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PREM 19/2248

PART 12.

MT

SECRET

Confidential Filing

Industrial Relations Legislation.

The Employment Bill.

Strikes in essential services.

(1 n folder attached: Draft Consultative Document on Proposals for Industrial Relations and Trade Union Legislation)

INDUSTRIAL POLICY

Part 1: May 1979

Part 12: April 1985

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~6.3.85~~							
~~19.4.85.~~		~~28.1.87~~					
~~25.4.85~~		~~[illegible]~~					
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~~13.1.87~~							
~~22.1.87~~							
~~23.1.87~~							

PREM 19/2248

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(A)(85) 35	26/06/1985
CCU(85) 5	18/07/1985

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 5/1/2016

PREM Records Team

PART 12 ends:-

DRN to PM 28.1.87

PART 13 begins:-

MS/MPO to Pay Gen 4.2.87

PRIME MINISTER

INDUSTRIAL RELATIONS REFORM

You will remember at your meeting last week Mr. Clarke said it would be impractical to take action against pre-entry closed shops: it would not be possible in practice to prevent an employer from hiring only people with a trades union card.

Is this necessarily so? If it is deemed practical at least to try to prevent discrimination in hiring on grounds of sex or race, why should the trades union ombudsman not be given powers analogous to those enjoyed in this area by the Equal Opportunities Commission and the Race Relations Commission?

DAVID NORGROVE
28 January 1987

EL3BRL

CJBUP

PRIME MINISTER 28 January 1987

INDUSTRIAL RELATIONS GREEN PAPER

The events at Wapping and the BT engineers dispute have both improved the climate for bringing further Trades Union reform back onto the political agenda. The E(A) discussion will probably focus on the two main issues raised at your meeting last week.

1 Protection against being disciplined for failing to join a strike.

We believe you are right to insist on this being included. Unions are not cosy clubs agreeing innocuous rules of membership. Many strike calls have potentially serious consequences - both for the individual members, the employers and the customers. The individual member's right to weigh up the consequences and make his own judgement about whether or not to work should not be overridden by fear of reprisals.

The need for protection is obviously most severe in de facto closed shops - such as journalism - where loss of union membership can lose someone their job. However, even in other sectors, union membership often provides a number of valuable benefits - particularly in defending an individual member's interests. Many teachers, for example, belong to the NUT primarily because of the legal and insurance protection the union provides against classroom liability. Why should someone be excluded from these positive aspects of union activity because they disagree over a particular strike call?

We need not fear electoral disadvantage from suggesting this move. Surely most union members would individually welcome a change in law which removed the threat of

coercion hanging over their heads.

2 The option for the new Commissioner to take action at his own initiative rather than just in support of an individual member.

Kenneth Clarke opposed this on the grounds that a breach of a union's statutory duty to its members was a civil rather than a criminal matter. However, this does not of itself rule out extending the Commissioner's power. As a precedent, DTI does in fact have power to take action itself for both criminal and civil breaches of the Companies Act - contrary to the views expressed in your last meeting (see Annex).

The simplest mechanism would be to give the Commissioner power to initiate an action against a union to remedy a breach of statutory duty on behalf of the total union membership when requested to do so by one or more members. As suggested in the current draft (P.20), the Commissioner would only be involved after the union had failed to take action on a ruling of the Certification Officer in connection with elections or registers of members.

It is also worth considering extending the same role to the Commissioner in a situation where he is satisfied that there are reasonable grounds for believing that the union has not abided by statutory duty to hold a secret ballot before calling for industrial action - again, when requested by one or more members. The present draft (P.22) merely states that the Commissioner would be able to offer advice and support to individual trade unionists in these circumstances. If the Commissioner is not under an obligation to offer support, how will he decide when to intervene?

We believe that further strengthening of these provisions

is highly desirable to ensure that the individual member can have his rights protected without fear of victimisation or intimidation. If we are prepared to argue that the statutory duties should be imposed on unions, surely we can also defend the measures needed to help individuals enforce those duties.

* * *

Essential Services

Your meeting last week also requested Kenneth Clarke to reconsider in a separate paper the possible options for dealing with essential services. The BT engineers dispute may bring this subject to the foreground again. We doubt if there is any merit in simply enforcing legal procedural agreements which just postpone the confrontation. Equally, we should be hesitant about blunting management's freedom of action by forcing them into conventional arbitration as a way of ending disputes. However, it may be worth looking further at the relatively new concept of "pendulum arbitration", where the arbitrators have to come down in favour of either the management or union proposals as they stand, without the option of "splitting the difference" or proposing their own compromise. In situations (such as the current BT dispute) where the union's demands are clearly unreasonable, the management could be fairly confident about winning its case - and the pressure on the union to present a credible proposal would strengthen the management's hand in prior negotiations. However, the main difficulty might be in appointing an acceptable group of arbitrators. In the long run the best solution is to ensure effective competition in as many service areas as possible.

Norman Blackwell

NORMAN BLACKWELL

ANNEX

DTI PROCEEDINGS UNDER THE COMPANIES ACT

DTI has the power to undertake an investigation of a company under a number of conditions - when requested by shareholders, when requested by the company itself or when the Secretary of State at his own initiative believes there is "good reason" to investigate.

Following an investigation, DTI can proceed to take action to remedy either criminal or civil breaches of statutory obligations under the Companies Act.

Criminal Offences

Offences under criminal law include:

- fraudulent trading
- regulatory offences on share dealings;
- failure to keep proper records
- failure to convene an Annual General Meeting.

When a serious criminal offence is involved, DTI will usually call in the DPP. However, for many technical offences DTI can and does prosecute in the Courts in its own right, without involving DPP.

Civil Matters

Examples of civil breaches of the Companies Act include:

- taking action which is prejudical to a minority of shareholders;
- payment of dividends when a company technically has insufficient funds;
- failure to elect directors individually.

Most civil breaches are pursued privately by shareholders.

However, where a civil offence is discovered as a result of an investigation, DTI has power to seek redress under civil law in the public interest - and might do so to protect the interests of a large number of small shareholders who might otherwise be unable to gain redress. In practice DTI has rarely needed to resort to these powers in court.

NRB 26/1/87

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HOUSE OF LORDS.
LONDON SW1A 0PW

28 January 1987

My dear Kenneth:

E(A)(87)1: INDUSTRIAL RELATIONS REFORM

I shall be attending the meeting of E(A) tomorrow which is to discuss your proposed Green Paper on Industrial Relations Reform. I thought you might like to have advance warning of two points that worry me.

The first concerns the implications for legal aid. Your are proposing that a new officer "The Commissioner for Trade Union Affairs" should be able to support union members in taking legal action against their union where it is considered by the Certification Officer to be in breach of its statutory duty. When a rather similar proposal was floated last year, I expressed considerable reservations. The Commissioner for Trade Union Affairs is a new idea, but the basic point remains that you are proposing what amounts to preferential legal aid for union members which (unlike legal aid proper) would not be subject to a means test. There must not be two sorts of legal aid with ordinary victims of accidents &c taking second place to litigants who for whatever reason wish to sue their Unions - I do not consider that it is politically defensible. It amounts to a decision by the Government that cases against Trades Unions are so important that they take priority over other areas of litigation, including for example, personal injury and medical negligence cases.

Either the legal aid scheme is a satisfactory way of providing financial assistance to those of small or moderate means wishing to pursue their rights, or it is not. If it is, (as I would argue) then why is a special scheme necessary for union members? If it is not (and there is no shortage of critics who argue that the legal aid scheme is deficient in terms of financial conditions and administrative delays), then surely the only acceptable solution is to improve it for all would-be litigants.

The Right Honourable
Kenneth Clarke QC
Paymaster General
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

I am aware that there are three precedents for your scheme. The Equal Opportunities Commission and the Commission for Racial Equality can grant assistance in cases which raise points of principle, or where because of the complexity of the case it is unreasonable to expect an applicant to proceed alone, or for other special considerations. ~~And~~ The Secretary of State for the Environment also has similar powers to assist council house purchasers facing recalcitrant local authorities under the "right to buy" provision, and he may ~~also~~ nominate the Treasury Solicitor to act as the solicitor for the tenant. Your proposal however is much more difficult to portray as an area where special assistance is justified. It would involve the Commissioners intervening between a trade union and its members.

My second concern relates to paragraph 25 of the Annex to your paper where you say that any increase in the number of court of tribunal cases will not be significant in resource terms. The number of cases which might be brought in the High Court under proposals (a) (right to a secret ballot), (d) (union funds) and (m) (action by the Commissioner) could well run into hundreds. This may not be unduly expensive in money terms, since we would seek to recover the costs through fees, but it would cause additional pressure on waiting times and there could be judicial costs. I must therefore seek an explicit assurance from you that any extra costs which do fall on my vote will be covered by a PES transfer.

Finally, I should perhaps mention that it does seem to me that the policy on which you are embarking could be an expensive one. Very roughly, a day in the High Court (including representation on both sides) costs about £3,500. Have you considered whether, for some of the proposals you are making (eg paragraph 2 of the Annex) the County Court might not be both a speedier and cheaper venue?

I am copying this letter to the other members of E(A) Committee and to Sir Robert Armstrong.

Yrs:

P 02466

PRIME MINISTER

Industrial Relations Reform: The Next Step
[E(A)(87)1]

DECISIONS

The Committee should:

(i) decide whether the time is now right to take a further step in reforming industrial relations and trade union law by publishing a Green paper;

(ii) decide whether to approve the particular proposals for inclusion in the Green Paper;

(iii) invite Ministers to send the Paymaster General any detailed comments on the full text.

BACKGROUND

2. Since 1979 the Government has legislated three times to circumscribe the power of trade union leaders and to redress the balance between business interests and organised labour. The Paymaster General has now come forward with a package of proposals designed further to establish rights for individual members of unions, building on and developing the previous reforms.

THE ISSUES

3. The main issue is whether the time is now right to bring forward proposals for further reform. You discussed this with a number of senior Ministers on 22 January, and concluded that, while the Government should be careful to refute any accusations

that trade unions were being treated more harshly than the City, it would now be helpful to raise the profile of trade union reform.

4. If the Committee accept the principle of publishing a consultative document this Spring, you will wish to turn to the particular proposals listed in the Annex to the Paymaster's paper. The majority of his proposals are designed to create new rights for union members. Most are straight-forward and self explanatory, and should gain widespread support from all except union militants. There are, however, two proposals and one omission which you may wish the Committee to consider in more detail. These are dealt with below.

Commissioner for Trade Union Affairs

5. The Paymaster proposes to establish a new authority which would be under a duty to support High Court actions brought by individuals or to act on his own behalf to secure redress against a trade union in cases where the Certification Officer has found the union to be in breach of its statutory duty. He has been described as a kind of 'Ombudsman', but that is misleading: all existing Ombudsmen provide an alternative to action through the courts, and are not concerned with the enforcement of strictly legal rights. A better analogy (as paragraph 6.5 of the full text recognises) is with the Equal Opportunities Commission and the Commission for Race Equality, both of which are empowered, among other things, to help individual complainants prosecute their cases. In both case, however, the Commissions have a discretion over which cases to take up. There is much to be said for giving the proposed Trade Union Commissioner some similar power of discretion so that he can avoid trivial cases, provided that it is clear that he is still under a duty to come to the aid of all individuals with genuine grievances. It is also proposed that he should spare individuals the burden of legal costs, which in the High Court will be considerable, but again it might be appropriate to follow the example of the Equal Rights Commission whereby their costs can be recovered against the other party if the Court finds

against them.

6. The new Commissioner would co-exist with the existing Certification Officer. At your previous meeting there was a brief discussion of whether both Officers, with potentially overlapping duties in the same area, would be necessary and you concluded that this would be acceptable. It could, however, cause confusion, at least in common perception, and you may wish to ask the Paymaster General to comment further on this.

7. I understand also that the Lord Chancellor may have reservations about the proposal that the Commissioner might act on his own behalf, as this might set an undesirable precedent in other areas. He may also be concerned about the possible increase in work-load for the High Court.

The Right Not to Strike

8. The Paymaster proposes that unions should not be able to discipline their members for refusing to take industrial action. This will be particularly controversial and strongly opposed by those unions which traditionally exercise a strong discipline over their members. They will argue that workers will have first, a right to remain outside the union if they wish once the closed shop is effectively ended; and second, a right to a ballot before being called on to strike; so it is only reasonable to expect individuals to abide by the 'club' rules and the democratic decisions of their colleagues. As you pointed out at the last meeting, however, the Government can defend this proposal on the grounds of conscience, individual liberty and the right to work - particularly where essential services are concerned.

Strikes in Essential Services

9. The draft consultation document is silent on this issue. It is a notoriously difficult one, which Ministers have examined before without identifying an acceptable way forward. The range of services which might be deemed 'essential' now covers a

significant part of the public and private sectors. The thrust of reform so far has been to increase the rights of individual members over their unions, whereas any action against strikes would remove the right of individual workers to withhold their labour in extreme circumstances. Moreover, those groups which have eschewed strike action, either formally or informally, have generally been given some other means of protecting their position: either a pay formula, as in the case of the police and fire brigade, or an independent review body in the case of the nurses. Recent experience suggests that these mechanisms usually result in higher pay rises than have been negotiated for other groups with the right to strike (with the exception of the teachers, of course, who have gained a high award without eschewing industrial action, though at the cost of other (imposed) concessions).

10. The Paymaster has been invited to bring forward a paper considering these issues further, and it might be argued that the Green Paper should be delayed until then. I doubt, however, whether you would wish to have any delay in publication of the White Paper on this account, particularly since it must be doubtful whether any acceptable new proposals on essential services will emerge.

The Draft Text

11. The Paymaster has circulated a draft text under cover of his minute to you dated 23 January. You will not wish to go through it in detail at this meeting and Ministers might be invited to submit any drafting comments within a week of the E(A) discussion. But you may wish to consider the general tenor of the document. Would it, for example, be helpful in presentational terms to start by reaffirming that the Government is not opposed to responsible and legitimate trade union behaviour, and that the objective is not to undermine unions per se but to ensure that they are democratically accountable to their members and respect individual freedoms?

HANDLING

12. You will wish to invite the Paymaster General to introduce the discussion. All Ministers will wish to comment. The Lord Chancellor and the Solicitor General have been invited on account of the legal issues raised, and the Minister of State, Privy Council Office because of his responsibilities both for the Civil Service and for policy on non-departmental public bodies such as the proposed new Commissioner.

J B UNWIN

Cabinet Office
28 January 1987

DM/39

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PAYMASTER GENERAL

NSP not at this stage

PRIME MINISTER

DRAFT CONSULTATIVE DOCUMENT ON PROPOSALS FOR INDUSTRIAL RELATIONS AND TRADE UNION REFORM

1 We are to discuss my memorandum proposing publication of a Green Paper on industrial relations and trade union reform at the meeting of E(A) on 29 January.

2 Attached is a copy of the latest draft of the Green Paper itself. The particular proposals it makes are detailed in the Annex to the E(A) memorandum.

3 I am copying this to members of E(A), the Lord Chancellor, the Solicitor General, the Minister of State Privy Council Office and to Sir Robert Armstrong.

L. C

K C

23 January 1987

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CHAPTER 2: RIGHTS OF TRADE UNION MEMBERS

Recent Developments

2.1 On 26 September 1984 Part II of the Trade Union Act 1984 came into force. This made it a condition of trade unions' immunity from certain actions in tort that they do not organise strikes or other industrial action without first securing a vote in favour from those of their members who are to be called on to break their contracts of employment. The ballot itself must meet specific statutory requirements as to fairness and secrecy. There can be no doubt that this modest requirement has contributed to a major change in the conduct of industrial relations.

2.2 Employers have made increasing use of the legal remedies available to them against industrial action called without a properly conducted ballot. Over 30 cases have already been brought by employers in widely differing fields relying on Part II of the Trade Union Act 1984. The £200,000 fine imposed on the TGWU in connection with the Austin Rover dispute in November 1984 provided a clear warning to union leaders tempted to order industrial action without first ascertaining their members' views. This was reinforced during the News International dispute when SOGAT was fined £25,000, and had its assets sequestrated, for refusing to withdraw an instruction to its members employed in wholesalers (who had not been balloted) not to handle the distribution of certain newspapers.

2.3 As a result of these ballot provisions trade union leaders can no longer, as they once did, command industrial action and rely on a tradition of union loyalties and the ready possibilities of sanctions to carry their members with them. Events such as those at London Regional Transport in 1985 - where the majority of members continued to work normally after a court had ruled a strike call unlawful because unballoted - have shown that union members expect the right to decide for themselves whether to strike or not. Opposition to the simple and entirely reasonable test of the wishes of union members is no longer plausible and the great majority of unions have come to accept that they cannot direct members to ignore their own best interests.

CONFIDENTIAL

DAS

cc Unwin
Blackwell

SUBJECT cc MASTER

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

22 January 1987

Dear Susan,

GREEN PAPER ON INDUSTRIAL RELATIONS AND TRADE UNIONS

The Prime Minister yesterday held a meeting to discuss the draft E(A) paper on Trade Union Reform circulated with your letter to me of 20 January. There were present the Paymaster General, the Chancellor of the Exchequer, the Secretary of State for Employment (for part of the meeting) and the Chancellor of the Duchy of Lancaster. Mr Brian Unwin (Cabinet Office) and Mr Norman Blackwell (No 10 Policy Unit) were also present.

The Paymaster General said the theme of the proposals to be included in the Green Paper was concern to protect the position of the individual within his trade union. Other areas for trade union reform also deserved attention in the future (the enforceability of contracts might be one possibility), but it seemed right now to concentrate on the role of the individual and the strengthening of democracy within trade unions. This would force the Government's opponents to oppose certain of the proposals in a way which they might well not wish to be seen to do, and it would put the spotlight on their own proposals. In presenting the Green Paper, it would be his intention to put most emphasis on the proposal for a trade union ombudsman.

Those present welcomed the proposal for a Green Paper: it would be helpful now to raise the profile of trade union legislation. However, it was noted that the Government would need to be careful to refute the possible accusation - however untrue - that the City was being left to regulate itself whilst a substantial burden of formal regulation was being placed on trade unions. It was further noted that the Green Paper did not discuss the important area of strikes in essential services. It was agreed that options for tackling the problem of strikes in essential services should be further considered, though this was not a matter for the Green Paper. Enforceable procedure agreements would need to be considered at a later stage and it was suggested that "Table A" agreements might offer one way forward.

In discussion of the detailed proposals, it was suggested that the role of the ombudsman might be expanded to allow him to pursue actions independently, rather than solely to support

actions taken by a trade union member. The Paymaster General explained that whereas, for example, wages inspectors, factory inspectors or DTI inspectors under the Companies Acts, promoted criminal actions, the ombudsman would support civil actions. In this respect, his role could be seen as a parallel with the functions performed by the Equal Opportunities Commission and the Race Relations Commission.

In response to concern about the possible escalation of the cost of the proposal and the risk of pressure for similar arrangements to be made to support actions in other areas, the Paymaster General said the Certification Officer would act as a first filter for complaints and the ombudsman would have discretion over the complaints he chose to pursue. The Prime Minister noted that trade unions enjoyed a special legal position which justified the creation of an ombudsman.

The meeting considered the proposal to create a right for trade union members not to be subjected to disciplinary measures by a trade union for refusing to take industrial action. It was agreed that this would be controversial. Opponents would argue that the Government had given extensive rights to individuals not to become members of trade unions. If they then chose to join a trade union they should be expected to abide by its rules, just as a member of a club was expected to abide by the rules of the club. The response to such arguments should be to point to the differences between a trade union and a club, and to the need to prevent individuals from being deprived of the right to attend his work, which was a fundamental and basic right. The Government would need to make every effort to explain the proposal to the Government's supporters in trade unions and to convince them of its wisdom.

In response to a question from the Chancellor of the Exchequer, the Paymaster General undertook to examine whether the law under which an employer had to show detriment in bringing an action against a trade union might inhibit Government departments from bringing such actions. It was suggested that under the legislation detriment was not confined solely to financial detriment.

Concluding the meeting, the Prime Minister invited the Paymaster General to circulate his paper to E(A). The question how to tackle the problem of strikes in essential services should be further considered and a paper prepared. But this was not a matter to be discussed in the proposed Green Paper.

I am copying this letter to Tony Kuczys (HM Treasury), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), John Turner (Department of Employment) and Trevor Woolley (Cabinet Office).

Yours, David

(DAVID NORGROVE)

Miss Susan Chappell,
Paymaster General's office.

PRIME MINISTER 21 January 1987

INDUSTRIAL RELATIONS GREEN PAPER

The draft green paper covers most of the points discussed in your previous meeting - postal ballots, elections for officials, restrictions on closed shops, the right to a ballot before a strike.

The key new proposal is to set up a Commissioner to help trade unionists enforce their rights. In principle, individual members can take High Court action individually - in practice few will do so given the costs and personal risks involved, unless supported. Providing a Commissioner to help will be a major step forward.

