it was essential for the Government to be seen to be responding constructively. The NHS unions had been awaiting a response since 30 June. He did not think the suggestion of the Secretary

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of State for Employment met this requirement. He would prefer Mr. Clarke to be authorised to go back to the unions for talks which would be exploratory and without commitment to any of the elements. The aim should be to flesh out the unions' proposals. It was possible that in the course of discussion the union consensus could fall apart.

In discussion, it was agreed that the Government should not accept unilateral access to binding arbitration. To do so would be to abdicate power to a body which had no responsibility for finding the resources to implement its decisions. An alternative would be binding arbitration with a Parliamentary override, but this was the form which had proved difficult with the Review Bodies.

One possibility was that the Government should set the global sum available for the NHS or the hospital service, leaving the arbitrator free to decide on the pay element. The weakness of this was that the arbitrator would not know what claims were being made by other bodies such as the doctors or nurses and that the Government might not, at the end of the day, be able to achieve a reduction in the volume of services implied by a high pay award.

Summing up this part of the discussion, the Prime Minister said that Mr. Clarke should be authorised to meet the NHS unions for further talks, provided these were exploratory and without commitment to any element of the package. It should be made clear that unilateral access to binding arbitration would not be acceptable to the Government.

The discussion then turned to the proposals set out in the Secretary of State's minute of 13 February. The Green Paper would canvass an approach under which strikes in essential services would lose immunity unless they satisfied three basic tests - that industrial action should not be taken on any issue determined by a substantive agreement during its currency; industrial action should not be taken until all stages of any procedure agreement had been exhausted; and a minimum period of notice of industrial action would need to be given. The Green Paper could also seek views on compulsory arbitration of the "flip/flop" variety, and, on the requirements for a higher majority to precede strikes in essential services.

In discussion, it was argued that compulsory arbitration, even of the "flip/flop" variety was unlikely to be attractive. For it to work, there had to be a tradition for sensible and well-judged bids by the two parties. It was unlikely that it would have improved upon the moderate settlements which had been achieved this year for the workers in the gas, electricity and water industries. A higher majority for strikes in essential services would tend to foster the view that in some circumstances such strikes were legitimate when the aim should be to create an ethos that such strikes were unacceptable. Concern was expressed that basing the tests on existing procedure agreements could be undermined if unions abrogated the agreements.

/ Summing

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Summing up, the Prime Minister asked the Secretary of State for Employment to draft an outline of the Green Paper which should be circulated for discussion with colleagues. The Law Officers would need to be consulted.

I am copying this letter to David Peretz (H.M. Treasury), Michael Reidy (Department of Energy), John Ballard (Department of the Environment), Callum McCarthy (Department of Trade and Industry), Steve Godber (Department of Health and Social Security), Stephen Alcock (Mr. Clarke's office) and Jim Acton (Mr. Waddington's office).

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment

SECRET

P.01277

PRIME MINISTER

Strikes in Essential Services

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. The papers for the meeting are as follows:

i. on essential services generally:

A - a minute to you of 13 February from the Secretary of State for Employment;

B - a minute to you of 13 March from the Secretary of State for Trade and Industry;

ii. on the possibility of a no industrial action agreement in the National Health Service:

C - a minute to you from the Chancellor of the Exchequer dated 26 March;

D - a letter of 29 March from Mr Turnbull to the Chancellor's Private Secretary setting out your views on how the Government might respond to the health service unions.

E - A Policy Unit note

SECRET

MAIN ISSUES

3. It may be best to deal first with the NHS since the Government will have to respond to the health service unions before long, whereas the timing of consultations on the general proposals is in the Government's own control.

4. The main issues are as follows:

a. in relation to the NHS:

i. whether the Government should accept compulsory and binding arbitration in return for a "no industrial action" agreement;

ii. if not, what should be the Government's response to the health service unions;

b. in relation to essential services generally:

i. whether the right approach is to make immunity for industrial action in the essential services depend on the observance of procedures;

ii. if so, whether it is sufficient to rely on the three simple tests proposed in Mr King's minute of 13 February;

iii. whether, in addition, strike ballots in essential services should require a higher majority than is the case in other industries;

iv. what should be the definition of essential services;

v. when the consultation should take place.

Compulsory arbitration in the NHS

5. The health service unions have proposed that they might be prepared to enter into a "no industrial action" agreement to operate from 1985 if there was a standing arbitral body to arbitrate on the global sum available for NHS pay; such arbitration would be compulsory and would also be binding on both parties, subject to Parliamentary override.

6. The most important objection to the proposal is that the Government, and other employers in the public sector, should not permanently hand over to a third party the final say on pay determination. It has not so far been thought worth paying a price as high as this for avoiding industrial action in the essential services. Even in the case of the Armed Forces Pay Review Body, the Government has the option of rejecting the offer if there are "clear and compelling reasons" for doing so. In the case of the police, the Government could reject the findings of the Police Negotiating Board, although it has not in practice been thought politic to do so. Where unilateral access to arbitration has existed in the public sector, there have been strenuous efforts in recent years to get rid of it.

7. There is the further difficulty that the health service unions want the arbitration to be about the "global sum available for NHS pay". What this means in practice is that the public service pay factor would no longer be set by the Government but would be determined by a third party.

8. Mr Turnbull's letter of 29 March contained the proposal that the Government might be prepared to agree to compulsory and binding arbitration provided that:

- failure to observe the agreement would lead to a loss of immunities;

- the arbitration would be of the "flip flop" variety.

9. On loss of immunities it is important to note that this would require legislation - either special legislation for the health service, or legislsation applying to the essential services generally. A "no industrial action"/compulsory arbitration agreement would in fact be covered by the general proposals in Mr King's minute of 13 February, under which loss of immunity would follow from non-fulfilment of any extant procedure agreement.

10. On "flip flop" arbitration, Mr Tebbit commented in his minute of 13 March that he did not think aspirations were yet sufficiently realistic, nor arbiters sufficiently hard-nosed to rely on it. There are also some particular difficulties for the Government in this kind of arbitration since the Government's offer may well tend, for demonstration reasons, to be a low one. In the context of binding arbitration, the unions would have little to lose by pitching their final position above, but not very far above, the going rate in the confident expectation that the arbitrator would find it much easier to opt for that than a low Government offer designed to work against the going rate.

Response to the health service unions

11. If the meeting concludes that compulsory arbitration is not acceptable, whether or not any conditions are attached to it, it remains to decide what the Government's response to the health service unions should be. The response most consistent with the Government's existing policy would be to concede arbitration, and the setting up of a standing arbitral body, but on the basis that access was only by agreement of both parties and that the arbitration was to relate not to the global sum for health service pay but to the pay, and other terms and conditions of employment, of particular categories of NHS staff. On this basis it might be conceded that the arbitration should be binding on both sides,

subject to Parliamentary override. In cases where they agreed to use the arbitration procedure, the unions would forswear the use of industrial action. There would not be much in this for either party, but there would be something. For the unions, there would be for the first time a standing arbitral body for the NHS and some moral obligation on the Government to use it from time to time. For the Government there would be some restriction, albeit modest, on the scope for industrial action. This could be reinforced by the sanction of lost immunities if Mr King's wider measures later went ahead.

Essential services: general approach

12. On essential services generally the meeting has to consider whether it approves the approach in Mr King's minute of 13 February of making immunity from industrial action depend on the observance of procedures, and in particular on the application of three simple tests (no action during the currency of a substantive agreement, no action until all stages of any extant procedure agreement have been exhausted, and a minimum period of notice between deadlock in negotiations and the start of industrial action).

13. At the meeting on 15 November 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.

14. 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.

15. On compulsory arbitration the general arguments are the same as those discussed above in relation to the NHS. However, even if Ministers were prepared to contemplate compulsory arbitration in the context of a "no industrial action" agreement with the NHS unions, it does not follow that it would be feasible and desirable to impose compulsory arbitration by legislative means on other essential services such as gas, electricity and water.

Strike ballots

16. 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 in the present Bill contain no requirement that immunity from civil action should depend on securing a given majority. In his minute of 13 March Mr Tebbit has said that he believes that it would be hard to impose levels above 50 per cent for the essential services without offering some concession in return and that he cannot

easily think of a concession that he would wish to offer. He would not even canvass the option of majorities above 50 per cent since it would be bitterly opposed by the union side and, as it would probably be enthusiastically welcomed by the Conservative Party, it would be difficult for the Government to withdraw from 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.