A number of points are worth discussion:

- The Commissioner will work through normal courts rather than imposing fines or penalties himself. This differs from the role of other enforcement agencies, but is sensible to avoid politicising the judgements.

- The Commissioner is under a duty to support individual trade unionists taking action where the Certification Officer has ruled that there is a breach of duty on elections or registers of members. The alternative would be to enable the Commissioner to take action in his own right - like DTI inspectors where there is a breach in shareholder rules. This would avoid putting the individual union member on the spot.

- Where the right to a secret ballot before a strike is breached, the Commissioner is "able" to offer advice and support to trade unionists taking action. This could also be made an obligation. If it is not an obligation, what grounds are used to decide when support should be given?

- The Commissioner is separated from the Certification Officer to avoid the registration problems that occurred under the 1973 legislation. To whom is the Commissioner accountable?

- The proposed legislation gives no similar protection to small employers. This could be justified on the same grounds (to help bear the costs and protect them from retaliatory action) but would extend the scope and divert attention away from the rights of individual members. It is probably best left as a subsequent step.

The main omission from the paper is any discussion of dealing with strikes in essential services. There is still no clear way of dealing with this problem, but we need to be ready to argue against SDP proposals.

Norman Blackwell

NORMAN BLACKWELL

cc DLP

PRIME MINISTER

INDUSTRIAL RELATIONS/TRADE UNION REFORM - MEETING TO DISCUSS THE GREEN PAPER

At an earlier meeting you agreed with the Paymaster General that it would be useful to work towards publication of a further Green Paper on industrial relations early this year. Tomorrow's meeting is intended to allow you and others (the Chancellor, Mr. Tebbit and Lord Young) to consider the Paymaster's proposals before he circulates the paper at E(A).

DN

DAVID NORGROVE

20 January 1987

SLHAEZ

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Department of Employment
Caxton House Tothill Street London SW1H 9NF
5949
Telephone Direct Line 01-213.....
Switchboard 01-213 3000

David Norgrove Esq
Private Secretary to
The Prime Minister
10 Downing Street

20 January 1987

Dear David

INDUSTRIAL RELATIONS/TRADE UNION REFORM - MEETING TO DISCUSS GREEN PAPER.

As promised, I enclose a copy of the Memorandum which the Paymaster General is planning to put to E(A) together with a summary of the draft Green Paper proposals. This will form the basis of Mr Clarke's discussions with the Prime Minister tomorrow at 2.30.

I am copying this letter and enclosures to Private Secretaries to the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary of State for Employment and Sir Robert Armstrong.

Yours ever

Susan

SUSAN CHAPPELL
Private Secretary

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AH/30/12/GP2

INDUSTRIAL RELATIONS REFORM: THE NEXT STEP

Memorandum by the Paymaster General

1. I believe the time is right to take a further step in reforming industrial relations and trade union law and to build on the successes of the Employment Acts of 1980 and 1982 and the Trade Union Act 1984. I therefore seek agreement for the publication of a further Green Paper in late February or early March with the aim of introducing a Trade Union Bill in the Autumn.

2. My proposals for the Green Paper are summarised in the Annex. They are further logical extensions of the consistent theme of our policies of making trade unions more democratic and establishing new rights and protections for individual members in respect of their unions. Other key elements are protection of the individual's right to go to work and not to take industrial action, full postal balloting under supervision for elections and political fund ballots and the final abolition of the post-entry closed shop. The new Commissioner on Trade Union Affairs will help individual trade unionists secure the observance of statutory duties owed to them by unions under the terms of existing legislation and proposals in the consultative document. I am circulating separately a full text of the Green Paper.

3. The early publication of a Green Paper and the public debate it will generate would:

(a) provide a firm platform from which to attract renewed attention to policies and issues on which our approach since 1979 has been both popular and successful;

(b) force our opponents to engage in public debate about their intentions; the Labour Party in particular is clearly anxious not to attract further undue attention to its plans to restore and extend the power of trade unions;

(c) confirm our continuing commitment to further reform in the interests of better industrial relations and labour market flexibility.

4. I propose that we should proceed in a straight-forward way to consult and then prepare a Bill for the 1987-88 Parliamentary session in the light of that consultation. If a General Election intervenes it will affect the timetable but provide us with an additional opportunity to present our policies.

5. My proposals have no EC implications, nor potential adverse consequences in terms of UK obligations under the European Convention on Human Rights. Public expenditure and manpower requirements will not arise before the 1988-89 financial year. The Treasury is content for the details, and any scope for offsetting savings, to be considered in the context of the Public Expenditure Survey 1987.

6. I invite agreement to the publication of the Green Paper I propose.

KC
January 1987

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INDUSTRIAL RELATIONS/TRADE UNION REFORM - SUMMARY OF DRAFT GREEN PAPER PROPOSALS

1. The full text of the draft Green Paper will be circulated separately. This Annex summarises, chapter by chapter, the proposals made in the draft, and key points about their rationale/intention. There is also a note at the end about public expenditure/manpower implications.

CHAPTER TWO: RIGHTS OF TRADE UNION MEMBERS

(a) Create a right to a secret ballot before being called upon to take industrial action

2. Trade unions would be placed under a duty to their members not to authorise or endorse industrial action involving breach of employment contracts without obtaining majority support from those due to take part in the action in a properly held secret ballot. Any such member could seek a High Court order restraining the union from breaching this duty, and contempt proceedings might follow if an order was ignored or not complied with. The new Commissioner proposed in Chapter Six (See (m) and (n) below) would be available to help trade unionists secure observance of this duty.

3. The proposal can be seen as a natural development of the provisions in Part II of the Trade Union Act 1984 which gave employers, customers and suppliers the capacity to take legal action against trade unions authorising or endorsing unballoted industrial action. Union members would not be given the right to require that a ballot be held, since this might increase the chances of industrial action being prolonged. The decision on whether to hold a ballot will remain (as now) with the trade union, but a decline in unballoted industrial action may well result.

(b) Create a right not to be subjected to disciplinary measures by a trade union for refusing to take industrial action

4. This would give trade union members protection against being expelled or otherwise disciplined by their union for refusing to take industrial action or crossing picket lines. If subjected to disciplinary measures in such circumstances a trade union member could seek redress by taking his case to an industrial tribunal (and in cases where a trade union refused to withdraw the disciplinary measures imposed the Employment Appeal Tribunal

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could award compensation at a deterrent level). The protection would apply regardless of whether a call to industrial action had won the support of a majority in a ballot or not.

5. The proposal should strengthen the resolve of trade union members who wish to continue working normally and assist moderates to remain within trade unions where they can be a force for reform.

(c) Protect trade unionists' rights to enforce common law or statutory rights

6. Trade union members could seek redress from an industrial tribunal if they faced disciplinary action by their union on the grounds that they had taken action to enforce their rights. The protection would apply whether the trade union member was complaining to the courts, the Certification Officer or the new Commissioner. The remedy would be as in proposal (b) above.

7. It might also be useful to confirm in statute that no trade union rule can deprive members of reasonable access to the courts. This would clarify and confirm the approach which the courts have taken in nullifying trade union rules which purport to oust or postpone their jurisdiction.

CHAPTER THREE: SAFEGUARD AND CONTROL OF UNION FUNDS

(d) Establish a statutory duty on trade union trustees not to apply union funds in contravention of the terms of court orders (even if acting with the authority of the union's rules)

8. This would enable trade union members to refer a matter to the court on the ground that trustees had breached such a duty. Those responsible for conducting trade union affairs (eg the executive to which the trustees are immediately answerable) would thus be deprived of the capacity to breach the terms of court orders by spending union money on activities which would put the union in contempt of court. The prospect and possibility of activating the legal process leading to the removal of trustees and the appointment of a receiver to take charge of the union's affairs would be more apparent than at present.

(e) Limitation on ability of trade unions to offer indemnities to those acting on their behalf

9 The possibility is canvassed of limiting trade unions' ability to offer indemnities in respect of fines or awards of damages against those acting on their behalf. This would increase the protection provided by the common law and meet concern aroused by the broad scope of the NUM rule on indemnity.

(f) Create a statutory right for trade union members to be allowed access to inspect their union's detailed accounts, and to do so accompanied by professional advisers

10. This would go further than the present statutory right of access to the outline retrospective accounting summary supplied by trade unions to the Certification Officer. A statutory right to inspect the up-to-date detailed accounting records has existed in the past. There are examples of trade unions which, through their rule books, seek explicitly to limit members' rights and/or preclude the possibility of professional advice even where a right of inspection is offered. The proposal would override any such rules. Trade unions would thus be encouraged to manage their financial affairs better, and trade union members to take a closer interest in such matters.

CHAPTER FOUR: THE CLOSED SHOP

(g) Remove trade union immunity from industrial action to establish or maintain a closed shop

11. At present individual employees are protected against dismissal for non-union membership if a closed shop has not been appproved in a ballot, and they are entitled to compensation. Compensation can be awarded against the union if dismissal resulted from union pressure. However, the employer has no protection against industrial action by his own employees directed to his agreeing to accept or maintain a closed shop. The proposal would remove immunity from all such industrial action.

12. The proposal can be seen as a logical development in the step-by-step approach. It would give employers an important additional weapon against efforts to establish or maintain closed shop practices - and its use would be at their discretion.

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(h) Repeal of statutory mechanism which allows the creation/maintenance of "approved" closed shops

13. Again in keeping with the step-by-step approach. Repeal of the statutory provisions which enable the establishment and maintenance of 'approved' closed shops would have the effect that any dismissal on the ground that an employee was not a member of a trade union (as is now the case for dismissal on grounds of union membership) would be unfair and attract the remedies available through complaint to an industrial tribunal.

14. This proposal would avoid any risk that the TUC's present opposition to closed shop approval ballots might collapse, so leading to more such ballots, more approved closed shops, and more 'fair' dismissals on grounds of non-union membership.

CHAPTER FIVE: EXTENSION OF DEMOCRACY IN TRADE UNIONS

(i) Require all elections to trade union principal executive committees, and obligatory ballots on political funds, to be by the fully postal method only (ie members receiving and returning ballot papers by post)

15. This would modify the relevant provisions of Parts I and III of the Trade Union Act 1984. Currently the Act requires executive elections to be by the fully postal method unless the basic requirements (eg as to secrecy, entitlement to vote, fair and accurate counting etc) can be met by ballots at the workplace or by a semi-postal method; ballots on political funds must involve voting by post or at the workplace, conducted in accordance with rules approved by the Certification Officer.

Would the union have home addresses?

16. The passage of time since Parts I and III of the 1984 Act came into effect should have enabled trade unions (where necessary) to improve their registers of members in such a way as to make the postal method practicable. Workplace voting offers the possibility of subtle forms of pressure being brought to bear on trade union members, and there are examples of flawed election and balloting procedures associated with such systems. Fully postal arrangements, accompanied (as proposed elsewhere - see (j), (l) and (m)) by adequate arrangements for independent supervision and improved methods to enable trade union members to ensure that proper procedures are followed, should eliminate the flawed procedures to which other methods can give rise.

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(j) Require independent supervision of such elections/ballots

17. A necessary complement to the proposal above. Legislation could either define the criteria which the required independent supervisor would have to satisfy or specify the use of professional persons. For example, supervisors might need to be independent of trade unions and employers generally; meet a defined standard of competence; or be lawyers or accountants. They would also need to provide a right of direct access to their verdict on the conduct of particular elections/ballots for the membership of the trade union concerned.

(k) Extend statutory election requirements to cover elections of all trade union executive members, presidents and general secretaries

18. The provisions of Part I of the Trade Union Act 1984 are currently limited to the election of voting members of trade unions' principal executive committees. The proposal would extend the election conditions to all members, and would prevent important union figures avoiding the obligation to stand for election or re-election by giving up their voting rights.

CHAPTER SIX: ENFORCEMENT OF STATUTORY DUTIES CONCERNING TRADE UNION ELECTIONS, REGISTERS OF MEMBERS AND OTHER MATTERS

(l) Require Certification Officer's decisions on complaints of breach of such duties to indicate, where a breach is found, the steps necessary to remedy it and timescale for such steps

19. This proposal paves the way for development of the enforcement system proposed elsewhere in the chapter (see (m) below). It may also in itself encourage greater use of the arrangements for complaint to the Certification Officer established in Part I of the Trade Union Act 1984, insofar as complainants can expect a more detailed statement of necessary remedial action than has been the case to date.

(m) Provide that, where the remedial action identified by the Certification Officer is not taken, the original complainant (or another member of the trade union concerned) can obtain support in subsequent legal action

20. Once satisfied that a trade union had failed to take action to remedy a breach of statutory duty in connection with elections or registers of members as specified by the terms of a decision by the Certification

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Officer, a new authority ("Commissioner for Trade Union Affairs") would be under a duty to support, and carry all legal costs involved in, a High Court action to seek a declaration and enforcement order.

21. The proposal should give more teeth to the present complaints/enforcement system. It would mitigate the disadvantages faced by an individual in bringing a High Court action against a trade union (eg in terms of cost and availability of legal expertise), without opening the path to a flood of frivolous or vexatious complaints. Trade unions might be expected to take more care to ensure that relevant statutory duties were not breached, or, if breaches occurred and were identified as such by the Certification Officer, necessary remedial action was taken as soon as possible.

(n) The new Commissioner to offer advice and support to trade unionists in connection with the enforcement of certain other duties owed by trade unions to their members

22. In addition to his work in connection with proposal (m) above, the new Commissioner would also be able to offer advice and (financial) support to trade unionists considering or proposing to take legal action to secure the observance of certain other duties owed by their union(s). In particular:

- the new duty not to authorise or endorse industrial action without obtaining majority support from those due to take part in the action in a properly held ballot (see (a) above); and

- the requirement not to spend money on political objects (defined in section 3 of the Trade Union Act 1913, as amended by section 17 of the Trade Union Act 1984) without a properly authorised political fund.

23. The proposal would be of direct assistance to trade unionists contemplating complaints on these grounds, but who might otherwise perceive the High Court process involved as unduly offputting. The consultative document invites ideas about additions to the duties mentioned above which might also be brought within scope of the supportive role of the new Commissioner.

(o) Publicity Campaign

24. Department of Employment would mount a special publicity campaign to publicise, and draw the attention of trade union members to, the statutory duties and requirements applying to trade unions, and routes of complaint/enforcement to remedy any breach of these.

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PUBLIC EXPENDITURE/MANPOWER IMPLICATIONS

25. There are likely to be implications for public expenditure/manpower as and if these proposals are translated into legislation. While any increase in the number of court or tribunal cases is not significant in resource terms, provision may be needed to cover (a) an expansion of applications and payments under the Trade Union Ballot Funding Scheme (b) costs arising from the role of the new Commissioner on Trade Union Affairs in helping trade union members enforce certain statutory duties, and (c) a special publicity campaign. Preliminary calculations put the extra costs to the Department of Employment Group at £5.8 million in 1988-89, and £5.7 million in 1989-90 and beyond, with an increase in manpower provision for the new Commissioner of around 6 man years from 1988-89 onwards.

Department of Employment
January 1987

Woodrow Wyatt

Unions still untamed

The government wants to improve the 1984 Trade Union Act. This has brought some significant reforms in union election procedures but serious defects have emerged, as prophesied by its critics.

During the passage of the bill, speaking for the government in the Lords on July 13 1984, Lord Gowrie said direct postal ballots should be the norm. In the Commons on July 24 Tom King, then Employment Secretary, said the new Act had "a presumption in favour of a postal ballot". Only two major unions have switched to postal ballots.

Moreover, five important unions have defiantly rejected the provisions for secret ballots at workplaces, the alternative offered in the Act. They are the National Union of Public Employees; the National Health Service union Cohse, the National Association of Local Government Officers; the General Municipal Workers; and Tass, a key union in engineering. Irregularities have occurred in workplace ballots, as in the election for the general secretary of the Transport and General Workers Union, in the building workers' union Ucatt, in the largest civil service union, CPSA, and in Nalgo. Theoretically a union member can complain to the Certification Officer, who has a duty under the Act to attempt to compel unions to rectify well-founded complaints. This was always going to be a farce, born of a misunderstanding by Tories of the life of a union member.

To bring one's own union to account is to invite instant victimization and vilification from the activists, usually on the far left.

A complainant's life can rapidly be made a misery. One tough and experienced trade unionist, Mr Alan Paul, complained about Nalgo's procedures to the Certification Officer. He was confronted at the Certification Office by senior officials and legal advisers from the union. He was not allowed to take part in discussions on the undertaking to be given by the union. Though the Certification Officer ruled against the union on three but not all points last September, he refused to consider breaches of the Act which occurred after the original complaint but before his final ruling.

Mr Paul's experience was daunting though partially successful. Ordinary union members could not face the mugging up of the law required, the complicated arguments, the hostility and the possibility of large legal bills. That is why there is hardly a murmur from union members to the Certification Officer about blatant breaches of the Act.

An essential major improvement is to put the onus on the Certification Officer to ensure compliance with the 1984 and subsequent Acts. He could do this by requiring each union to submit its proposals for conducting ballots, declaring any elections void if they are without the law, and requiring evidence after elections that the plans approved by the Certification Officer were in fact implemented. It is beyond ordinary union members to be law enforcement officers.

The government's naïvety in supposing that postal ballots would become the norm must now be obvious even to obscurantist Department of Employment officials; if not they should read an admirable survey, to be published soon, on the workings of the 1984 Act by Mark Loveday, a barrister. Postal ballots must now be the law. Ballot papers should be sent out by and returned to an independent body for counting, as is already done by several unions. Some unions have not yet obeyed the law to keep a register of their members: there should be penalties for their failing to do so.

Ballot papers should be numbered seriatim to avoid a common practice of overprinting ballot papers and keeping no record of to whom they have been distributed, a jolly device for false voting which could be used to frustrate even postal ballots supervised by an independent body. This should be the Certification Officer or an organization approved by him.

Another dodge needing elimination is that by which an official on an executive with no vote escapes standing for election. Mr Scargill promptly had his vote removed on the NUM executive so that he could remain president for life. It is not obligatory to hold an election for the general secretary of the TGWU. He has no vote on the executive but both he and Mr Scargill have enough influence to do without one.

At present, though a member may ask to see the union accounts, he has no right to a professional adviser, such as an accountant, to help him understand them. There are numerous cases of improper spending of union money: a miner or a dustman must have the legal right to have help from a professional adviser in unravelling them. Most with university degrees are fazed by balance sheets and would not know how to identify impropriety unaided.

If previous Tory ministers unversed in union life had taken the advice of those who were, another go at making trade unions democratic could have been avoided. As it is, further action is urgently needed: a number of union leaders have not changed their rule books in the hope that there will be a Labour government which is already pledged to allow unions to return fully to their bad old ways without a nod in democracy's direction.

IND POL 7

10 DOWNING STREET

Prime Minister

Woodrow rang. He thought you might like to see the attached which appeared in Saturdays Times.

CR

13/.

SUBJECT
cc master

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 October 1986

THE INDUSTRIAL RELATIONS GREEN PAPER

The Prime Minister this morning met the Paymaster General and the Secretary of State for Employment to discuss the Paymaster General's minute of 1 October which set out the possible contents of a further Green Paper on industrial relations. Mr. Douglas Smith (Department of Employment) and Professor Brian Griffiths were also present.

The following main points were made.

i. Enforceable contracts had a number of substantial advantages. However, the attempt which had been made to introduce them in 1971 had failed. The proposed statutory protection for trades union members against their being expelled or disciplined for refusing to take industrial action or respect picket lines in breach of their contracts of employment would be a very important step forward. The importance of employers giving support to non-striking employees was also noted.

ii. It was agreed that closed shops were fundamentally wrong. However, at this stage it would not be right to seek to prohibit them. The proposals set out in the Paymaster General's minute were recognised as a useful further advance in protection for employees who did not wish to join closed shops.

iii. It was recognised that there was a case for supervised workplace trades union elections. However, these would give rise to difficulties in some industries. Supervised postal ballots were likely to be as good or better in nearly all cases. It would be important that ballot papers should not be distributed through trades unions.

The Prime Minister asked whether there were any gaps in the trades union legislation which should be filled to help individual employees or small employers. In response the Paymaster General argued that the courts were still often

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inaccessible to such people on grounds of cost or for other reasons. It would be worth considering whether a small public body could be empowered to enforce some of the legislation. The new body might in fact consist of only one or two people.

The Prime Minister agreed that this idea would be worth considering. Concluding the meeting, she invited the Paymaster General to submit his proposals, perhaps in the form of a draft Green Paper, to the appropriate Cabinet Committee with a view to publication by spring of next year.

I am copying this letter to John Turner (Department of Employment).

DAVID NORGROVE

Chris Capella, Esq.,
Office of the Paymaster General.

PRIME MINISTER

13 October 1986

INDUSTRIAL RELATIONS GREEN PAPER

Kenneth Clarke's plan for a Green Paper is intended to regain the initiative from the SDP and focus attention on the Labour Party's unreformed attitudes. However, his proposals are relatively modest and exclude options for action on several more contentious areas - including 'no strike' agreements in essential services and restrictions on secondary action. You will wish to consider:

(1) Is this the right balance for the next pronouncement on IR reform?