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 for issue in the autumn with a view to legislation in the 1985/86 Session.

HANDLING

15. On the question of a "no industrial action" agreement for the NHS you will wish to invite comments first from the Secretary of State for Social Services and then from the Chancellor of the Exchequer (who chaired the E(PSP) discussion) and the Secretary of State for Employment.

16. On strikes in essential services generally, you will wish to invite the Secretary of State for Employment to introduce the proposals in his minute of 13 February and then invite comments from the Chancellor of the Exchequer. The Secretaries of State for Energy and the Environment should be asked for their views on the impact of the proposals on the electricity, gas and water industries.

CONCLUSIONS

17. You will wish to reach conclusions on:

i. what response should be made to the unions' proposal for a "no industrial action" agreement in the NHS;

ii. whether immunity from industrial action in the essential services should depend on the observance of procedures and in particular on the application of the three tests outlined in the Secretary of State for Employment's minute of 13 February;

iii. whether a higher majority should be required for strike ballots in essential services;

iv. whether the essential services should be defined as the health service, electricity, gas and water;

v. whether the proposals on the essential services generally 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

18 April 1984

Prime Minister (4)
Interesting

Policy Unit
17 April 1984

MR TURNBULL

AT 17/4

UNIONS AND THE WORKFORCE

The Certification Officer for Trade Unions has recently produced his annual report. An interesting picture emerges when this report is compared with previous volumes.

Since 1979, the number of people in employment has dropped from 22.5 million to 20.5 million. Over the same period, the number of union members has dropped from about 13.5 million to about 11.5 million. In short, the fall in employment is matched almost exactly by the fall in union membership. As a result, the proportion of the workforce in unions has dropped from 60% to 55%.

It is tempting to conclude that almost all the industrial decline has occurred in heavily unionised industries. A rapid inspection of the figures tends to confirm this suspicion. The workforce in declining industries is heavily unionised - roughly 70% of printing employees, 80% of engineering employees, and 100% of miners are union members. Unions account for a far lower proportion of the workforce in growing industries - 25% of insurance workers, 16% of distributors, and 5% of the 2.5 million workers in miscellaneous services.

Other evidence, outside the service sector, supports this thesis. Rapidly growing, high technology companies have been extremely successful in keeping out unions altogether: Motorola, IBM, Semi-Conducters, Digital, GE and NEC are all non-unionised. As John Langan of ASTMS put it, "if you consider now that there are more jobs in IBM and Semi-Conductors at Greenock than there are at Scott Lithgow, then you start to get the picture. The large concentration of trade union membership we used to employ, and the opportunities to educate that membership, are being depleted, while at the same time, and in their place, individualistic and company trained attitudes are being encouraged to grow".

HOW CAN WE HELP TO REDUCE UNIONISATION STILL FURTHER?

The non-unionisation of the high technology companies is not due to any Government action. It is due to high pay, and astute management. Talking to IBM managers, we have been extremely impressed by their abhorrence of any Government interference.

But there are various areas in which the Government could properly act, without appearing to attack the unions directly. Reduction in subsidies for heavily unionised, dying industries is undoubtedly the most important step. But this is politically difficult. There are several other ways:

- continue to make life easier for small businesses, which are largely non-unionised;

- consult directly with the Government's own employees over pay and conditions, rather than operating through the unions;

- ensure that MSC schemes do not lead young people into unions; there is a danger in view of trade union involvement with the MSC;

- continue to encourage employee share ownership;

- pursue policies on contracting-out, competition and denationalisation more vigorously: these all contribute to de-unionisation.

All these points need further investigation. John and I are pressing ahead with this but thought you would like to be kept in touch.

Oliver Letwin

OLIVER LETWIN

CONFIDENTIAL

File

bc: Mr. Redwood

10 DOWNING STREET

From the Private Secretary

5 April 1984

Dear David

Balance of Power within Trade Unions

During the course of discussion on the coal industry dispute, the Prime Minister remarked on the fact that militants in the NUM and transport unions seemed to be able to exert power over the membership disproportionate to their numbers. This was despite the fact that the Government has been seeking to reduce the power of militants and increase the influence of moderates.