(2) Is it right to publish a Green Paper now, or would it be better to wait and announce a full set of proposals as part of the Manifesto?

Political Considerations

Industrial Relations was an important contributor to Conservative victory in both the last two Elections, and Government achievements in curbing union power have broad, popular support. However, with industrial relations now slipping down the electorate's list of key concerns, there is a danger that the Government will not reap the benefit of this support at the next Election.

Proposals to continue reform in areas for which there is a broad consensus could help bring the issues back to public attention and, by forcing the Labour Party into a position of outright opposition, would draw attention to their commitment to repeal existing reforms.

However, as in previous reforms, there is an important decision on how radical the next pronouncement should be. Being too radical in additional curbs on union power at a time when it is not at the front of public concern could risk losing the popular support that the Government has secured so far and give the opposition further ammunition to brand the Government as harsh, divisive and anti-worker. However, being too cautious could also backfire by giving the impression that the Government was afraid to tackle outstanding problem areas and suggest a lack of clear policy on these issues.

This decision is related to the timing. An early Green Paper might have to stick to safe ground to avoid exposing ideas that are not yet fully worked through. This could then constrain the Government's ability to publish more radical Manifesto proposals close on their heels (which is what some officials, of course, would probably like!). If it is agreed that more radical steps are needed, it might therefore be better to wait until a fully considered set of proposals can be announced in the context of a Manifesto for the next phase of Thatcherite reforms.

Specific Proposals

Kenneth Clarke's proposals cover three broad areas which can all be presented as increasing individual rights, and are likely, therefore, to be unexceptional to most of the electorate (although opposed by the Labour Party). We support all these proposals for eventual inclusion as part of a Green Paper or Manifesto.

1. Increasing Rights and Protection for Union Members. For example, protecting them from coercion to break their contract and enabling members (as well as employers) to call for a pre-srike ballot. Only item (d) - prohibiting individual indemnity for union officials carrying out executive decisions - could be construed as hostile to unions.

2. Stopping Formation of New Closed Shops. In fact, legal interpretation of the individual's right to exclude themselves from union membership on grounds of conscience or conviction has effectively ended most closed shop agreements. It may be simpler to simply abolish closed shops. (The SDP, by contrast, would relax regulations on closed shops).

3. Extending Trade Union Elections. Requiring all elections to be held by postal ballot and requiring all members of the union executive to submit themselves for regular re-election. (This is supported by the SDP!)

The areas most obviously ommitted are as follows:

1. Outlawing all Secondary Action. Under the provisions of the 1980 Act, a union can legally extend a dispute from the primary company to the first customers or suppliers. The Institute of Directors, among others, has called for this immunity now to be removed. This would be a logical progression, but would clearly be different in tone from the proposals above.

2. Enforcing 'No Strike' Agreements in Essential Services. Action on this front was promised in the 1983 Manifesto and is now advocated by both the IoD and the SDP. An obvious concern is that any specified procedure which led through to an arbitration procedure could weaken the Government's anti-inflationary stance - given the historic tendency of ACAS to 'split the difference'. One way round this would be to specify the so-called 'pendulum' system of arbitration where the arbitrator has to select either the employer's final offer or the union's final claim as they stand. This has the advantage of encouraging the union to move towards a reasonable claim in the final stages of negotiation - and has already been adopted in a number of UK no strike deals. However, it may not be appropriate for more complex negotiations, and would need much more examination before it could be confidently recommended.

3. Enforcing Legal Contract in Other Sectors. The argument against making all contracts legally enforceable has always been that it would lead to most of the substance being left out of the contract. One solution could be for the Government to specify a reasonable minimum disputes procedure that would have to be followed before a strike ballot - including, perhaps, arbitration in the form discussed above. However, this would involve creating a large and complex arbitration industry and - if arbitration was non-binding - would not necessarily help resolve disputes. This also requires more thinking through.

4. Requiring Political Funds to Operate by Contracting-In. While desirable, this could not be defended politically unless a similar sytem was required by shareholders.

Recommendations

The Government cannot avoid taking a stance on all these issues in the next Manifesto. However, there seems to be little value - and some dangers - in rushing into an incomplete Green Paper if there is no chance of enacting further laws before the next Election. You could, nevertheless, ask for further preparatory work to prepare a Green Paper in reserve, covering the additional areas of essential services and secondary action. This would provide useful back-up to the Manifesto and allow an early move on new legislation after the Election.

It would also put the Government in a position where it could respond rapidly if a few major strikes over this Winter caused a significant shift in the climate.

Norman Blackwell

NORMAN BLACKWELL

SG/Conf06

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CCB/UP

PAYMASTER GENERAL

PRIME MINISTER

AN INDUSTRIAL RELATIONS GREEN PAPER

You asked for a note on the possible contents of a further Green Paper which might be published in the coming months. This is attached.

I am sure, as a next step, we should continue our very successful approach in making trade unions more democratic and establishing rights for individual members in respect of their unions and so maintain the overwhelming support of public opinion and the majority support of trade union members themselves. All the proposals have this objective and provide a single theme.

I am copying this minute to David Young and your office has arranged a discussion with us on 14 October.

K C
1 October 1986

ANNEX

PROPOSALS FOR AN INDUSTRIAL RELATIONS GREEN PAPER

(i) Rights and Protections for Union Members

(a) A statutory protection for all members against being expelled or otherwise disciplined by their union for refusing to take industrial action or respect picket lines in breach of their contracts of employment.

This protection would remain even if there had been a ballot under the 1984 Act. It could be enforced by complaint to an industrial tribunal with power to award compensation for any loss suffered, with compensation at a deterrent level if the union refused to lift its penalty. This would strengthen the resolve of members anxious to continue working and assist them in retaining the often valued benefits of membership.

(b) An enforceable statutory duty on unions, exercisable by individual members, not to induce members to break their contracts of employment without first having a ballot under the 1984 Act.

At present only the employer has a remedy, initially by application to the High Court for an injunction, if a ballot is not held.

(c) Statutory provision to ensure that union rule books do not purport to prevent members seeking remedies in the courts for the infringement of their statutory or common law rights and a protection against any disciplinary action a union might take against members seeking such remedies.

This would clarify the attitude courts have taken in nullifying rules which purport to oust or postpone their jurisdiction and prevent a union's rules operating against freedom and public policy. The NUM's new rule book attempts to restrict members' access to the courts until a labyrinthine internal complaints procedure has been exhausted and the Labour Party/TUC's proposals would also appear to put obstacles in the way of the enforcement of existing rights.

(d) A statutory duty on union trustees not to apply union funds in contravention of court orders; and possible restrictions on unions providing indemnity for officials.

The first of these proposals would enable members to ensure that funds were not spent on purposes which would breach Court orders, override any less stringent obligations on trustees and in effect increase the risk of a receiver being appointed which would deter. Secondly, the NUM's new rule book purports to provide indemnities from the union's funds for officials for any acts sanctioned by the executive even if they result in criminal or contempt proceedings and are not in accordance with the union's rules. The courts would be likely to declare void any guarantee of indemnity for future criminal acts, but a wider statutory protection for union funds, which would still enable unions to provide indemnity for civil damages eg for accidents on union property, has attractions.

(e) A statutory right for members to inspect their union's accounting records with professional advisers.

A right of inspection is afforded by a good many unions but its statutory basis was repealed in 1974. The courts have held that where this exists a member can be accompanied by a professional adviser. But some unions explicitly limit access to audited accounts and the NUM's new rule book specifically excludes the right to professional advice.

(ii) Closed Shops

(a) Remove immunity from any industrial action with the objective of establishing or maintaining a closed shop.

Individual members are now protected against dismissal for non-union membership if a closed shop has not been approved under the 1982 Act and can be awarded compensation against their union if dismissed because of union pressure. But the employer concerned has no protection against industrial action by his own employees directed to his agreeing to accept a closed shop or the dismissal of individuals.

(b) Repeal the 1982 provision which allows post-entry closed shops following a secret ballot on a test of 80% of those entitled to vote or 85% of those voting.

The spread of closed shops has been halted, but a sprinkling of approved closed shops have been established under the 1982 provisions. In principle no majority vote should enforce union membership on individuals, even though

employees in the employment before a closed shop is introduced or approved and anyone who has a genuine objection to membership on grounds of conscience or other deeply-held personal conviction now has a protection against this under the 1982 Act. The effect would be that any dismissal on the grounds that an employee was not a member of a union would be unfair.

(iii) Trade Union Elections

(a) Require all elections to the executives of unions to be by fully postal ballots, ie members receiving ballot papers by post and voting by post.

The 1984 Act requires unions to hold elections by fully postal ballots unless they are satisfied that all the Act's other requirements (eg as to secrecy, entitlement to vote, fair and accurate counting) can be met by ballots at the workplace or by semi-postal ballots. On the established complaint of a member that these requirements were not met, the High Court can order a fresh election and can require it to be conducted by a fully postal ballot. It is becoming clear that only fully postal ballots can provide for wholly fair and well conducted ballots.

(b) Require independent supervision of such ballots.

This would require unions to engage an independent body, eg a firm of solicitors or accountants, the Electoral Reform Society, to supervise the printing and distribution of ballot papers, their return and the count.

(c) Extend the 1984 Act's requirements for elections to all members of union executives.

At present the requirements are limited to voting members; they need to be elected by secret ballot at least every 5 years. Executive members without a vote may be elected for life (eg Arthur Scargill, Brenda Dean, John Golding) or are appointed under contract (eg John Lyons, Lief Mills, Clive Jenkins).

DM/B71

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Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

cc SS MEA

Prime Minister 2

There is useful material here which could be drawn on if you wished for your speech in 24 September 1986 the Debate on the Address and your Party Conference speech perhaps.

David Norgrove Esq
Private Secretary
10 Downing Street
LONDON SW1A 2AA

Dear David

ARW
24/9.

TUC CONFERENCE: INDUSTRIAL RELATIONS DEBATE

In your letter of 8 September at flag you asked if this Department could pull together material to illustrate the effects of the TUC-Labour Party proposals.

... The attached material has been produced by officials and discussed with the Paymaster General. The "Points to Make" do not generally cite situations which would have developed differently under Labour's proposals: in many cases the facts will not be faimiliar to a popular audience and to set them out adequately would be tedious. Annex A, however, provides a wealth of supporting material, including case studies. Annex B not only offers further explanation on certain points but also illustrates ways in which the material may be woven together.

I am copying this letter to Andrew Lansley.

Yours ever

Susan

SUSAN CHAPPELL

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NHR/17/9/MISC

POINTS TO MAKE

The TUC-Labour Party document proposes the total repeal of this Government's industrial relations legislation. What would they envisage in its place?

(a) "a right for union members to have a secret ballot on decisions relating to strikes"

- not every strike, not other forms of disruption, not before the strike (as Ron Todd made clear in the TUC debate at Brighton), not excluding action if members vote against, not swiftly enforceable by injunction through the courts

- and John Prescott says "I personally do not believe in pre-strike ballots" (FT 5/9/86);

(b) "the new framework would in no way give employers, or their customers or suppliers, any opportunity to seek injunctions and damages against a union"

- unions would be above the law once more, employers would be deprived of their most effective remedies in the face of union demands, and the public could expect a return to regular strikes;

- as John Prescott puts it (NUS Conference 5/6/86), "There is no point in having a sophisticated system of rights, responsibilities and benefits if these are to be arbitrarily undermined particularly in our common law legal system, basically alien to the concept of collective rights as reflected in industrial disputes";

(c) "the method of election of union executives" would be "based on a system of secret ballots"

- this omits the most essential requirements of direct election and regular re-election. It removes the indidivual's right to a direct say in the election of union leaders and re-opens the way to jobs for life and the block vote;

(d) unions would be free to organise industrial action by workers far removed from a dispute, and on a range of issues (including companies' investment policies and decisions) extending far beyond their employment relationship; there would be little restriction on politically motivated strikes;

(e) "The law will be redrawn to ensure that workers can picket peacefully without the continual threat of civil and criminal liability"

- with no limitation to individuals' own place of work, mass picketing would become commonplace and protection for employers and others not involved in the dispute would be greatly reduced;

(f) encouraging collective bargaining "will involve ..... providing for the negotiation of fair union membership agreements and arrangements"

- abuse of the closed shop led to the dismissal of some 500 employees prior to 1980 as protection came to be confined to narrow religious grounds; to whom would the new arrangements be "fair"? with what protection? would they guarantee freedom as well as fairness?

(g) enforced unionisation (and spread of the closed shop) of the kind made notorious by the printing industry (cf Leggatt report on SLADE*[n]) would be possible, and encouraged in the public sector by 'contract compliance policies";

(h) rehabilitation of the closed shop would give new teeth to the enforcement of union discipline, for example, with respect to strike calls (cf Mrs Saunders*);

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n.* indicates that the point is covered in more detail in Annex A

(i) union members would be able to take their grievances to court only as a "last resort" (Norman Willis, who also claims nevertheless that "we are not intending to interfere with common law rights")

- this would smooth the path of any future leader determined, like Mr Scargill, to pursue his own ends irrespective of his union's rules or his members' wishes.

ANNEX A

JH/16/9/MISC

NEWS INTERNATIONAL - JANUARY 1986 ONWARDS

Though the NGA and SOGAT balloted its members over primary action in Fleet Street it called on its members in wholesalers and contract printers to take secondary action, to disrupt the production and supply of newspapers, without first holding a ballot. It was for this reason that injunctions were granted against the NGA and SOGAT which resulted in fines for contempt and sequestration of SOGAT's assets. Injunctions were also granted against the UCW and the TGWU. A majority of members in the regions ignored their unions' instructions and it is at least open to question how far they would have felt able to do this without the backing of this Government's legislation. Under Labour's proposals the union would not be required to ballot before calling its members out on strike and this might put more pressure on those members to obey the instruction - the onus then being on them to call for a ballot to endorse or end the action.

The Labour Party's proposals will make dismissal in a strike unlawful. News International had failed to reach an agreement with the print unions over a transfer of work to Wapping. Without the ultimate sanction of dismissal he would have been subject to the power of the union and subject to the continuation of restrictive practices and the closed shop and unable to implement new technology.

Department of Employment
16 September 1986

BRITISH RAIL AND LONDON REGIONAL TRANSPORT V NUR - MAY 1985 ONWARDS

In May 1985 the NUR called on its members in London Regional Transport to begin an indefinite strike over the issue of one-man operation of trains. LRT obtained an injunction because the strike had been called without a ballot and the majority of members subsequently ignored the strike call and worked normally. It is open to question how far union members would have been prepared to defy the union if they did not have the authority of the law behind them. In fact the strike was called off within a few hours.

The NUR subsequently made a conference decision to adopt a policy of holding ballots before industrial action. However in July 1985 BR won an injunction when the NUR did not ballot its members on industrial action over railbuses built by a private company. The action was called off immediately. The union then balloted guards on driver only operated trains and signalmen over plans for work reorganisation which would have resulted in job losses. Following defeats in both cases the union called off a proposed third ballot of engineers over proposed closures and job losses in engineering workshops. In July 1986 it tested the water again with a ballot on the issue of redundancies in railway workshops which again went against strike action. The events in British Rail might be attributable to management's hard line approach, which included the sacking of 251 guards and threats to sack signalmen if they went on strike. (Under Labour Party proposals it would be unfair to dismiss an employee during a strike). However under LP proposals there is no requirement to ballot before a strike and even if a ballot instigated by a member went against strike action the union could have caused considerable disruption over all these issues by bouncing its members into strike action before ballots took place.

Department of Employment
16 September 1986

RAIL DISPUTES 1970-79

1971 - ASLEF work-to-rule in Southern and Eastern Regions over pay claim

1972 - Pay dispute led to 1 week of unofficial action in South and Eastern Regions and 1 week of official action by all rail unions followed by 3 days 'work-to-rule'

1977 - ASLEF members in Southern Region took part in 'lightning' strikes over rest day working

1979 - NUR members in Wales in protest strike over cuts in services

1982 - ASLEF dispute over flexible rostering - collapsed as members returned to work

Department of Employment
18 September 1986

POST OFFICE AND THE UCW - MARCH 1985

After failing to reach an agreement with the union the Post Office nevertheless introduced new machinery into its Mount Pleasant Office as part of its plans to increase productivity and efficiency. This led to immediate strike action and the Post Office obtained an injunction against the UCW because it had instructed its members not to operate the machinery without first consulting them in a ballot. The union ordered its members to return to work. The legal proceedings were reported to have caused considerable concern within the union because of the potential financial liability. Under Labour's proposals this would not have been a consideration because unions themselves would have complete immunity from actions in tort (though in any event under Labour's proposals there would have been no right of action for an employer over an unballoted strike). The strike ended within a day but many members were reported to have been reluctant to obey the union's instructions to return to work because of widespread opposition to the Post Office's wider proposals. If the current legislation had not been in force there could well have been an escalation of the dispute with disruption to the postal service similar to that seen in 1971.

Department of Employment
16 September 1986

AUSTIN ROVER - NOVEMBER 1984

The Joint Negotiating Committee at Austin Rover, which covered 9 unions, called on the company's employees to take strike action in support of a pay claim following show of hands voting at mass meetings. Austin Rover began court proceedings against all 9 unions because they had failed to ballot in compliance with the 1984 Act. The action against the EETPU was withdrawn because the union instructed its members to return to work pending a secret ballot and 2 other unions, the AUEW foundry and engineering sections, also avoided injunctions by disowning the strike. However the company obtained injunctions against the 6 other unions (TASS, TGWU, the Patternmakers, the Boilermakers, the Metal Mechanics and the Construction Workers). Under Labour's proposals failure to hold a ballot over a strike would give no right of action to the employer. When the 6 unions failed to comply with the terms of the injunction Austin Rover began contempt proceedings. In the event it continued proceedings only against TASS and the TGWU (both of which were found to be in contempt, the latter being fined £200,000) but the company's ability and preparedeness to use the legal remedies available to it probably contributed to the progressive return to work. The effect was to draw the dispute to a close earlier than would otherwise have been the case and on the company's terms.

Department of Employment
16 September 1986

SECONDARY ACTION

The secondary action provisions of the 1980 Act were introduced as a direct response to the House of Lords judgement in the case Express Newspapers v McShane 1977. In the latter half of the seventies the extent of immunity for secondary action was governed by the Courts' interpretation of the so-called golden formula 'in contemplation or furtherance of a trade dispute'. In several cases the courts granted injunctions against the organisers of the industrial action on the grounds that some action was too remote from the main action to be arguably in furtherance of it and that some action, wherever it took place, was not capable per se of furthering the main action. However the McShane case established that the test of whether an act was in furtherance of a trade dispute was that a person should genuinely believe that to be the case. The law therefore appeared to provide immunity for those who organised industrial action far removed from the original dispute and this would presumably be the position if Labour repealed the present legislation on secondary action.

DIMBLEBY NEWSPAPERS AND THE NUJ - MARCH 1984

Journalists working for Dimbleby newspapers took industrial action because the firm transferred its printing to a non-union firm with whom the NUJ was allegedly in dispute. The Court however held that the firm involved in the dispute was a separate company and that the action by the journalists was therefore unlawful secondary action (it was not targetted against a first customer or supplier of the employer in dispute). Labour would widen the boundaries of lawful industrial action presumably allowing a return to the position where action which damages employers and contracts unrelated to the primary dispute are lawful.

/NB Though an injunction was granted the union subsequently resumed official support for the strikers and enforcement proceedings were not taken, presumably because of Mr Dimbleby's membership of the NUJ/.

Department of Employment
16 September 1986

POLITICAL STRIKES

Under TULRA 1974 a trade dispute was one which was 'connected with' employment related matters such as pay and conditions, jobs, allocation of work etc. A purely political strike which had no connection with the subjects listed in the definition of a trade dispute would not have had immunity. In two cases in the 70s the Courts decided that the dispute did not come within the definition of a trade dispute. In BBC v Heam in 1977 the Court of Appeal granted an injunction against national officers of the Association of Broadcasting Staffs to restrain the threatened blacking of the BBC's transmission of the Cup Final to South Africa; the Court decided that the subject of the dispute - the union's support for a campaign against the policies of the South African Government - fell outside the definition of a trade dispute. In the second case, Express Newspapers Ltd and the Evening Standard were granted an injunction aaginst the General Secretaries of the main printing unions and the NUJ to restrain them from calling their members out on strike in support of the TUC's 'day of action' in May 1980 which was organised to demonstrate opposition to the Government's policies.

Notwithstanding these judgements it was felt that it would not be too difficult for trade unions to show some 'connection' with jobs or terms and conditions of employment even where their principal motive was political. The definition of a trade dispute was therefore amended by the Employment Act 1982 to cover disputes which were 'wholly or mainly' about such matters.

The Labour Party would also extend the definition of a trade dispute which might result in immunity being given to campaigns by unions against matters such as privatisation.

Department of Employment
18 September 1986

MERCURY COMMUNICATIONS V POST OFFICE ENGINEERING UNION - OCTOBER 1983

Mercury Communications is a private telecommunications operator licensed by the Government following the ending of British Telecom's monopoly. Their system needs to be connected with British Telecom's network and in 1983 the company sought an injunction against the then Post Office Engineers Union (POEU) after the union had instructed their British Telecom members to refuse to interconnect the systems. The POEU was concerned about possible redundancies in British Telecom as a result of privatisation but it also objected to the whole concept of privatisation and the privatisation Bill. The case went to the Court of Appeal which found that the dispute was primarily about privatisation and therefore did not attract immunity under the definition of a trade dispute. Under Labour's proposals, which would extend the definition of a trade dispute, such action could be lawful forcing companies such as Mercury out of business and reducing the need for BT to improve its performance in order to compete in an open market.

Department of Employment
16 September 1986

PICKETING

The main changes introduced by the Employment Act 1980 were to limit picketing to an individual's place of work and to introduce a Code of Practice which recommended that there should be a limit of six pickets at each entrance to a workplace. Almost 30 employers have obtained injunctions against unions or their members for picketing following the introduction of the legislation, and the evidence is that six is becoming the accepted norm for the number of pickets in the majority of disputes. The Labour Party proposes that the law will be redrawn to ensure that workers can picket peacefully without the continual threat of civil and criminal liability. This would open the way to the re-introduction of the 'flying pickets' who contributed to the mass picketing seen through the long dispute at Grunwick and who characterised the steel strikes in the late seventies.

Department of Employment
18 September 1986

GRUNWICK DISPUTE

1. The strike began in August 1976 when 150 workers went on strike over the dismissal of a colleague and non-recognition of their union (APEX) and were dismissed.

2. APEX asked ACAS to carry out an enquiry under Section 11 of the Employment Protection Act 1975. The company refused to co-operate with ACAS, who recommended recognition of APEX and TGWU. The company then issued a writ of ultra vires, alleging that ACAS had exceeded its authority by undertaking an attitude survey of the striking workers.

3. Clashes between police and pickets outside the factory began in March 1977 and intensified during the summer. Hundreds of arrests were made.

4. On 29 July 1977 the Appeal Court ruled in favour of the company and found that the ACAS recommendation was null and void. The Secretary of State for Employment, Albert Booth, announced the setting up a Court of Inquiry into the dispute, and APEX, through the TUC, asked other unions not to take part in mass picketing while the Inquiry was underway.

5. In August 1977, the Court of Inquiry headed by Lord Scarman, ruled that as many of the sacked strikers as possible should be reinstated and that a union should be recognised. The company rejected the Court's recommendations.

6. Despite pleas from APEX and the TUC, mass picketing of the factory began again in September 1977 and further clashes with police took place.

7. In November 1977 the House of Lords began hearing APEX's appeal against the Appeal Court's ruling and violence broke out again on the picket lines. The Lords ruled on 14 December 1977 that ACAS's recommendations were void in law, as the Service had not sought the views of those who carried on working during the dispute.

8. APEX and the TUC continued to urge support for the strike but on 12 July 1978 ACAS announced that it was not pursuing the recognition issue any further and the strike ended.

Department of Employment
18 September 1986

CLOSED SHOP DISMISSAL

1. Mr Shackcloth

Mr Shackcloth had belonged to USDAW for over three years but gradually became disenchanted with the service it offered to him. He therefore resigned his membership in 1983. His employer operated a closed shop and dismissed him for non-union membership. Mr Shackcloth won his claim of unfair dismissal: under this Government's legislation his objections to the way the union had failed to represent him amounted to a "deeply held personal conviction" against union membership, so that he had the right not to be dismissed for non-union membership (whether or not the closed shop is an approved one). The amount of Mr Shackcloth's compensation is not known as it was agreed out of court.

Under Labour's proposals the 1982 Act - which affords this protection - would be repealed. Those dissatisfied with their union would not therefore be able to claim unfair dismissal. They would accordingly have little option but to continue paying union dues in order to keep their job.

2. "The Three Bristol Tugboatmen"

In 1984 following a secret ballot among its workforce which approved the introduction of a new closed shop agreement with the TGWU, Cory King Towage Limited sacked three of its employees ("the Bristol tugboatment") for refusing to join the union. A closed shop was not introduced and the men were protected against unfair dismissal by virtue of being non-union members at the time of the ballot. The men accordingly applied to an Industrial Tribunal which found that the union had applied pressure for the dismissal of the three men. It had done this by threatening to make official a strike of the other employees. The dismissal was found to be unfair and the union ordered to pay all of the compensation. The amount was agreed between the parties but not made public. It is thought to be a total of around £60,000.

Under Labour's proposals employers and unions would be able to conclude "fair" closed shop agreements. There is no mention of balloting employees to ascertain what they regard as fair. A closed shop could be imposed over their heads, therefore, and the proposals to restore unions' wide immunity from legal action would mean that the employer would stand little chance of resisting union pressure. Employees who refused to join the union could be faced with dismissal without compensation.

"The three British Railmen" - 1976

Under the Labour Government's legislation prior to 1980, non-union employees could be dismissed fairly in a closed shop unless they were able to prove religious objections to union membership. Few were able to meet the test applied by industrial tribunals (broadly speaking that they were members of an exclusive sect) and around 500 people were dismissed prior to 1980 without remedy.

In 1976, British Rail introduced a new closed shop agreement with the NUR, ASLEF and TSSA. Over 40 employees refused to join one of the specified unions and were accordingly dismissed. Three individuals, Messrs Young, James and Webster (the last of whom had been employed by BR for nearly 20 years), made applications to the European Commission of Human Rights (ECHR) alleging that their rights under the Convention had been breached. The applications were opposed in their entirety by the Labour Government and, following the 1979 election, by the incoming administration on the technical ground that the UK Government could not be held directly responsible as an employer for the acts of public bodies such as British Rail (this was of major significance for other cases). The Conservative Government nonetheless made clear its condemnation of Labour's legislation and of the dismissals themselves.

In 1979, the Commission, having given its opinion that the men's dismissal had violated their rights under Article 11 of the Convention (freedom of association), referred the case to the European Court of Human Rights which ruled similarly. Its reason for doing so was that the three men had been existing non-union employees before the closed shop took effect and two of them had had conscientious objections to joining the unions concerned. A total of around £150,000 was paid by the Government in compensation plus legal expenses of some £60,000.

The unfair dismissal legislation was changed in 1980 to protect individuals in circumstances similar to those of the three railmen. This protection was built upon in the 1982 Employment Act so that even in an approved closed shop (ie one which had been balloted) employees who were non-union members before its introduction are protected against unfair dismissal. So too are employees who object on grounds of conscience or other deeply-held personal conviction to union membership. The Labour Party's proposal is

that "fair" closed shop agreements should be allowed. There is no mention however in the joint TUC-Labour document "People at Work" of how existing non-unionists and conscientious objectors should be treated (although some Labour politicians/academics do mention the need to protect existing employees against dismissal eg Lord McCarthy). It seems possible therefore that Labour's policies could re-open the door to widespread sackings of those with objections of principle or long standing to union membership and to further ECHR cases which the UK would lose.

Department of Employment
17 September 1986

STOCKPORT MESSENGER GROUP/NGA - SEPTEMBER 1983

In 1983 workers at two plants belonging to Eddy Shah's Messenger Group of free newspapers were offered the choice of whether or not an NGA closed shop should operate and in a secret ballot the employees voted against union membership. The NGA set up pickets at both plants and wrote to local advertisers asking them not to use the Messenger newspapers during the dispute. The company obtained two injunctions against the union. One restrained the secondary picketing. The other was granted because the court considered the letter to advertisers constituted pressure on a third party as part of an attempt to enforce a closed shop (unlawful under S14 of the 1982 Act). The NGA did not obey the injunctions until it had incurred a series of fines totalling £675,000 and sequestration of its assets. The employer was also awarded damages of £125,000. Mr Shah has reported to have said that he would not have have succeeded in resisting the NGA without the civil law remedies available to him. Under the Labour Party's proposals he would not have been able to obtain an injunction against the unions. The mass picketing by the NGA could have continued indefinitely with the result of forcing Mr Shah to close down or to impose a closed shop, thereby necessarily sacking those individuals who did not want to belong to the union.

Department of Employment
16 September 1986

UNION LABOUR ONLY CLAUSES

One method of enforcing unionisation of an industry is for a union to put pressure on an employer to insist, when letting contracts, that the contractor uses only union labour. In addition, any work produced by non-union employees may be "blacked". This was particularly prevalent in the printing industry in the late seventies.

The 1980 Employment Act tackled the worst abuses /identified by the Leggatt Inquiry into SLADE's recruitment tactics/ and the 1982 Act strengthened the remedies available to employers. Union labour only clauses are now void and employers may sue the union when non-union work has been blacked. The general restriction on union immunities has also helped.

Under Labour these remedies would at best be swept away and at worst replaced by a statutory form of contract compliance. Under this, contractors might be unable to obtain a contract unless they agreed to employ union members, pay specified minimum rates, and follow a Labour Government's directives on, for example, equal opportunities.

DISCIPLINARY ACTION BY UNIONS

1. Mrs Saunders

Mrs Saunders was employed in a supervisory capacity in a bakery. During an unofficial strike in 1983 she crossed picket lines to clear up food which would otherwise go bad and cause damage to machinery. This was in accordance with a management/union agreement covering supervisory staff but tempers flared as a result of differences of opinion. She resigned her membership following an altercation with her union official (Bakers Food and Allied Workers' Union) but, when faced with dismissal due to a closed shop agreement, sought to regain it. The branch concerned refused however to readmit her and she subsequently went on to win acase of unreasonable exclusion under the 1980 Employment Act. She received around £10,000 in compensation.

Under Labour's proposals the 1980 Act would be repealed leaving no statutory means of complaining about exclusion/expulsion from a closed shop union. Employees might have little option therefore but to go along with unofficial strike action rather than risk the loss of their union membership.

2. Austin Rover

As a result of the dispute at Austin Rover in 1984 (see separate note) several individuals had disciplinary action taken against them by their union for refusing to obey the strike call. Fines were imposed and failure to pay these could lead to expulsion and dismissal as there is a closed shop in operation.

Under the Government's 1980 and 1982 Employment Acts anyone dismissed/ expelled from their union in these circumstances has a right of complaint to an industrial tribunal. As the strike was declared illegal by the High Court, employees would probably win any case they brought and receive compensation.

Under Labour's proposals, however, the 1980 and 1982 Acts would be repealed leaving employees with little or no protection for refusing to obey even an unlawful strike call. The strike would in any case not be unlawful under Labour as ballots will not be required before strike action occurs.

NUS LEVY

In October 1984 the National Union of Seamen imposed a levy of 50p per week on its members to raise money for striking miners. Failure to pay the levy would have resulted in disciplinary action being taken against individuals and ultimately expulsion from the union. One member, Mr D Hopkins, challenged the legality of the levy and in November 1984 the High Court ruled that the levy was illegal because it had not been called in accordance with the union's own rules. The levy was subsequently replaced by a voluntary one with no penalties for refusing to pay.

The basis of the legal action was that the union's rules form a binding contract between the union and its members. Any breach of the rules may therefore be challenged in the courts. It is unclear whether under Labour's proposals individual union members would be able to sue their union for breach of contract. If not people in Mr Hopkins' situation would have little option but to pay.

MINERS STRIKE - MARCH 1984 - MARCH 1985

During the strike 7 injunctions were granted under the provisions of the Employment Acts 1980 and 1982 (4 picketing and 3 secondary action). The sequestration of the assets of the South Wales area was a result of one of these cases. Under Labour's proposals employers would be unable to obtain injunctions against the union itself.

A total of 19 cases were brought by members of the NUM against their own union nationally, or their own Areas, under the common law. Fourteen of these were brought under the rules of the NUM itself (actions in contract) and resulted in the strike being found to have been called contrary to the rules of the union. Under Labour's proposals unions organising a withdrawal of labour or other forms of industrial action would have legal protection against actions in contract. On a strict interpretation this would protect them against members' actions to enforce the rule book.

The fact that the strike was found by the courts to have been called in breach of the NUM's own rules undoubtedly strengthened the hand of the working miners and did nothing to improve the prospects of supporting action by other unions. In addition the ability of members to take action against the union put pressure on union leaders and the sequestration of the national union's funds, which resulted from a case brought by working miners, restricted the NUM's ability to escalate the strike.

Department of Employment
16 September 1986

General

Our legislation has created a climate in which it is easy to forget about the trade union domination of the 60s and 70s. Domination which dragged down not just Governments but the economy as well. We now have the best industrial relations record for 50 years. And x million new voters for whom 'the Winter of Discontent' is just a line from a play they read at school.

But this peace was hard won. It was won because we had the courage to put trade unions within the law. And to see that Britain was governed from the corridors of Westminster not the smoke filled rooms of Congress House. This peace which we now take for granted would be surrendered by a future Labour Government.

It is no use looking to what was said at Brighton or at ? for clarification of the Kinnock strategy. The strategy is to say as little as possible so as not to frighten the voters. The rhetoric about secret ballots and democracy no more than a decoy. But let me lift the veil on what it all really means for industrial relations.

Trade Union Immunities

The first and most important thing to note is that trade unions would once again be given complete immunity for organising industrial action. We took away that blanket privilege in 1982 when we made them liable in the same way as their individual organisers were. This was not just a technical nicety. It meant trade unions, like everyone else, had to pay for the damage they caused when acting unlawfully. That single step, perhaps more than any other, changed the course of industrial relations. Had the unions remained unsuable, Eddie Shah*[1] might have been forced to give in to the imposition of a closed shop by the mass picket of his Warrington plant, after his own workforce had voted overwhelmingly against. Railway workers might have been called out on strike without a ballot, leaving British Rail* locked in to overmanning and restrictive practices - or making 1985 and 1986 as miserable for the commuter and unwilling striker as 1982 had been. The workers on the sidelines of the Wapping* dispute - the distributors and warehousemen - could still be

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1 All examples marked * are explained in more detail in Annex A

under orders to join in, again without a secret ballot, and against their inclination. And any union that wished would have been free to add muscle to the cause by ordering the spread of strikes to employers far removed from the original dispute.

Strike Ballots

Let's take a closer look at what would be the fate of our laws on ballots before industrial action. The Labour Party reserves its commitment to ballots relating to strikes alone not all forms of industrial action in breach of contract. There is no commitment to giving union members the chance to say if they want to strike before they are ordered to. Quite the opposite - John Prescott has said he doesn't believe in pre-strike ballots[2]). So when would the ballot take place? At best during the dispute, perhaps not at all. I doubt any new tribunal could move fast enough to give a judgement before a dispute had had damaging effects for employer and workforce alike. And then suppose a union is found not to have a rule about securing majority support for a strike or, has a rule and chooses to disregard it. What sanctions would apply? Not loss of immunity - that is sacrosanct - the the employer who suffered damage would have no right to seek an injunction or damages against the union. This question of sanctions is crucial. The NUM had a rule about strike ballots longer than most when Arthur Scargill chose to replace it with his own. The working miners had the common law to protect their interests - would the Labour Party take that away too?

Trade Union Elections

Then there's the question of trade union elections. We've given union members the right to choose their leaders directly and by secret ballot at least once every five years. The key feature of our election law is that all members have an equal say. Promising, as the Labour Party has done, that elections will be by secret ballot is not enough. It leaves the way open to all the old systems. The block vote - where however small the majority, all votes are allocated to the winner. The indirect election whereby the top few are chosen by a chosen few.

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2) John Prescott quoted in Financial times, 5 September 1986

The NUR and the TGWU have been forced under threat or legal action to change their systems in order to meet our higher democratic standards. Others[3] have done so in respose to members' wishes. But others again[4] have made only a temporary change and are just waiting for the opportunity to revert to old habits.

Closed Shop

Finally, the closed shop. We have taken four important steps to tackle this major injustice of the British industrial system. We have said, if you've never been a member of a trade union, you have a right not to be forced to become one should a closed shop be introduced at your place of work. If you have conscientious objections to union membership, these should be honoured however long the closed shop has been in existence. If union members want to introduce or retain a closed shop they must secure the votes of an overwhelming majority of those affected. And if unions want to engineer the dismissal of a non-union member they may share the cost of any compensation awarded by an industrial tribunal. In place of these safeguards, the Labour party propose to allow the operation of fair closed shop agreements. Fair to whom? Presumably not very fair to those like the 500 people sacked without compensation under the last Labour Government's legislation. Closed shop sackings are for the moment very rare. When the T&GWU put three Bristol Tugboatmen* out of work by threatening to close the port they ended up paying dearly for it. Would that penalty remain? Unlikely. Would closed shops require the vote of an overwhelming majority? Just as unlikely. The 1982 Wembley Conference made it TUC policy not to hold ballots on the closed shop.

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3) Unions which have changed their voting standards in order to comply with the 1984 Trade Union Act or are contemplating change include (besides TGWU and NUR) GMBATU APEX, ASTMS, UCATT, UCW, USDAW and others

4) The following unions have changed their election rules by temporary regulation: NCU, IPCS, SCPS, CPSA, STE and ASLEF

David
Fixed for
TUE 14
October at
10.30. CR 19/7.

Thanks.
DRS

10 DOWNING STREET

Caroline Could you please . . . .

AJS

Could you or Caroline please arrange a meeting for about 3 weeks time on industrial relations policy with

Lord Young
Paymaster General
Mr Douglas Smith
– Dept of Employment.

To last, say, 3/4 hour.

DRS
17/9

// BF for meeting //

CONFIDENTIAL

File JD3AQD
cc BG

10 DOWNING STREET

LONDON SW1A 2AA

9 September, 1986.

From the Private Secretary

TUC CONFERENCE: INDUSTRIAL RELATIONS DEBATE

The Prime Minister was most grateful for your Secretary of State's minute of 4 September which discussed the TUC conference debate on industrial relations law. The Prime Minister found this most interesting.

The minute mentioned that had the TUC-Labour Party proposals been in force, the actions which working miners brought against the NUM would not have been possible. The Prime Minister may wish to draw upon the material you provided in her speeches in the coming weeks, and it would be helpful if the Department could pull together examples of a similar kind which might be used in speeches to illustrate the effects of the TUC-Labour Party proposals. If it would help, I would be happy to discuss this with you on the 'phone first.

I am copying this letter to John Turner (Department of Employment), and Andrew Lansley (Office of the Chancellor of the Duchy of Lancaster).

David Norgrove

Ms. Jeannie Cruickshank,
Office of the Paymaster General.

CONFIDENTIAL

2

PRIME MINISTER

TUC CONFERENCE: INDUSTRIAL RELATIONS DEBATE

You were asking about the implications of Monday's TUC debate on industrial relations law.

Kenneth Clarke's minute below contains an interesting account. I suggest you also, if you have time, look at the press release below, and particularly the careful comparison of the Labour/TUC proposals with the present position which is attached to it.

Mr. Clarke takes the opportunity in paragraph 9 of his minute to lobby your support for a Green Paper on industrial relations to be published before the election. He makes quite a good case, but I suggest you do not respond at this stage and instead discuss the idea with Lord Young at your next bilateral.

There is useful material here for a passage in your speeches in the coming weeks. This might, however, have more force if we could get more examples of things which have happened in the past few years which could not have happened if the Labour/TUC proposals had been in force, eg the actions which working miners brought against the NUM, to which Mr. Clarke refers. I shall ask the Department of Employment to sort out some usable examples.

DKN

DAVID NORGROVE
4 September 1986

CJ(66)

PRIME MINISTER

TUC CONFERENCE: INDUSTRIAL RELATIONS DEBATE

1. As you know I attended this Monday's debate at the TUC Conference on industrial relations law.

2. The Conference gave overwhelming backing to the TUC-Labour Party document "People at Work: New Rights, New Responsibilities" and to the composite motion on industrial relations law drawn up shortly beforehand to avoid a split on the question of ballots. They rejected a resolution by TASS opposing state interference in unions' internal procedures.

3. The Conference was predictably more concerned with achieving a show of unity behind the TUC-Labour Party Document than with clarifying its proposals. The one clear commitment was the total repeal of all our industrial relations legislation. On the key issue of ballots before strikes, the composite called for 'a right to strike and to have a secret ballot in such situations'. Ron Todd's supporting speech made clear that, as well as removing any right of action from the employer, this did not apply to industrial action short of a strike and did not mean there would have to be a ballot before the strike began. Despite this, the Guardian and the Times have reported the outcome as a commitment to pre-strike ballots.

4. There were similar ambiguities on the issue of elections of executives. The composite motion promises to 'permit union members to control the rules and electoral procedures of the union'. This sweeps away our requirement of a one man one vote secret ballot at least every five years. Indeed the Society of Telecom Executives were commenting last week that they had been assured that indirect election systems would again be permitted. Prior to the 1984 Trade Union Act most union executives were in any case elected by secret ballot. The important effect of our reforms has been to eliminate voting structures which lent themselves to activist domination.