She asked your Secretary of State to prepare a paper on what was being done to alter the balance of power within unions. Could you therefore set in hand the preparation of a paper which would cover what action Government has already taken, what developments, e.g. on the closed shop, are already in train, what further action is in hand, e.g. in the Bill before Parliament, and what further action might be sought. She will, of course, want the paper to cover the issue of whether making union leadership accountable to the membership is best achieved by postal or work-place ballots. Finally, the paper might cover the underlying factors affecting union membership such as the decline of traditional industry and the increase in the proportion of women in the labour force.

BF 11

Could this paper be available shortly after Easter? I expect the Prime Minister will then want to discuss it with your Secretary of State.

Yours sincerely

Andrew Turnbull

Andrew Turnbull

David Normington, Esq
Department of Employment

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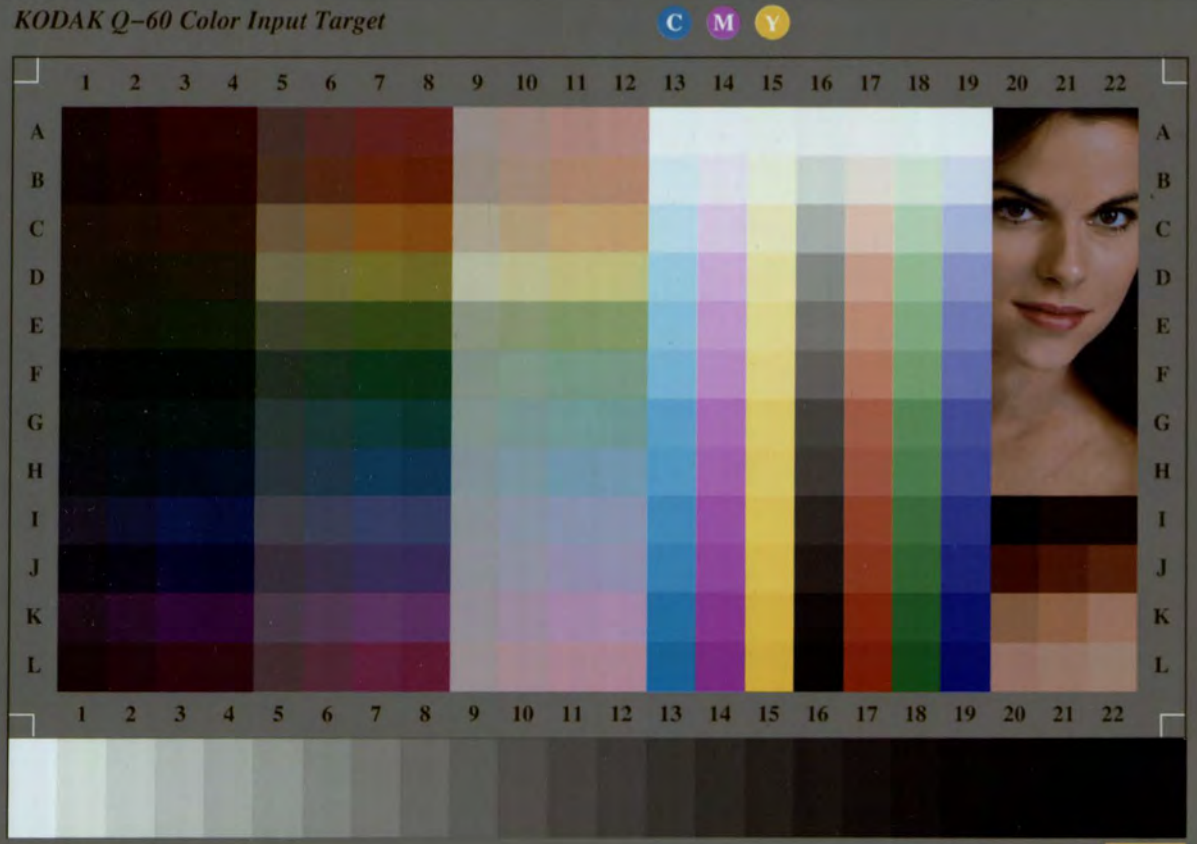
PART 10 ends:-

Hansard extracts 2.4.84.

PART 11 begins:-

AT to Employment 5.4.84.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