5. There was no mention of what sanctions would be applied to unions which either declined to adopt balloting rules or failed to obey in practice. But 'New Rights and New Responsibilities' suggested these matters would be decided by a new independent tribunal taking a 'conciliatory and flexible approach'. Ron Todd went as far as to say that the courts should play no part in disputes over union rule books. This would in fact go beyond simple repeal of our provisions and release trade unions from their contractual obligations under the common law towards their members - obligations which were the basis of the legal actions taken against the NUM by the working miners.

6. Repeal of our legislation would permit a return to widespread secondary action, secondary picketing and closed shop dismissals. The Conference provided no indication of what if any new controls would be imposed. The composite motion called for the right 'to picket peacefully within the criminal law, abolishing restrictions on picket numbers and so-called "secondary" activity' and the right to take industrial action 'in solidarity with other workers'. The document itself called for 'the negotiation of fair union membership agreements'. Despite all this, there was criticism from Alan Sapper, the left wing leader of ACTT, that the new proposals 'elevate the individual above collective decision taking'.

7. In supporting the joint document, the Conference endorsed the prohibition of ex parte injunctions in industrial disputes. The document also proposes that trade unions organising industrial action should have 'comprehensive legal protection against actions in tort, contract and equity' so it would only be individual organisers and not the unions themselves that could ever be called to account in any way before the courts. Our laws have probably had their greatest effect on Union activity precisely because they put Unions and their funds at risk for unlawful behaviour.

8. While the left wing of the trade union movement may appear to have been defeated on the principle of state involvement in their internal affairs, the package endorsed earlier this week would impose an industrial relations framework remarkably similar to the one we set about reforming in 1979. We must continue our efforts to expose their position over the coming months.

9. We must also, in my opinion, consider further what positive steps we should take to set clearly before the public our own future policies on these matters. As you know colleagues decided against my bid for industrial relations legislation in the coming session. I have already discussed with David Young and Norman Tebbit the case for a Green Paper on the subject this side of the election. I believe we must reinforce our commitment to individual members' rights. We could make useful proposals on the pre-entry closed shop, on disciplinary action against workers who refuse to break their contracts of employment and on postal ballots. The Labour Party's inevitable opposition to this would reveal their true colours once more. Incidentally it would also prevent the SDP upstaging us on our own issue with their already declared commitments on some of these matters.

10. I am copying this to David Young and Norman Tebbit.

K C
4 September 1986

CONSERVATIVE PARTY NEWS SERVICE

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THE RT HON KENNETH CLARKE QC MP

Release Time: 00.01 hrs. Sunday 31 August 1986 474/86

The Rt Hon Kenneth Clarke QC MP (Rushcliffe), Paymaster General, in a statement in advance of the TUC Conference.

MARKING THE TUC CARD

On Monday we will have our first chance to take a close look at Labour's latest deal with the unions. That's when the TUC Conference will be discussing the 'new' package on industrial relations law agreed to by Neil Kinnock. I predict that there will be a lot of talk about 'Freedom and Fairness' and rather less about what the proposals on labour law would mean in practice. So I shall be listening carefully not only to what is said, but also to what is left unsaid.

I believe that on Monday, the TUC should come clean and give answers to the following questions. They all come within five key areas. If the TUC and the Labour Party are really committed to democracy in Trades Union affairs, they would be able to answer 'Yes' to all or most of them.

/.. On the Closed Shop

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On the Closed Shop

- would a workforce have the right to a ballot before a closed shop was made legally enforceable?

- would an employee have the right to compensation if he were sacked for refusing to join a union?

On Picketing

- would people be prevented by law from picketing factories and premises which were not their own place of work?

- would there be protection under the law against unions organising 'flying' pickets?

- would there be any limit or guidance on the number of pickets permitted at any one place?

On Strike Ballots

- would an employer have any remedy to prevent a strike which had not been voted on by his employees?

- would anyone have an effective legal right to stop a strike being called without a ballot first having been held?

/.. On Secondary Action

On Secondary Action

- would a union be prevented under the law from taking industrial action against a company which was not a customer or supplier of a company in dispute?

On the Election of Union Leaders

- would union executives have to be elected directly by all members of a union in a secret ballot, or would block voting and indirect elections be reintroduced?

- would a union be required to maintain an up-to-date register of its membership?

- would an election be quashed and re-run if a complaint on any of these grounds was upheld?

During the debate, I shall be checking the answers to these questions. My reading of the document is that the answer will be 'No' to every question that is not evaded. If that is so, I would regard the whole proposal as a complete con - a purely cosmetic cover-up of an attempt to turn the clock back to the bad old days of union misrule and undemocratic behaviour.

END STATEMENT

NOTE FOLLOWS

THE CLOSED SHOP

Previous Situation: Employees could be "fairly" dismissed for not belonging to a union where a closed shop existed. The only protection was exemption on religious grounds.

Government Initiatives since 1979: the 1980 and 1982 Employment Acts made dismissal for non-union membership automatically unfair unless it was the result of a closed shop which had been approved in a secret ballot in the preceding five years by the overwhelming majority of the workforce.

- That means it must have gained the support of 80% of those entitled to vote or 85% of those actually voting or, if the closed shop was introduced after 14 August 1980, 80% of those entitled to vote.

- If the closed shop has not been approved in this way, or if no ballot has been held, anyone may complain to an industrial tribunal that he has been dismissed unfairly and may order re-engagement, reinstatement or award substantial financial compensation.

- Even where closed shops have been approved by the workforce certain categories of employee retain their protection against unfair dismissal, including employees who were non-union members before the closed shop was established and those with a deeply held personal conviction against union membership.

- Individuals were also given the right not to be unreasonably excluded or expelled by a union they are required to join under a closed shop agreement. This is backed up by a right of application to an industrial tribunal which may make a declaration that unreasonable exclusion/ expulsion has occurred and ultimately award compensation.

Labour Party/TUC Proposals: Very little is said directly on the closed shop.

- There is a commitment to strengthening the right to belong to a union, including "providing for the negotiation of fair union membership agreements and arrangements". The position of those who do not wish to belong, or are excluded or expelled, is not spelled out.

/.. PICKETING

PICKETING

Previous situation: Under Section 15 of the Trade Union and Labour Relations Act 1974 it was lawful for one or more persons in contemplation or furtherance of a trade dispute to attend at or near:

(a) a place where another person works or carries on business; or
(b) any other place where another person happens to be, not being a place where he resides,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

Government initiatives since 1979: Section 15 of the Trade Union and Labour Relations Act 1974 was amended by Section 16 of the Employment Act 1980. Picketing is now lawful only if; in general:

(i) it is undertaken in contemplation or furtherance of a trade dispute;
(ii) it is carried out by a person attending at or near his own place of work; a trade union official may also attend at or near the place of work of a member of his trade union whom he is accompanying on the picket line and whom he represents;
(iii) its only purpose is peacefully to obtain or communicate information or peacefully to persuade a person to work or not to work.

The legislation is supported by a Code of Practice, issued under Section 3 of the 1980 Employment Act, which outlines the law on picketing and gives practical guidance on its conduct. As part of this guidance it recommends that pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to a workplace. The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to legal proceedings. But Section 3(8) of the 1980 Act provides that any provisions of the code are to be taken into account in any legal proceedings where the court considers them relevant.

Labour Party/TUC proposals: "the law will be redrawn to ensure that workers can picket peacefully without the continual threat of civil and criminal liability".

STRIKE BALLOTS

Previous situation: No statutory requirement on ballots before strikes. Some unions made provision for ballots in their rule books.

Government initiatives since 1979: the 1984 Trade Union Act has made it a condition of immunity that before calling an official strike or other industrial action a trade union must first obtain the support of its members through a secret and properly conducted ballot. If prior to industrial action being taken a ballot is not held at all or not held properly in accordance with the requirements of the 1984 Act, employers and others, such as their customers and suppliers, who are damaged by certain tortious acts of the union may take civil proceedings against the union or its officials.

Labour Party/TUC proposals: The Labour Party would introduce statutory provision for inclusion in union rule books of a right for union members to have a secret ballot on decisions relating to strikes. The TUC would draw up a code of practice for unions giving more detailed guidance on the methods to be adopted. The aim would be to provide an effective right for union members. Employers or their customers or suppliers would not be able to seek injunctions or damages against a union. A complaint by a member that the statutory balloting provisions had been breached would be investigated by a new independent tribunal headed by a legally qualified person, which would have the power to require a trade union to take the necessary steps to remedy the complaint. Appeal to the ordinary courts would only be permitted on a point of law.

/.. SECONDARY ACTION

SECONDARY ACTION

Previous position: Immunity for secondary action was dependent on whether the action was in contemplation or furtherance of a trade dispute. Following a judgement in the House of Lords in the case Express Newspapers v McShane in December 1979, that the test of whether an act was in furtherance of a trade dispute was that a person should genuinely believe that to be the case, the law appeared to provide immunity for those who organised industrial action far removed from the original dispute.

Government initiatives since 1979: As a result of Section 17 of the Employment Act 1980 immunity applies in the case of secondary action amounting to interference with a commercial contract whereby the action is taken by those who work for a supplier or a customer of the employer in dispute and the purpose of the action is to disrupt supplies between the supplier or customer and the employer or an associated employer to whom work has been transferred because of a dispute. If the main effect of the secondary action is to disrupt the business of other employers not involved in the dispute then its organisers have no immunity.

Labour Party/TUC proposals: No specific reference is made to secondary action but the Labour Party would "establish fair boundaries within which effective industrial action can be organised during disputes with employers without thereby exposing workers and their unions to legal action".

/.. TRADE UNION

TRADE UNION ELECTIONS AND BALLOTS

Previous Situation: The standard of conduct and practice in union elections was essentially a matter governed by union rule books, with union members having access to the courts if a rule book was not adhered to. Some rule books allowed for such procedures as block voting and indirect elections and for indefinite terms of office.

Government Initiatives since 1979: The 1984 Trade Union Act required a trade union to elect every voting member of its principal executive committee at least every five years by a ballot of all the members.

- The Act lays down standards for the conduct of those ballots. Postal voting is regarded as more secure and is therefore the favoured option but a workplace ballot may be used if the union is satisfied that it will meet the same high standards as the postal option.

- The requirements are comprehensive; they cover secrecy, security, freedom from intimidation, opportunity to vote, who can not and who can stand as a candidate. Block voting and indirect elections are outlawed.

- Unions are required to construct and maintain a register of members names and addresses.

- Members have a choice of remedy. They may complain about a breach of the Act's requirements to the court or they may use the speedier and inexpensive route of complaint to the Certification Officer. He can investigate the alleged breach and can issue a declaration, though unlike the High Court he has no power to impose sanctions.

- Unions are able to reclaim certain expenses for fully postal ballots from the Certification Officer under a scheme set up under the 1980 Employment Protection Act.

- Employers are required to provide premises for ballots if requested and union members may have unpaid time off to vote.

Labour Party/TUC proposals: Would lay down a statutory framework of general principles for inclusion in union rule books for the method of election of union executives to be based on a system of secret ballots.

- Members would have the right to complain about breaches of the statutory principles to a new independent tribunal presided over by a legally qualified person. Tribunals would be able to investigate complaints and require a union to take remedial action; the question of sanctions is not addressed.

- Employers would be required to provide time-off and workplace facilities to enable members to participate in an extended range of internal trade union affairs.

- There is no mention of standards for the conduct of ballots beyond the requirement for secrecy, whether there would be a requirement for periodic re-election or if indirect elections would continue to be outlawed.

/.. INJUNCTIONS AND THE

INJUNCTIONS AND THE ROLE OF THE COURTS

Previous Situation: An employer has always been free to seek interlocutory injunctions restraining individuals from organising industrial action as a result of which he or his company would suffer loss where such action might at full trial be found unlawful. However, prior to 1980 it was more difficult for employers to obtain interlocutory injunctions as all that needed to be proved by the defendants was the existence of a trade dispute, in respect of which the provisions of the Trade Union and Labour Relations Act of 1974 were likely to afford to defence.

Government Initiatives since 1979:

- The 1982 Employment Act made trade unions vicariously liable for the acts of their organisers, officials and members in certain cases concerning inducing a breach of, an interference with the performance of, a contract of employment and conspiring to commit torts.

- The 1980 and 1982 Employment Acts and the 1984 Trade Union Act all restricted the circumstances in which unions retained their immunity, and increased the opportunities for employers to take legal action and the likelihood of employers obtaining injunctions.

Labour Party/TUC Proposals

- The present way in which injunctions are granted against unions in respect of industrial action which is claimed to be unlawful would be substantially modified. Ex parte injunctions, granted on the evidence of one side only, would be prohibited. A new tripartite body - possibly a specialist labour court - would need to be consulted if an employer sought to challenge industrial action.

- "Unions organising a withdrawal of labour or other forms of industrial action will have comprehensive legal protection against actions in tort, contract and equity".

END

PLEASE NOTE EMBARGO

CLARKE 474/86 Release Time: 00.01 hrs., Sunday 31 August 1986

Attached is a note describing how the TUC/Labour party proposals contained in the document 'People At Work: New Rights, New Responsibilities' would affect the law on industrial relations as it presently stands.

Since that document was published, the TUC seems to have adopted a new approach to the issue of pre-strike ballots. Press reports suggest that the composite motion to be debated on Monday now calls for 'a right to strike, and to have a secret ballot in such situations, and to take other industrial action, both in dispute with the employer and in solidarity with other workers'.

This clearly indicates a move away from pre-strike ballots as a general rule and seems to mean that a ballot would not have to be held until <u>after</u> a strike was in progress. Other forms of industrial action would not be covered by any balloting provisions.

/.. THE CLOSED SHOP

JOBS AND INDUSTRY

PEOPLE AT WORK: NEW RIGHTS, NEW RESPONSIBILITIES

TUC

LABOUR PARTY

TUC — Labour Party Liaison Committee

Tony Benn MP	Rodney Bickerstaffe	Jack Cunningham MP
David Blunkett	Ray Buckton	Jack Dormand MP
Ken Cure	John Daly	Roy Hattersley MP
Gwyneth Dunwoody MP	John Edmonds	Gerald Kaufman MP
John Evans MP	Roy Grantham	Neil Kinnock MP
Eric Heffer MP	Fred Jarvis	Stan Orme MP
Neville Hough	Clive Jenkins	John Prescott MP
Tom Sawyer	Bill Jordan	Peter Shore MP
Syd Tierney	Ron Todd	John Smith MP
Charles Turnock	Norman Willis	*For the Parliamentary Labour Party*
Larry Whitty	*For the TUC*	
For the National Executive Committee		

Joint Secretaries: Geoff Bish (Labour Party) and David Lea (TUC)

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11 AUG 1986
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WORKING TOGETHER FOR BRITAIN

Britain needs a new approach to industrial relations — an approach that gives our people a better deal at work. This aim is not just worthwhile in itself: it is an essential basis for a stronger economy, and a more democratic society.

We recognise that good industrial relations are not achieved overnight, nor can they be imposed by employers or the government. They must be developed through joint negotiation and agreement at the workplace. And they must be supported, not undermined, by the law.

This statement outlines a new legal framework for industrial relations agreed by the Labour Party and TUC. It should be read alongside other statements in the series *Partners in Rebuilding Britain*, including the statement also before this year's Conference and Congress, *Low Pay: Policies and Priorities.*

These statements present the case for a **new partnership** between the next Labour government and the people who work in our industries and services; they point the way to a new approach based on co-operation rather than conflict and division.

The approach to industrial relations set out in this statement gives real substance and vision to our partnership. It starts from the twin themes of **fairness and security at work** and **involvement in change.**

All workers should be entitled to job security and a fair wage. And they should be given the chance to play a constructive and responsible role in the decisions which affect them. This is the **only** realistic way to improve industrial relations in Britain.

Our principles of fairness and involvement are relevant to every type of employment: public sector and private sector; large firms and small firms; and managers as well as shop-floor workers. In this statement, we show how they may be embodied in new legislation on industrial relations and industrial democracy.

The Labour Party and TUC are committed to the repeal of the present government's divisive trade union legislation and its replacement by positive legislation. In our view there is no question of excluding the law from industrial relations. But it can be given a positive role — with new rights and protection for individual workers and their unions.

Our partnership will derive its strength of purpose from the talent and energy of people at work. The law must allow them to play a full part in Britain's recovery.

A POSITIVE ROLE FOR LAW

The present government has made anti-trade union legislation a centrepiece of its whole approach to economic strategy. It has deliberately set out to shift the balance of power in society against working people. The price of this approach is record unemployment, glaring social injustice and a rising tide of bitterness in industrial relations.

Three major acts of parliament — the 1980 and 1982 Employment Acts and the 1984 Trade Union Act — have been designed to place tight restrictions on trade union action and weaken trade union organisation, thereby curtailing unions' influence through collective bargaining. **The government's legislation encourages authoritarian management;** it treats workers as isolated individuals and limits their freedom to combine and act together in pursuit of their interests; and it is designed to unleash the market forces of 'competition', ignoring the wider need for co-operation and involvement in the process of industrial change.

The legislation also takes away basic rights to fair wages and employment security, on the pretext of reducing 'burdens' on employers. The 1986 Wages Bill currently proceeding through parliament continues this process. These measures do nothing to create jobs. Instead they hurt the most vulnerable groups in society, especially women, blacks, and young people.

The approach of the Labour Party and TUC is different. Our approach will be to repeal the legislation enacted since 1979 and to strengthen the rights of workers, both as individuals and as trade unionists. **We believe that the law should be used to enlarge, not diminish, the freedom of workers to control their environment.**

• Collective strength enables workers to obtain better pay and conditions than they would otherwise receive in the same set of economic and employment circumstances.

- Collective strength enables workers to join in the determination of their pay and conditions, and provides protection against arbitrary acts of injustice in their employment. Thus trade unionism is an essential democratic countervailing influence against the unilateral power of employers. It helps to redress the imbalance of the employment relationship between a more powerful employer and a weaker individual employee.
- Collective organisation enables workers to reach a considered and collective view on the conduct of the industry or service in which they work, and sometimes to influence decisions.
- Collective organisation enables workers to exert a social and political influence on all issues of concern to the interests of working people, eg: employment policy; social services; training and education; safety at work; retirement and pensions; and health care.

Of course, freedom brings with it responsibility, but that is a prospect that can only be welcomed. It is not as though working people are unused to responsibility: trade unions were formed so that workers could exercise the influence collectively that they lacked as individuals. Yet the courts and the common law have consistently obstructed efforts to secure improvements at work and in society.

That is why a positive framework of law is needed to establish the freedom to organise, to negotiate and to withdraw labour, as the basis for effective involvement by workers in the decisions which affect them. And this potential for involvement must be supported by new rights to information, consultation and representation at all levels of company decision-making.

Providing this positive framework is part of the way a Labour government will demonstrate its readiness to assume responsibility for managing the nation's economy. It will do so in partnership with workers, unions and employers.

Jobs and change

The pattern of work in Britain is changing: the kind of jobs many people do is different, and so is the way they do them.

In recent years, against the background of the worst international recession since the 1930s — and destructive economic policies in Britain — the loss of jobs in old industries and processes has far outweighed the gain in new jobs. And, far from countering this process, the government has positively encouraged it. Our aim, by contrast, is to see that people benefit from change, instead of being the victims of change.

'Where are the new jobs coming from?' is a crucial question. The TUC and the Labour Party must be able to answer this with confidence and give a lead. Otherwise pessimism about new technology could lead to a hardening of the economic arteries, prevent the change which is needed, and so prevent the increase in national output needed to provide increased living standards.

Our view is that many new jobs can be created not just in public services, such as health and education, but also in building and construction and a wide range of service industries. This will only be possible in the longer-term, however, with a strong manufacturing base. Although we cannot expect a net increase of jobs in manufacturing, it is essential for sustaining exports and growth.

The pattern of industrial relations is also changing to some extent. A trained, capable and informed workforce is a precondition for industrial success. And traditional styles of management are increasingly out of touch with the demands of new technologies and skills.

Women play a bigger role, but are still generally condemned to low status, low paid, often part-time occupations. The chance to participate on equal terms is long overdue; the untapped potential of half the population is a resource which Britain simply cannot afford to waste.

The microelectronic revolution will pervade all aspects of working life and all sectors of the economy — the traditional sectors of the economy as well as the high-tech sectors. **Alongside this and other technological changes are great changes in the ownership and control of industry.**

The past year has seen a rapid acceleration in the frequency and scale of merger and takeover activity in the United Kingdom, some of which has been multinational in character; this has led to the random restructuring of industry. These mergers and takeovers often contribute little to the nation's economy, and they may lead to an undesirable concentration of ownership and market domination, asset stripping and avoidable job losses.

Change is not confined to the traditional manufacturing and production sectors. The microelectronic and knowledge-based innovations have even greater potential in the service sector. As we move into the 21st century, services will increasingly come to mean not just the conventional areas of hotels, catering and distribution, but the information-based activities supporting manufacturing, such as computing.

All this poses a great challenge to British trade unions seeking to help workers in these existing and emerging sectors. One of the themes of this statement therefore is our joint commitment to helping individual workers in these sectors by extending their rights and promoting trade unionism among unorganised groups.

Nor will the public sector be immune from change: both the TUC and Labour Party are committed to successful public enterprise, and we are now considering what forms this should take in the future.

The Labour Party and TUC recognise that change is essential in the way Britain's economy is organised and run. Our aim is a flourishing and fully-employed economy: one that is efficient and internationally competitive; and one in which rising productivity leads to growth in output and better living standards rather than job loss. The wealth created in those sectors trading internationally must be used to build up those sectors that serve the community.

We reject the view that the way to achieve this is through restrictive monetary policy and reliance on 'market forces'. The government's recent claims about productivity and employment improvements come as near to deliberate deceit as can be imagined: there are still one million fewer people employed than in 1979; investment has been stagnant; productivity is only growing at the rate at which it grew in the 1960s. That rate was way below that of our major competitors, and the relative position has not changed in the 1980s. Our productivity record is still poor compared with that of our competitors.

Participation in change

We want to create the conditions in which change is beneficial to working people and their families. At present the structure of Britain's industries and services may be changing, but the people who work in them have little control over the events that shape their lives. Indeed, key rights and protections have been stripped away leaving workers vulnerable to arbitrary decisions by employers and the government.

The Labour Party and TUC want a modern, just and prosperous society: one where the law establishes clear rights for individual workers and their unions which enable them to take collective action, providing new opportunities to influence economic policy and planning.

Our aim is to secure freedom and fairness for people at work. This will be a central feature of the partnership we have proposed between the next Labour government and working people. It will require a positive framework covering:

- job security and training for new skills;
- improving protection against unfair dismissal;
- protecting part-timers and temporary workers;
- developing equal opportunities;
- low pay and fair wages;
- health and safety in the workplace;
- union organisation and collective bargaining;
- extending workers' influence and responsibility;
- the conduct of disputes;
- membership participation in unions.

These steps will not on their own solve Britain's economic and social problems, but they can help to make our industrial relations system a source of new and forward-looking initiatives — a positive force for change.

FAIRNESS AND JOB SECURITY

The TUC and Labour Party are firmly committed to economic and industrial policies that promote beneficial technological change and social progress. These policies are set out in our previous joint statements which link planning to extensions of industrial democracy. They would give workers a stake in the restructuring of enterprises and public bodies by involving them in the decisions that bring it about.

Under this government, however, the workers affected by change have become its casualties. The government's policies have encouraged change by fear and coercion, rather than joint discussion and agreement. This kind of change often has little to do with investment and production — it is directed instead towards short-term financial gains. It is not the way to get the highly skilled, highly-motivated workforce that Britain now needs.

Our approach is to seek to underpin and hasten change: by providing support for those affected, and by winning their consent for what has to be done. A humane and civilised approach of this kind not only affords protection for the workers concerned; equally important, it assists the smooth introduction of new technology and working methods. **By easing or removing the fear of job loss, workers are much more ready to accept change.** We shall give priority to promoting an approach of this kind by employers.

Job security and training

Since 1979, there have been millions of redundancies. Large numbers of workers have subsequently experienced lengthy periods of unemployment for which the levels of redundancy payments have not been remotely adequate compensation.

Our proposals for extending industrial democracy (set out in part 4 of this statement) are designed to strengthen economic planning. We believe that this is an essential framework for generating employment, industrial revival and social justice. In addition to developing economic and industrial policies to provide jobs, we aim to promote greater job security and boost the nation's training efforts. **A Labour government would tackle the question of redundancies** by:

- Strengthening the requirements on employers to notify public authorities, and to consult unions, about proposed redundancies.
- Obliging employers to justify any proposed redundancies and to explore with their workforces ways of avoiding them through the development of new products and services.
- Involving the advisory services of ACAS in exploring ways of avoiding redundancies. If redundancies become inevitable, we will involve all the services of a reformed Manpower Services Commission in providing job placement, vocational guidance and training and retraining.
- Increasing the levels of statutory compensation available to workers made redundant, giving statutory protection to workers who are presently excluded, and reintroducing redundancy rebates to employers subject to adequate consultation.

We are also considering the possibility of raising the tax threshold on redundancy payments, abolishing the right to offset pensions and ex-gratia payments and ensuring that casual workers and pregnant women are eligible for compensation under all circumstances.

In the area of training, the emphasis would be on investing in the knowledge and skills of our people. This means:

- Developing a comprehensive and coherent programme for all young people with a guarantee of at least two years education, training and work experience. This would be based on a legal duty on employers to train all young workers to a required standard and to release them for off-the-job training and education without loss of pay.
- Expanding training for skills and the opportunities available for adults, whether in work or unemployed.
- Providing workers with a right to establish joint training committees with management in their workplaces.
- Providing a right to paid leave for education and training for those in work and those who are unemployed, and establishing a fair system of funding so that all employers pay their fair share of the costs of training.

Protection against dismissal

We will improve the protection available against unfair dismissal by:

- extending the scope of the legislation to all workers, including those who have just started work, those on fixed-term contracts, and part-timers;
- ensuring that where a person successfully appeals against unfair dismissal, the normal remedy will be reinstatement;
- reviewing the present industrial tribunal system and exploring the scope for express procedures based on arbitration;
- abolishing the provision used by the government to remove employment protection rights at GCHQ;
- strengthening individual workers' legal rights in respect of dismissal for taking industrial action.

Part-time and temporary workers

In recent years there has been a significant increase in the number of part-time workers and in the other groups of so-called 'marginal' workers (such as temporary workers, homeworkers, and workers on fixed-term contracts). These groups of workers are often lower paid, suffer poorer working conditions, and are more vulnerable to exploitation and the sack than many full-time employees. Yet they are far from adequately covered by employment protection legislation.

Under a Labour government:

- **Part-time workers (who are predominantly women) would be given equal treatment** under the employment protection laws by abolishing the minimum qualifying arrangements. Employers should not be able to juggle with hours of work or periods of service to avoid providing decent treatment to part-timers.
- **Homeworkers must have employee status.** In the legislation needed to extend their statutory protection, a legal definition of homeworkers will be clearly set out, and other legislation amended to include them.

Developing equal opportunities

Discrimination in employment is still widespread. Both the Labour Party and the TUC are committed to the development of positive and comprehensive policies to promote equal opportunities in employment irrespective of workers' sex, marital status, sexual orientation, creed, colour, race or ethnic origin, and disability. Present provisions must be strengthened and supplemented with other measures. **Equal opportunities for all are central to our commitment to a fairer society.**

We propose:

- A strengthening of the present anti-discrimination laws with a view to increasing their effectiveness in promoting the employment rights and opportunities of women, black people and people with disabilities.
- An urgent review of the Equal Pay Act to strengthen and extend its provisions.
- The development of equal opportunities as a central element of our training and retraining strategy.
- Positive action measures to encourage more women and more black people to enter non-traditional areas of employment. A firm lead will be given by the government to promote equal opportunities for their own employees, including positive action in the public services, police and armed forces.
- The introduction of a comprehensive contract compliance strategy by government, local authorities and other public bodies. This will buttress the Sex Discrimination and Race Relations Acts, and the EOC and CRE Codes of Practice. It will also ensure that women, black people, and people with disabilities get a fair chance in the labour market.
- The improvement of the back-up services that are essential if those who are disadvantaged are to have true equality at work. Childcare facilities must be improved and expanded; maternity and paternity leave, parental leave and leave for family reasons will become a right, not a privilege for the few.
- The entitlement of people who work in shipping, fisheries and offshore oil to the same rights and status as other workers.

Low pay and fair wages

The present government has restricted the operation of Wages Councils, which set minimum terms and conditions to protect workers in certain industries who would otherwise be exploited by unscrupulous employers. **This is part of a general strategy of deregulation and squeezing wage rates** — particularly for young workers and the low paid. The government has also scrapped provisions to ensure workers receive the recognised rate for the job or industry concerned. **The TUC and the Labour Party have drawn up a further joint statement proposing a comprehensive strategy for 'fair wages' and for dealing with low pay.**

Health and safety

Central to the development of fair employment standards is the improvement of worker's statutory protections in respect of health and safety at work. The shared priorities of the TUC and the Labour Party include:

- The expansion and strengthening of the HSC Inspectorate and the introduction of tougher penalties for breaches of the law.
- The development of a comprehensive programme of research and scientific support, particularly in relation to occupational health issues.
- The strengthening of the safety representative and safety committee regulations in order to allow workplace representatives more involvement in the decision-making processes of their industries, particularly in those areas of high risk. Consideration also needs to be given to statutory provisions for training safety representatives.
- The removal of the immunity of Crown employers from prosecution under the Health and Safety at Work Act: this has led to lower levels of compliance in many key areas of employment, including the NHS, Prison Service, Civil Service and government establishments.
- The introduction of a statutory requirement for the provision of occupational health facilities by employers, in line with the ILO Convention.
- The entitlement of people who work in shipping, fisheries and offshore oil to the same rights and status as other workers.

INVOLVEMENT IN CHANGE

Unions and bargaining

The TUC and the Labour Party strongly support collective bargaining. Collective bargaining gives unions a constructive role in the negotiation of change. Decisions reached in this way carry the agreement of the workers concerned. They can be the source of real and lasting improvements in a way that changes imposed without consultation cannot.

Collective bargaining is also an effective counterweight to concentrations of power in Britain's economy. **It thus has a vital democratic role in making decisions accountable to workers and society.**

The government uses the language of individual rights to attack collective rights and the ability of trade unions to defend their members. **In contrast, our aim is to take steps to promote trade union membership and organisation; to encourage union recognition by employers for collective bargaining purposes; and to develop and support stable and effective negotiating machinery.** This will involve:

- strengthening the right of individual workers to be union members and to take part in union activities, including industrial action;
- introducing measures obliging employers to provide certain minimum time and facilities to workers' representatives to enable effective workplace trade union organisation;
- requiring employers to permit time off with pay for their employees and elected lay representatives on union policy-making bodies to participate in union education and training;
- providing for the negotiation of fair union membership agreements and arrangements;
- promoting contract compliance policies by public bodies that ensure contractors and other suppliers recognise and negotiate with appropriate unions in respect of their employees.

We believe that workers as individuals should be guaranteed certain rights to representation by a union official in disciplinary or grievance proceedings. For cases where employers refuse to recognise and negotiate with a union on behalf of members, we are considering provisions whereby the union can pursue a claim for improved terms and conditions of employment to arbitration. We are developing a new procedure whereby a union can seek to secure recognition from an employer to bargain on behalf of the employees concerned.

A Labour government will also reintroduce the Fair Wages Resolution, and extend the use of arbitration where employers do not observe established terms and conditions of employment.

Extending influence and responsibility

The TUC and Labour Party are committed to extending industrial democracy as a foundation for economic policy and planning; a detailed consideration of the methods and objectives of industrial democracy can be found in previous joint statements, initiated by *Economic Planning and Industrial Democracy* (1982).

Our approach is not to impose any particular model or method of industrial democracy. **Instead, we aim to widen the collective bargaining agenda beyond wages to crucial investment decisions** — decisions which determine the performance of companies and the economy as a whole. We see new rights for workers in this area as a catalyst for the extension of democratic involvement and accountability. This applies not only within the enterprise but also beyond it, in sector and national planning.

Three broad principles will shape our legislation:

- **Those who are affected by change must be able to have a far greater control over the nature and direction of change, and compensation where it is adverse.** The changes that are needed for Britain to compete in world markets and to provide decent public services cannot be imposed.

- **There is a need for permanent arrangements for information, consultation and representation for workpeople and their representatives.** There is little point in introducing such arrangements solely in times of crisis, and letting them fall into disuse when times are better. Such arrangements can be valuable every day and every week of the year. Workpeople, through their trade union representatives, should be involved on a continual basis with management in assessing the need for change — working together to anticipate the problems and how to overcome them.

- **Industrial democracy cannot be developed without reference to the process of collective bargaining between trade unions and management.** Clearly more systematic consultation and discussion of company plans and the environment in which the company is operating pose a challenge to both parties in collective bargaining. But the TUC and the Labour Party believe that it is in the interests of both management and trade unions — and in the national interest, too — that they meet this challenge. The pressure on management for more informed and systematic discussion will improve the quality of decision making; the pressure on unions to reflect the needs and interests of their members must mean a higher level of strategic influence and responsibility.

The Labour Party and TUC are not proposing a blueprint but a new way of making decisions at all levels of the economy. This will be a learning process for workpeople and managers. And it will need to be supported by access to education and resources. We believe that the rewards of genuine involvement are worth striving for: better industrial performance; improved public services; and higher living standards.

It is for these and other reasons that the TUC and the Labour Party propose three new statutory rights, and will be examining how they might operate in practice. **These new rights will promote a radical extension of industrial democracy.** They are:

- **The right to information.** A new right is needed on the disclosure of information to workers and their union representatives. This would expand the range of issues covered and make the company's books available for inspection.

- **The right to consultation.** A right to be consulted in advance on actions and decisions affecting workers' interests is essential. It would put union representatives in a stronger position to make use of information. They could also then play a more creative and responsible role in the decisions that shape the future of their industries and services.

- **The right to representation.** A right for workers to be represented up to, and including, boards of management would allow them to develop a permanent and continuous influence over all aspects of enterprise planning. The size and scope of representation will be open to joint discussion and agreement.

It would run counter to the spirit of industrial democracy to impose any one arrangement. Account has to be taken of the diversity of industrial relations structures in Britain today: the views of workpeople would have to be sought through a range of measures, including the right to a ballot, following an initiative by the recognised unions that they wished to take advantage of the new rights. New methods of joint union working and co-operation will be needed to meet the challenge outlined above.

We recognise, for example, that management cannot be expected by law to hold fragmented discussions with many separate groups of representatives (and with individual workers) on company-wide issues if such groups do not find the means of working together. Such separate groups can represent different plants or establishments within one enterprise, or different groups of workers within one plant or establishment; but they cannot represent the whole.

These matters raise difficult and sensitive issues, but they are not so difficult or sensitive that, given goodwill, they cannot be resolved. New rights in this area cannot be divorced from new responsibilities; and it is in this spirit that further discussions will take place. At a later stage in this step-by-step approach to legislation, and in the light of experience of the joint representation committees, we shall consider a further move to establish a new framework of company organisation. This would enable the workforce, if it chose, to opt to join shareholders' representatives (and community representatives) on the first-tier board of directors of the enterprise, as in a number of other European countries.

Such major steps need not preclude more immediate action. For example, there is an urgent need to build on the minimum standards laid down by the European Community. **We regret that the Government has blocked the Community's draft 'Vredeling' directive, which provides information and consultation rights for workers.** The implementation of this directive, modest as its proposals are, could allow worker representatives to meet with management in the national subsidiaries of large companies and multinationals. It would also facilitate regular meetings of trade unions with the world-wide headquarters of multinational companies; this would help to strengthen international trade union links.

The conduct of disputes

At home, the time is ripe to consider how the chief officers and senior board members of public industries are appointed. Such figures must carry the confidence of the government of the day, the community at large and the workforce. In both the public industries and the public services, there is scope for imaginative experiments in industrial democracy. **Consistent with the broad objectives set through the political process, it should be possible for the public sector to set the lead in developing industrial democracy.**

Providing workers with an opportunity to influence and participate in company decisions will assist in avoiding disputes. **Yet the right to strike is fundamental for workers and their unions:** it is their ultimate weapon to protect themselves against a company that tries to use its power to force them to work in conditions or at levels of pay they are not prepared to accept.

The right of working people to withdraw their labour in the pursuit of a dispute with their employer is widely accepted as a basic civil liberty in the UK as in all democratic societies, though one that brings with it corresponding responsibilities. **It is vital that the law guarantees the essential legal freedom of workers and their unions to organise effective industrial action, without the continual threat of employers launching debilitating legal actions against unions.**

Labour is committed to enacting clear and comprehensible measures to establish fair boundaries within which effective industrial action can be organised during disputes with employers without thereby exposing workers and their unions to legal action. The new programme that the TUC and the Labour Party put forward involves giving an expanded set of rights to workers. The **statutory** embodiment of those rights, however, will inevitably incorporate a mixture of rights, immunities and responsibilities. We are also concerned to ensure that the mechanics of the legal procedure by which legal action in this area is dealt with is fair and compatible with the interests of industrial relations.

The TUC/Labour Party proposals for redrawing the law on industrial disputes involve the following broad elements:

- We will place increased emphasis on conciliation and arbitration by strengthening the role of ACAS, encouraging the use of 'status quo' clauses in procedure agreements, and promoting the quick and effective resolution of disputes without the need for recourse to unilateral hostile actions by either unions or employers.

- It will be lawful for workers to organise or take part in a strike or other industrial action in defence of their interests. The range of issues on which workers could properly seek to influence an employer would need to refelect the wider collective bargaining agenda envisaged in our proposals on industrial democracy.

- Unions organising a withdrawal of labour or other forms of industrial action will have comprehensive legal protection against actions in tort, contract and equity.

- The law will be redrawn to ensure that workers can picket peacefully without the continual threat of civil and criminal liability.

- The present unfair way in which injunctions are granted against unions, in respect of industrial action which is claimed to be unlawful, will be substantially modified. *Ex parte* injunctions will be prohibited. In all cases in which the validity of industrial action is challenged, the view of a new tripartite body, comparable perhaps to the Central Arbitration Committee, would need to be sought. We are also considering whether, alternatively, there would be any advantage in establishing a specialist court to deal with such matters.

Membership participation

Democracy is the essence of trade union organisation. In no other major national institution is the commitment to, and the practice of, democracy more deeply embedded than in the trade union movement. All union members have always had the right to a voice in their unions' decision making, and unions have encouraged the widest possible involvement in elections and policy making; all unions base their practices on this central principle, although a variety of constitutional methods have been adopted to give effect to it. **The TUC and the Labour Party reject the often-made charge that unions are undemocratic bodies.**

Over many years there have been major and enduring changes in unions' internal democracy, involving the improvement of communications and increased emphasis on workplace and postal balloting in some unions. An incoming Labour government would place strong emphasis on assisting trade unions in the development of membership involvement and participation in union decisions, including the use of balloting. **Our aim is to provide a framework of measures to underpin the participative rights of union members to replace the present rigid measures introduced by this government.**

The new Labour government will consider how union administration in this and other areas could be assisted. The provision of adequate time and workplace facilities by employers is often central to the effective working of unions' democratic procedures: measures will be introduced to ensure all aspects of union democratic procedures are facilitated by employers, but that employers do not interfere in the internal affairs of unions. This means extended rights in relation to: holding relevant union meetings; carrying out procedures for nominating candidates; supervising ballots; consulting members on policy issues; reporting back; and access to postal facilities, etc.

In stark contrast to the government's approach, **the new framework would in no way give employers, or their customers or suppliers, any opportunity to seek injunctions and damages against a union.** This new statutory framework will also entail laying down general principles for inclusion in union rule books based on a right for union members to have a secret ballot on decisions relating to strikes, and for the method of election of union executives to be based on a system of secret ballots. **The aim is to provide an effective right for union members.**

On election, a Labour government in consultation with the TUC will establish a new independent tribunal that will have the duty of acting on complaints by union members that the statutory principles have been breached. This will be presided over by a legally-qualified person. The tribunal would adopt a conciliatory and flexible approach but would ultimately, after conducting an investigation, be empowered to require a union to take the necessary steps to remedy the complaint. In common with the procedures relating to other tribunals of this kind, appeal to the ordinary courts will only be permitted on a point of law.

There will, clearly, be no imposition of specific forms of balloting procedures. The TUC will draw up a code of practice for unions giving guidance on the range of methods to be adopted.

A FREE AND FAIR SOCIETY

This statement has outlined our main proposals for new industrial relations legislation. They reflect our shared conviction that the present government's unfair and damaging measures need a complete overhaul. The aim must be to produce an even-handed and forward-looking legal framework — one that reflects modern conditions in British industry. It must provide a durable basis for a concerted approach to improving Britain's industrial relations in the 1990s and beyond.

There are of course many issues of detail that remain to be settled, and much detailed work and consultation will need to take place. We intend to involve employers fully in these moves, and so demonstrate our determination to proceed by agreement as far as possible.

The priority of both Labour and the TUC is to improve industrial relations and to avoid damaging industrial disputes and the disruption they can bring. But that cannot be achieved legalistically: industrial relations are in so many respects matters of human rights and relationships; they cannot be dealt with satisfactorily or conclusively by legal curbs and contests. It requires a strengthening of the role that unions can play in shaping the decisions that affect their members. And it requires the commitment and resources that only the government can provide to ensure the ready availability of the advisory, conciliation and other services which play such an important part in achieving good industrial relations and effective collective bargaining arrangements that minimise the incidence of disputes.

Our commitment to industrial democracy, fair wages and job security offers a solid foundation for the new partnership we propose between the next Labour government and people at work. It will contribute to our vision of a free and fair society and a resilient economy, able to provide jobs and prosperity for the British people.

TUC — Labour Party Liaison Committee

Statement adopted by the General Council of the TUC and the National Executive Committee of the Labour Party, July 1986, for submission to the 1986 TUC Congress and Labour Party Conference.

LABOUR'S JOBS AND INDUSTRY Campaign

TUC

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PRIME MINISTER

You may be interested to see the attached transcript of Mr. Kinnock's interview on "Face the Press" insofar as it relates to industrial relations legislation. It is clear that the Labour Party is still in some disarray on what exactly is their policy towards ballots, secondary picketing etc. Particular quotes are, when asked how much of the Conservative industrial relations legislation would be undone, Mr. Kinnock went on to say:

"We'd undo the lot" but qualified it by saying

"I think that the balloting provisions and the way in which they relate to the rights of individual trade unionists, will in a variety of forms be retained, whether they relate to political funds or a number of other areas". Whether or not Mr. Kinnock has become converted to ballots is not clear; what is clear is that he is still in favour of mass picketing, secondary picketing and all the other abuses which were so apparent before the Government's trade union legislation came into effect.

Timothy Flesher
24 February 1986

IOD
Institute of Directors

From the Director General

R 29 by Hand

Rt Hon Margaret Thatcher MP
10 Downing Street
London
SW1

28th November 1985

Prime Minister 4

This argues:
(i) binding contracts
(ii) risk of strikes in essential services in the run-up to the election.

DHS 2/12

Dear Margaret,

As you know, David Young and I had a useful meeting on the 29th October, during which we discussed the scope for consultation on further Trades Union reform.

I thought that you might like to see the enclosed copy of the memorandum which I prepared for David on these issues. I hope this will be useful.

Yours ever

John Hoskyns

INSTITUTE OF DIRECTORS

MEMORANDUM FOR SECRETARY OF STATE FOR EMPLOYMENT

NO STRIKE AGREEMENTS, STRIKES IN ESSENTIAL SERVICES AND FURTHER TRADE UNION REFORM

1. This memorandum follows up a discussion between Lord Young of Graffham and Sir John Hoskyns and Graham Mather of the IOD on 29 October 1985 about the scope for further trade union reform.

2. In an interview in The Director magazine in September 1983, the Prime Minister said that she was in favour of further measures of trade union reform with legislation every two years "until we've got it right".

3. The 1983 Conservative General Election Manifesto stated: "we shall consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity. The nation is entitled to expect that the operation of essential services should not be disrupted".

4. In a press briefing on 19 June 1985, the then Secretary of State, Rt Hon Tom King MP, indicated that plans had been drawn up to honour the manifesto pledge as part of a wider package of industrial relations and trade union legislation.

5. As yet, however, no formal consultation has taken place. It is still uncertain whether ministers envisage further legislation before the end of the present Parliament or at all. Nor is it clear whether such legislation would concern itself with internal

trades union affairs and rulebooks, on the model of the 1984 legislation dealing with the political levy; or would affect the relationships of trades unions with the rest of society by further refining and limiting trades union immunities. The IOD believes that the latter course is preferable in principle and more effective in practice.

6. The 1984 legislation concerning the political levy has not been successful. The IOD argued then, and would support now, a requirement that check-offs from pay for this purpose would be lawful only where there was a written contracting-in to the levy.

7. This memorandum is designed to provide a brief summary of some of the industrial relations issues and political considerations relevant to further trade union reform.

THE TREND FROM DISPUTES TO AGREEMENTS

8. There is no doubt that the number of days lost in Britain from industrial disputes has diminished very dramatically. Media attention has swung away from disputes towards agreements.

9. Although major publicity has been reserved for the strike-free deals between the EETPU and some Japanese companies, there is evidence that British employers and indeed other trades unions are contemplating entering into similar agreements.

10. If, as is likely over the medium term, there is some realignment within the trade union movement leading to a sharp and permanent structural distinction between democratic and marxist-led unions, the role of agreements for handling disputes without recourse to strike action between employers and trades unions will become all the more important. The strength of those agreements will be put to the test as unions scramble to protect or to increase their membership in an atmosphere of heightened competition. These trends are already evident.

LEGAL RIGHTS

11. In the United States, collective agreements between employers and trades unions are generally legally binding. In Britain, disputes procedures are frequently expressed not to create legal obligations between the parties.

12. The IOD considers it desirable that dispute procedure agreements should be clear, formalised and should create legal rights between the parties. This is in the interest of both sides: the ability for employers to sue trades unions for damages where agreed procedures are broken is matched by the ability for trades unions to seek injunctions to prevent employers from acting contrary to agreed procedure. It is a salutary discipline for both sides.

13. The Government has not been seen to be active in stimulating no-strike agreements. This has meant that prominent SDP figures, including Dr David Owen himself and others linked to the EETPU have taken the lead.

14. The SDP has been developing policies towards the possible role of the law in encouraging binding procedure agreements between employers and unions; and the trend towards a search for a peaceful resolution to disputes has led Dr David Owen publicly to speculate on the possibility of introducing similar arrangements into the public sector.

ESSENTIAL SERVICES

15. Exactly the same reasons lay behind the manifesto commitment to consult on the potential use of procedure agreements to minimise the risk of disruption in essential services.

16. The two issues are linked together. Conventional wisdom points to the infrequency of serious disputes in essential services during the past six years, the demoralisation of the union movement in the

wake of the NUM strike, the internal divisions within the TUC and the effectiveness of the Government's trade union reform legislation as reasons why any attempt to honour the manifesto commitment to consult on essential services would be unwise.

17. This view, however, ignores the fact that the current political certainties on which it is based are likely to change in the approach to a general election. Unions on the left might see very significant political advantages from disputes in essential public services. There is a very real risk that one or possibly more unions will launch essential service disputes, perhaps initially based on pay disputes, in the hope of influencing the result of the next election, In 1974 and 1979 such disputes were highly relevant to voting decisions.

18. The danger for the Government is that, having identified this problem in 1983 and committed itself to consider it further, a subsequent failure to do so would appear a sign of complacency.

19. At the same time, the Government could be seen as missing the opportunity to take the lead in encouraging the development of means of solving disputes other than by way of strikes.

WIDESPREAD ACCEPTANCE

20. There now appears to be a widespread acceptance that the law has an important role to play in industrial relations. It is notable that, at a recent seminar of the Public Policy Centre, a provisional paper by Christopher Dow, formerly of the Bank of England and a visiting fellow at the National Institute of Economic and Social Research, argued the case for a number of far reaching measures including the curtailment of picketing and further limits on the power of trades unions to inflict damage upon third parties, especially in essential services.

Dow argued: "It is not, for instance, desirable that unions, in pursuit of sectional gain, should deny power to industry generally, or to domestic consumers, disrupt transport or travel wide areas; or - potentially - switch off the supply even of water". During the discussion on this paper, which took place between representatives of a wide range of organisations and policy institutes, there was little or no dissent from the underlying proposition that further legal restrictions on trades unions might well be a necessary part of the continuing restructuring of the economy.

21. The IOD believes that the Government should pay full regard to all the possible consequences when it reaches its decision on the future of its manifesto commitment to consult on means of tackling disputes in essential services by the extension of agreed disputes procedures. We believe that public interest in this issue is wider than might have been expected. Consultation is a necessary and minimum political step.

22. The IOD has developed detailed proposals for resting remaining trades union immunities upon the observance of agreed or reasonable disputes procedure, and of introducing procedures based on pendulum arbitration into essential public services. They are set out in the two 'Settling Disputes Peacefully' documents enclosed.

Policy Unit
Institute of Directors

25 November 1985

NEW ST. ANDREW'S HOUSE
ST. JAMES CENTRE
EDINBURGH EH1 3SX

NBPM

D J Normington Esq
Private Secretary to the
Secretary of State for Employment
Caxton House
Tothill Street
London
SW14 9NF

9 August 1985

Dear David,

OVERSEAS ACTIVITIES OF ITBs

My Secretary of State has seen a copy of your Secretary of State's letter of 23 July to the Lord President of the Council about the amendment of the 1982 Industrial Training Act.

Mr Younger is content with the proposed amendment. It seems entirely sensible to allow Boards to continue to generate revenue from overseas activities, provided these do not interfere with their domestic responsibilities.

I am copying this letter to the private secretaries of Members of H, other Ministers in charge of Departments, Tim Flesher and Richard Hatfield.

Yours sincerely,

John S. Graham

J S GRAHAM
Private Secretary

IND. POL: Industrial Relations: Pt 12.

GTN 2921-
Direct Line 01-936-
Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

Our Ref: 400/81/20

NBPM

The Private Secretary
to the Lord President of the Council,
Privy Council Office,
Great George Street,
LONDON, SW1.

31 July 1985

Dear Private Secretary,

The Solicitor General has seen the letter dated 23rd July 1985 from the Secretary of State for Employment to the Lord President of the Council seeking agreement in principle to a small amendment to the 1982 Industrial Training Act. As indicated in that letter, the Solicitor General has given advice on the current legislation. He has asked me to write indicating that he has no objections to the proposed course of action.

Copies of this letter go to the Private Secretaries to the members of H Committee, to the Private Secretary to the Prime Minister and to the Private Secretary to Sir Robert Armstrong.

Yours sincerely,

David Pearson

D.J. PEARSON

Ind. Relations Legislation:

Ind. Rel. P(-12

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 24, 1985

BRITAIN'S INDUSTRIAL RELATIONS RECORD

IS NOW FAR BETTER SAYS TOM KING

"Today's figures for the number of disputes and days lost through strikes are once again most encouraging. May was a good month but June was even better," Tom King, Secretary of State for Employment, told the Sheffield Chamber of Commerce.

"The truth is that attitudes have changed and Britain, from being one of the most strike bound countries, is now building a far better record on industrial relations. That is good news for all firms in this country and the best possible advertisement for attracting overseas companies to bring investment and jobs to Britain. That's exactly what is happening with 30,000 jobs created by inward investment - a tremendous 86 per cent increase over 1983.

"What a contrast from those years of seemingly continual strife. How many jobs were lost when Britain used to suffer a whole range of different strikes in every sort of company and industry and the only winners were our competitors overseas? But now the change has come. Fewer strikes, more investment, better exports, higher growth - all good signs of a better future for everybody in this country. For those in work a rising standard of living, for the unemployed a better chance of a job.

"I believe that union members now understand what is really at stake and how damaging futile disputes are. Our reform of industrial relations has at last given them the chance to have their say. Particularly with the opportunity now of a secret ballot before being brought out on strike. This reform and our other sensible step-by-step reforms have been a key factor in the change of attitudes that has so dramatically improved our performance."

DE

SECRET

(7) NBPM AT 24/7

HOUSE OF LORDS,
SW1A 0PW

23 July, 1985

1 of 8.

My dear Tom:

INDUSTRIAL RELATIONS LEGISLATION: THE NEXT STEP

At our meeting with the Prime Minister yesterday you & Michael Havers drew our attention to the power of the Secretary of State for the Environment to assist tenants in proceedings under the "Right to Buy" code. You saw this as a possible precedent for your proposal to assist Trade Union members in the cost of litigation against the Unions rather than leaving them to be assisted privately or by way of legal aid.

On considering the powers conferred on the Secretary of State for the Environment by section 24D of the Housing Act 1980 (which enables him to assist tenants in bringing proceedings) I find that they form a small, but important, part of his wider powers to ensure that the right to buy is real and unencumbered by obstruction. The Secretary of State can give notice under section 23 of that Act and override a recalcitrant local authority landlord by himself transferring and vesting the dwellinghouse under section 24 to the purchasing tenant. I also find his power to nominate the Treasury Solicitor under section 24D(7) as the solicitor for the tenant indicative of the extent of ministerial involvement in the whole scheme.

I see the Secretary of State for the Environment's position as analogous to that of the Equal Opportunities Commission or of the Race Relations Board which take over the conduct of litigation where points of principle arise and which both have a statutory duty to protect such principles.

Unless we propose to involve the government to some such extent in internal Trade Union affairs, I remain of the opinion that

/cont'd...

The Right Honourable
Tom King, MP

SECRET

such assistance in litigation would breach the basic principles concerning the separation of Ministers from the granting or refusal of access to the courts by way of legal aid.

I am sending a copy of this letter to the Prime Minister, the Attorney General, Home Secretary, Chancellor of the Exchequer and the Secretaries of State for Social Services, Energy, Transport and Trade and Industry.

yrs:

IMD Por: Rebo
Pt 2

24. VIII. 1985

MC/C33

NDPM
AT 2317

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6460

Switchboard 01-213 3000

The Rt Hon Viscount Whitelaw PC CH MC MP
Lord President of the Council
Privy Council Office
Great George Street
LONDON SW1

23 July 1985

Dear Willie,

I am writing to seek colleagues' agreement in principle to a small and uncontroversial measure to amend the 1982 Industrial Training Act. The need for legislation arises because of recent advice by the Solicitor General that certain activities by Industrial Training Boards involving the provision of training services to overseas customers, are ultra vires. The legislation would restore Boards' powers in this area, and allow the continuation of activities which are generally considered to be beneficial. Colleagues will be aware that a similar measure concerning the Agriculture Training Board recently passed through its Parliamentary stages unopposed.

Informal soundings with the Opposition have indicated that they would not oppose legislation on this matter and I believe there is a strong case to amend the legislation in order to restore the position as previously understood. The small Bill required would be eminently suitable for promotion by a private member. Although if a suitable measure existed, it could well be added to other legislation.

... The attached paper sets out the background in full. I would be very grateful if colleagues could respond by 6 August. Copies of this letter and attachements go to Members of H, other Ministers in charge of Departments, the Prime Minister and Sir Robert Armstrong.

Yours

INDUSTRIAL TRAINING BOARDS AND OVERSEAS TRAINING

BACKGROUND

1. Industrial Training Boards are statutory bodies, deriving their powers from the 1982 Industrial Training Act, whose primary purpose is to make better provision for training in industries within their scope in Great Britain. (Separate arrangements apply to Northern Ireland). The operation of Boards is funded entirely by employers.

2. The Boards are empowered to raise a levy on employers, and to disburse grants to support approved training. However, since the review of industrial training in 1981, which resulted in the abolition of all but seven Boards, the remaining Boards have been encouraged to increase their revenue - earning activities, in order to reduce the burden of costs on levy-paying employers. The Boards have pursued this objective in a variety of ways and two - those for the offshore petroleum and hotel and catering industries - have sought to gain revenue by provision of direct training and other services abroad to overseas nationals.

3. Until recently, legal opinion was that these overseas training activities were allowed by the 1982 Act provided Boards were requested to undertake them by the Manpower Services Commission. The Hotel and Catering Industry Training Board entered into a number of contracts on this basis. However, the Solicitor General advised in February 1985 that, while the Act clearly permits Boards to provide services to overseas nationals in some circumstances, the provision of direct training or other services abroad to overseas

nationals not intending subsequently to take up employment in Great Britain, is ultra vires. The Boards were therefore informed, on the Solicitor General's advice, that they should not enter into further contracts of this nature.

The case for continuing overseas training activities

4. The activities which Boards have undertaken include training of trainers based overseas; and the development of courses to assist newly developing industries overseas. They have been regarded by the Boards pursuing them as a small but significant additional aspect of their operations bringing benefits in terms of revenue. However, ensuring that domestic training provision is satifactory remains the Board's priority, and forms by far the greater part of their activity.

5. The Boards most concerned have made strong representations that the legal position should be altered so that they should be able to continue with training activities overseas. Such a measure would be particularly important to the Offshore Petroleum Industry Training Board, which has decided not to raise levy on employers, and intends from 1 April 1985 to become entirely self-financing.

6. I believe that there is a strong case to amend the legislation in order to restore the position as previously understood. Such legislation would not be complex, and would include provision for Boards to keep revenue earned from overseas training activities on a separate account, in order to protect funds raised by way of levy from employers in this country from any liabilities incurred.

Possible reactions to legislations

7. Informal soundings with the Opposition have indicated that they would not oppose legislation on this matter. A Private Member's Bill to extend similar powers to the Agricultural Training Board (which comes under the Ministry of Agriculture, Fisheries and Food) has recently passed through Parliament unopposed, and was presented in the Commons by an Opposition Member.

8. There has been no opposition from the private sector to Boards' previous overseas activities, but if colleagues agree in principle to legislation, I shall also ask the Boards to ensure that an understanding is achieved with the British Consultants Bureau, which represents private sector consultants providing similar services overseas, in order to ensure that there is no opposition from this sector.

Financial, Manpower and EC implications

9. Because Board's operating and staffing costs are met from levy fund and revenue earned, there are no financial or manpower implications for the public sector from the proposed legislation. There are also no EC implications.

Conclusion

10. I believe in the circumstances that a Bill to amend the 1982 Industrial Training Act should be introduced as early as possible in the next Parliamentary Session. The Bill would be small and uncontroversial and might appropriately be presented for Second Reading in Committee. Alternatively, it would be eminently suitable for promotion by a private Member. If colleagues agree, I shall approach the Leader of the House to consider this further.

NB This note was attached to CCU(85)5 18/7

10 DOWNING STREET

From the Private Secretary

Prime Minister ③

You will remember in July 1984 that MoD produced a contingency plan whereby 2,800 servicemen could move 1,000 tons a day, or about 40 lorries. This was rightly laughed at and MoD were asked to rework the plan.

The dock task force has been increased to 3,500 but it is now expected that these productivity would, after a time, be as good as or better than, that of regular dockers. The normal volume of imports excluding bulk fuels is 375,000 tons per working day (97 million a year). The task force is about 16 per cent of the dock labour force and so might move around 60,000 tons a day.

AT
22/7

CF

Please inform Brigadier Budd (233 7388) on Monday, that this has been approved.

BF

BRMATP 6 BM.

NB: no copy to Mr. Unwin but to R. Hatfield via Cabl.

B/C: MR LOWIN

10 DOWNING STREET

From the Private Secretary

22 July 1985

a MASTER SET

INDUSTRIAL RELATIONS LAW: THE NEXT STEPS

The Prime Minister held a meeting today to discuss the next steps in industrial relations law. Present were the Lord Chancellor, the Chancellor of the Exchequer, the Home Secretary, the Secretaries of State for Energy, Social Services, Trade and Industry, Transport, Environment, the Attorney General and the Minister for Health. Also present were Mr. Unwin and Mr. Letwin. The meeting had before it the Secretary of State for Employment's minute of 5 June.

The Secretary of State for Employment said he proposed to issue a consultative document before the end of the year, with the aim of introducing legislation in the 1986-87 session. His paper grouped his proposals under three themes.

i) Protection for union members against unfair treatment by their union.

ii) The further extension of democratic rights to union members.

iii) The discouragement of strikes in essential services.

He had considered whether the Government should make an early response to the abuses contained in the new NUM Rule Book but while the Nottinghamshire miners were considering whether to break away and while the Rule Book itself was under legal challenge from other miners, he did not consider this appropriate. The Secretary of State for Energy said the Nottinghamshire miners were now considering whether to establish a new federation. This might require only a simple rather than a two-thirds majority. While the Government should not seek immediately to counter the abuses in the Rule Book, it should nevertheless continue to publicise its iniquities in order to maintain the right climate for action at a later date.

Strikes in the Essential Services

The Secretary of State for Employment said the 1983 manifesto had promised that the Government would "consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". The threat of loss of immunity was preferable to an outright ban on strikes which would be strongly opposed by some public sector unions which had a good record of industrial relations. Ministers had discussed these proposals in late 1983 but had shelved them during the miners'strike. It had been envisaged that unions in the specified industries wishing to call a strike would need to satisfy three simple tests if immunity were to be preserved. There should be no industrial action during the currency of an agreement; all stages of an extant procedure agreement should be exhausted; and a minimum period of notice should be given.

In discussion, it was argued that unions should be encouraged to introduce or improve procedure agreements but threat of loss of immunity if such agreements were not observed would be a powerful disincentive to this process. No procedure agreements existed in the Health Service and use of the Whitley procedure made action unlikely during the currency of a pay agreement. It was doubtful therefore whether this approach would contribute to the improvement of industrial relations in the Health Service.

Summing up this part of the discussion, the Prime Minister said that the situation had changed since 1973. The 1984 Act had come into force requiring ballots before all strikes. This would benefit essential services as well as other sectors. The consultative document should argue, therefore, that the case for special treatment of essential services was no longer as strong as it had been.

Enhancing the rights of individual members

Paragraphs (i)(a) to (i)(a) of the Secretary of State for Employment's paper set out a number of changes which could be made to the law to improve the rights and protections for individual members. It was agreed that these should be put forward for consultation but it was noted that the policy of giving individual members more rights would succeed only if individual members were willing and able to take them up. The risk of incurring substantial costs during litigation was a powerful disincentive.

The Secretary of State for Employment said he had considered ways in which individual trade unionists could be assisted with legal costs. In many cases trade unionists would quality for legal aid or could find someone who did quality in whose name action could be brought. Nevertheless, there would be cases where trade unionists did not qualify or would be deterred by the time taken to establish eligibility for legal aid.

There were two alternatives. First, a private fund could be set up by "men of good will" to which trade unionists could apply for assistance. Secondly, a statutory arrangement could be established, modelled on that applying when an election was being disputed. An individual trade unionist could apply to the Certification Officer who could issue a certificate declaring that the claimant had a prima facie case. This would enable the claimant to apply to a separate body for assistance. The fund could be the same as that providing help to unions for postal ballots. It would thus be a fund to help both unions and their members.

The Secretary of State for Employment recognised that this proposal raised difficult issues of principle. It would be seen as creating a privilege category of claimant and as being unfair to other categories such as those involved in personal injury cases. The Attorney General said there were precedents for State assistance to particular categories of people outside the legal aid scheme, eg the 1980 Housing Act which provided help for tenants seeking to buy their homes but encountering obstructive Councils. Similar schemes provided help for claimants under the Race Relations and Sex Discrimination Acts. One difficulty in applying these schemes to trade union legislation was that it would give the appearance of State prosecution of trade unions. In discussion it was argued that the special case of individual trade unionists oppressed by their unions could be differentiated. Against this it was argued that it would be wrong for the Government to be singling out this category of claimant. The public might well regard someone injured in a road accident suing an insurance company or the parent of a vaccine-damaged child suing a drug company as equally deserving. Legal aid could, if necessary, be obtained quickly under the present scheme and further improvements could be introduced.

The Secretary of State for Trade and Industry reported that he had discussed the idea of a private fund with potential backers and hoped to be able to carry the idea further forward. It was argued that such a scheme would have to be well publicised if it were to be successful. It had been possible to raise money to help working miners during a major dispute which had threatened the liberties of the country as a whole. It would be much more difficult to mobilise support for less emotive cases though these might be just as crucial for the individual concerned.

Extension of Democracy for Trade Unions

It was agreed that the ideas put forward by the Secretary of State for Employment should be further developed. The possibility of extending the requirements for postal ballots should be considered together with the extension of the category of trade union officers for which ballots were required. The machinery for ensuring that ballots were properly conducted should be strengthened. Ways of preventing abuse should also be investigated. For example unions should be prevented from re-polling within a specified time in order to overturn the verdict of a ballot.

Other Matters

The Secretary of State for Employment said he did not wish to pursue the proposals on lay-off, nor did he think further legislation was needed on secondary action.

Summing up the discussion, the Prime Minister invited the Secretary of State for Employment to develop his proposals further and to bring forward a draft Green Paper for discussion with colleagues at the end of September. In the meantime he should undertake further work to find ways of ensuring that trade unions were able to exercise the rights which Government was providing. The Secretary of State for Employment should examine with colleagues a number of options, including special help for legal costs incurred by trade unionists; improving or acceleration of the present legal aid arrangements; and the establishment of a private fund.

I am copying this letter to the Private Secretaries to all those who attended the meeting and to Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

David Normington, Esq.,
Department of Employment

SECRET

COPY 1 OF 8

SECRET

HOUSE OF LORDS,
SW1A 0PW

19 July, 1985

5

My dear Tom:

INDUSTRIAL RELATIONS LAW: NEXT STEPS

For our meeting on Monday morning it may help you to know that I accept the need for the rights of Trade Union members to be strengthened and clarified. My concern is to ensure that these changes will take full account of the implications for the Courts, both in terms of general resources and of the costs to public funds of any resulting increase in litigation as many Trade Unionists may seek their remedies.

I am particularly concerned to ensure that we do not breach the accepted criteria for granting legal aid or for its administration.

I am copying this to the Prime Minister, the Attorney General, the Home Secretary, the Chancellor of the Exchequer and the Secretaries of State for Social Services, Energy, Transport, and Trade & Industry.

yrs:

The Right Honourable
Tom King, MP,
Secretary of State for Employment

SECRET

Place on file

10 DOWNING STREET

CR

Please arrange a meeting on Industrial relations: Next Steps (Mr Kings minute of 5 June)

for

Home Sec
CL / Ex
SS / Emp
Energy
S Security
~~Trade~~ Trade & Industry
Transport
Environment.
AG

1 hour Monday 22 July

1530 - 1630

CR

9/7

PRIME MINISTER

Employee Involvement
FLAG A E(A)(85)35

BACKGROUND

1. In correspondence earlier this year, the Secretary of State for Employment suggested that the proposed Nationalised Industries' Bill (then envisaged for the 1985/86 parliamentary session) should contain provisions on employee involvement. It was agreed between Ministers that Mr King should come forward with a paper covering not only this but also reviewing more generally the progress in improving employee involvement throughout the economy. In E(A)(85)35 he reviews experience of the existing statutory provision relating to the private sector and discusses options for further progress.

MAIN ISSUE

2. The main issue is what steps (if any) should the Government take to further its policy of encouraging employers to involve their employees and to help them to identify with a success of the firm for which they work.

The Private Sector

3. The existing statutory requirement on private sector companies, contained in section 1 of the Employment Act 1982, requires those with more than 250 employees to include in their Annual Report an account of action taken during the year to involve their employees. The evidence is that this has been broadly successful.

4. It has been suggested that this fairly minimal requirement should be strengthened, either by introducing a statutory code of practice or by specifying the types of material that must be communicated to employees or by specifying

mandatory forms of involvement - eg Consultative Committees. Any of these suggestions would involve a departure from the voluntary principle underlying existing policy. Furthermore, it would impose an additional burden on business, and it must be doubted whether the costs would be greater than the benefits. Employee involvement is a matter of co-operation and goodwill: if they are absent, legislation is unlikely to produce them; if they are present it is not necessary.

5. The Employment Secretary therefore proposes to build on the voluntary approach. He suggests that a 'Employee Involvement Conference' might be held in 1986 to demonstrate the Government's interest in and support for the issue. A key question is whether the trade unions would take part. A conference in their absence would only underline the gulf between employers and employees. A conference under independent auspices but with strong Government support, might be more likely to be successful.

6. The Employment Secretary also suggests that the Government should continue to promote employee share ownership. To the extent that employees have a direct interest in the profitability of their companies, the gap between employees and employers will be narrowed. In particular, the pressure for excessive wage increases with the consequent increase in unit labour costs, which recently some private sector companies appeared to have allowed, will be reduced. Mr King proposes that officials might explore ways in which share ownership schemes could be further promoted.

7. The statutory provisons in the Employment Act 1982 do not apply to public sector bodies. It is not proposed that they should, but it is clearly right that no less should be expected of them than of the private sector. There may

be limits to what can be achieved, and in the public services there can be no direct equivalent of profit sharing; but nationalised industries and others should clearly be encouraged to follow the same practice as good private sector employers.

8. The Government has a particular responsibility to its own employees. Mechanisms for consultation have existed for many years, but these are formalised and involve union activitists rather than staff more generally. There should be scope under the Financial Management Initiative for staff at all levels to become involved in defining their objectives and assessing the contribution which they themselves make. Ministers might be encouraged to consider whether anything further can be done in their departments.

HANDLING

9. You will wish to invote the Secretary of State for Employment to introduce his paper. The Secretary of State for Trade and Industry and the Minister without Portfolio will no doubt wish to comment, and the Chancellor of the Exchequer is likely to wish to contribute to the debate, particularly on share ownership. A number of other Ministers (including the Foreign and Defence Secretaries) have previously expressed views on the subject.

CONCLUSIONS

10. You will wish to reach decisions on whether to:

(i) Endorse the existing policy based on a voluntary approach.

(ii) Accept the idea of an 'Employee Involvement Conference' in 1986.

(iii) Seek to encourage public sector bodies and Government departments to follow the example of the private sector.

(iv) Examine ways of further promoting employee share ownership schemes.

J B UNWIN

Cabinet Office
28 June 1985

MR TURNBULL

28 June 1985

EMPLOYEE INVOLVEMENT

Tom King is right that we should continue with a voluntary approach, and we support his proposals both for a national conference and extending 'Section 1' to the public trading sector.

The proposal to promote employee share-ownership schemes is obviously desirable, but most employees work for subsidiaries of larger companies and therefore cannot be given shares directly in the units for which they work. What is really needed is a tax effective 'local profit share' scheme to allow employees to identify with the performance of their own operating unit and to share in its success.

Tom's fourth proposal of extending employee involvement to the civil service, whilst commendable, could actually increase the alienation that it is designed to counteract. Involvement is highly time-consuming. It can only reap a reward if it informs employees about things they would not otherwise know and acts as a channel for comment and complaint which is subsequently acted on. Many industrial schemes fail for the want of these, particularly as each tier of management (and union) has a vested interest in withholding information and defending its position.

Employee involvement should only be introduced into the civil service if we are convinced we can ensure a positive approach (not just resigned acquiescence) right down the management tree. It should be linked to the FMI and should operate in small units, so that each 'manager' can hold discussions with his entire workforce - not just with representatives. (Representative committees are often taken over by the unions; they are a bad mechanism for disseminating information and almost never put forward constructive change).

Peter Warry

PETER WARRY

SUBJECT
cc Master.

SECRET

file

SRWAEE 4

bcc Oliver Letwin
cc/NAT IND. COOL Pt 18

10 DOWNING STREET

From the Private Secretary

27 June 1985

NUM RULE BOOK: INDUSTRIAL RELATIONS REFORM

The Prime Minister held a meeting today to discuss the NUM rule book and the next steps in industrial relations. Present were the Secretaries of State for Energy, Trade and Industry and Employment and the Solicitor General. Mr. Letwin was also present.

The Secretary of State for Energy said it was still not clear whether the proposed new rule book would be adopted by the NUM. The decision could go either way or the issue could be deferred for further discussions. The outcome might depend on whether the Notts miners attended the meeting and whether they were allowed to vote freely. The NUM leadership would use all manner of procedural devices to secure its objectives. Summing up this part of the discussion, the Prime Minister said that if the rule book were adopted, the Government should immediately draw attention to the rights of union members which were being taken away. Subsequently, measures should be introduced to restore those rights.

The discussion then turned to the question of whether the Government should set out model rules to which union rule books should conform if immunities were to be retained. The Secretary of State for Employment had set out what such rules might look like in the annex to his minute of 21 June. In his minute, he had advised against following this course, preferring to continue the existing approach of identifying specific abuses and then extending the network of statutory duties, rights, protections and remedies to counter them. It was better to put weapons in the hands of individual union members than for the Government to specify all aspects of behaviour to which unions must conform. One drawback of the model rule approach was that if a union was deprived of immunity as a result of shortcomings in its rule book, no incentive would remain for it to comply with any existing requirement for which the sanction was loss of immunity. He had also considered whether model rules could be set out, not with statutory force, but as a code which might influence the courts in their decisions. The analogy with other codes was not exact however; these had been amplifications of statutory provisions. There was no precedent for a self-standing code. After a brief

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discussion it was agreed not to pursue the proposal for model rules.

In discussion, it was noted that the success of the Government's approach depended upon the willingness of individual trade union members to go to court to exercise the rights which they were being given. Many ordinary trade union members would be intimidated by the courts or by the expenses of litigation. Although legal aid was often available in principle, many union members would not qualify. One possibility would be to relax the conditions of legal aid, perhaps after requiring a statement from the Certification Officer that the individual had a prima facie case. There were precedents for state assistance in the field of industrial relations legislation, eg, help for postal ballots and compensation for dismissal in closed shop cases. There would be difficulties in distinguishing between trade union members who could receive legal aid and, for example, someone seeking damages over defective goods who could not. An alternative would be to encourage the establishment by private interests of a fund that trade union members might draw upon. They might be reluctant to do so if it were too overtly associated with employers. Summing up this part of the discussion, the Prime Minister said the Government's approach should continue to be to provide rights for trade union members but it was essential, at the same time, to make it easier for trade unionists to use those rights. The Secretaries of State for Employment and Trade and Industry and the Solicitor General should examine ways of achieving this.

Discussion then turned to the wider programme of industrial relations reform set out in the Secretary of State for Employment's minute of 5 June. One element of this was how to carry out the manifesto commitment to consult about ways of reducing strikes in essential services. The proposal had not been to ban strikes in essential services but to require that certain procedure agreements were observed if immunities were to be preserved. A number of public sector unions, some of which like those in the electricity industry were responsibly led, had expressed concern. It was essential to assure them that an outright ban on strikes was not being contemplated.

It was noted that even the introduction of mandatory postal ballots would not guarantee proper conduct of elections for officials and strikes. The creation of a statutory body had been suggested to oversee the conduct of elections though it might find it necessary to involve itself in all stages. Such a body would find it difficult to oversee elections beyond those for national officials. Strong reservations were expressed about the proposal for lay-off of workers made idle by a strike.

Summing up this part of the discussion the Prime Minister said a meeting of a wider group of Ministers would be convened to discuss the Secretary of State for Employment's minute of 5 June. The aim should be to produce a consultation document by the autumn of 1985 which would

provide the basis for legislation in the 1986/87 session. The Government should, however, be in a position to respond earlier, if necessary, to any major abuse whether in the NUM rule book or elsewhere.

I am coyping this letter to Geoff Dart (Department of Energy), John Mogg (Department of Trade and Industry) and Henry Steel (Law Officers Department).

(ANDREW TURNBULL)

David Normington, Esq.,
Department of Employment.

c/ NATINA : Coal A 18

PRIME MINISTER

c. Mr Letwin

INDUSTRIAL RELATIONS LEGISLATION: NUM RULE BOOK

This meeting can be divided into three parts.

(i) NUM Rule Book

Mr Walker could be asked to report on the latest intelligence about the NUM vote. Mr MacGregor implied that if the Notts miners decided to take part there was a chance that the rule book would be defeated but that Notts may prefer to stay away and split off from the main union. NCB should be asked quickly for their advice on which outcome is preferable. I would have thought that if the rule book can be defeated by Notts taking part it would be better for this to happen. If Notts took part and the rule book went through the option of their leaving the union would still be available but they might regret it if the rule book went through in their absence by a narrow majority.

(ii) Model Rules

Flag A As you requested, Mr King has prepared a set of model rules though he advises against pursuing this course. He prefers to continue the existing policy of identifying specific abuses and extending the network of statutory duties, rights, protections and remedies to counter them, rather than the Government attempting to specify at one go all aspects of the behaviour to which trade unions should conform. He argues that it is better to give individual union members weapons with which to fight abuses by their leaders rather than for the Government to be in the front line. Certainly the miners' strike showed the value of this approach. He also points out that if a union lost immunity on account of its rule book other sanctions based on the loss of immunity are rendered

Flag B impotent. Oliver has suggested a compromise in which the Government sets model rules but gives them the status of a code which would not have statutory force but to which the courts could refer in reaching their judgements.

(iii) The Wider Programme of Industrial Relations Reform

Flag C

Mr King minuted you on 5 June to set out the wider programme of reform, including the Government's response to the Manifesto commitment on strikes in essential services. It would be helpful if, at some stage, whatever is decided on model rules were integrated with this wider initiative. You may want to expand the group to include the Home Secretary, the Chancellor, and the Secretaries of State for Social Services, Education and Science and Transport. Such a meeting could decide which of Mr King's ideas should be put out to consultation.

At present there is no slot in the 1985-86 programme for industrial relations legislation. In view of this there seems no reason to rush out a consultation document before the recess, even if it could be done. The alternative would be something when Parliament returns in November. This timetable would need be reconsidered if the NUM rule book was passed and an earlier response to counter its obnoxious features was desirable.

AT

26 June 1985

VC3AER

PRIME MINISTER (2)

21 June 1985

This is for discussion on Thursday. AT 21/6

MODEL RULES FOR TRADE UNIONS

Tom King has fulfilled your request, and has produced a sensible set of model rules for Trade Unions.

But we agree with him that a system of statutory registration and approval for union rules would raise the ghost of the failed 1971 Act, and would ultimately be counter-productive.

If you want to pursue the model rules issue further, you could consider a scheme of a somewhat different sort, using existing legal principles of 'natural justice':

1. The government would promulgate a set of model rules of the sort that Tom King has provided.

2. Unions would not be compelled to conform to these rules, but any individual member who felt that his union's rules were unreasonable would be given an explicit right to seek judicial review. If the union's rules were substantially different from the model rules, this would be *prima facie* evidence that the union was acting unreasonably. It would be for the union's officers to show that they had good cause to depart from the model.

In a case like the proposed NUM Rule Book, it would be difficult for the union's officers to show that they had departed from the model rules for any good reason, either historical or otherwise. An individual complainant would therefore have a strong case.

A system of this sort would be better than compulsory registration and approval of union rules, because it would put the onus on the individual rather than on government. This would be politically more acceptable, more difficult for the unions to oppose, and more in line with this government's previous trade union legislation.

If you were interested in this method of approach, you would clearly need to seek help from the Law Officers on the methods of implementing it.

OLIVER LETWIN

MC/B25

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PRIME MINISTER

MODEL RULES FOR TRADE UNIONS

1. You asked me in consultation with the Solicitor General, to set out model rules which would emphasise certain basic principles that trade unions would have to observe.

2. The attached note describes such a scheme of model rules. The annex sets out a series of principles that could be covered. Under the scheme union rule books, and any subsequent changes to them, would need to be submitted for approval to an independent statutory authority (perhaps the Certification Officer) and if approval were not given a union would lose immunity. If a union did not submit its rule books for approval, immunity would be automatically forfeit.

3. I am sure that a scheme of this kind is to be preferred to one whereby unions would be required to adopt the actual text of statutory model rules. It would be extremely difficult to frame rules which were appropriate to the very different circumstances of all unions and the principle which this would establish would be the more bitterly contested.

4. Our objectives are to ensure that individual members have power over their own union leaders and to nullify objectionable rules of the kind proposed by the NUM, such as the centralisation of power in the hands of the National Executive, the restriction of members' rights of access to the courts and the indemnification of officials against criminal acts.

5. The annexed scheme would go further than that which we attempted to establish by the Industrial Relations Act 1971. Unions then were required to secure approved registration if

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they were to have immunity and normal tax advantages. But the tests to be met were a good deal lower than what we would now propose, in that the requirement in a good many areas was simply to have rules, no attempt being made to lay down standards with which these had to comply. The outcome nevertheless was that only a handful of unions registered and the TUC expelled those which did. The response of employers was then not to seek the remedies which the absence of immunity afforded. They preferred to continue to deal with the unregistered unions as representatives of their employees. We have heeded that experience in the framing of the very successful 1980, 1982 and 1984 Acts, by deliberately establishing rights and duties irrespective of the content of union rule books and in doing so we have denied unions a common cause in a traditionally emotive area.

6. The climate has changed to some considerable degree, but many moderate unions can be expected to resist strongly the scheme under consideration, which would be open to portrayal as State licensing of trade unions.

7. There are three other important considerations. The loss of immunity would leave untouched the rights of a member in relation to his union. Members of unions which did not seek approval of their rules would be afforded no new protection or remedy against oppressive treatment. Secondly, if unions were permanently deprived of immunity (effectively denied the right to strike), there would be no incentive for them to comply with any existing requirements for which the sanction was the loss of immunity. Thirdly, unions would probably seek ways of avoiding legal responsibility for

industrial action (as now prescribed in Section 15 of the 1982 Act) both by doing nothing to discourage unofficial action and by secretly inciting it.

8. The likelihood is that we would also fall foul of the International Labour Organisation, and be found to be in breach of Conventions governing the freedom of association, and could be in difficulty in any complaint under the European Convention on Human Rights. Recently the ILO's Committee of Experts, in helpfully ruling that the TUC's formal complaint about the 1984 Act could not be upheld, referred back to their 1983 General Survey of Freedom of Association which took the view that "with the exception of certain purely formal clauses, any obligation imposed on a trade union to base its constitution on a compulsory model runs counter to the principles ensuring freedom of association".

9. I look forward to discussing all this with colleagues, but my provisional conclusion is that we will do better to build on the foundations we have so securely laid in the 1980, 1982, and 1984 Acts, by identifying specific abuses and extending the network of statutory duties, rights, protections and remedies to counter them. In this way we should be seen to be tackling abuses which are widely recognised as such by the public, and we should be equipping individual trade union members with swords rather than shields to wield against them. My minute of 4 June identified a number of additional steps we

might take which, taken together, can readily be presented as a charter of rights for unions members.

10. I am copying this minute to Peter Walker, Norman Tebbit and Patrick Mayhew.

Ian (Private secretary)
for TK

21 June 1985

(Approved by the Secretary of State
and signed in his absence)

MODEL RULES FOR TRADE UNIONS

This note describes a legislative scheme whereby union rule books would need to conform with statutory model rules if immunity for industrial action was to be preserved. Such a scheme might be considered analogous to Table 'A' rules for companies, but in that case the rules only apply if not excluded or modified by a company's articles.

2. It could not be the intention to establish model rules for all the many and various matters now to be found in union rule books or to establish a single model organisational structure for all unions. The main objective therefore would be to establish and protect the rights of individual members. A second objective could be to seek to impose rules of a kind which could be regarded as necessary on a wider view of the needs of public policy, and to prevent rules judged contrary to that policy.

3. On examination, these objectives could not always be met by drafting actual model rules for importation into union rule books. On some matters it would be necessary to prohibit oppressive or other rules and this leads to the conclusion that model rules would be best framed as statutory principles which union rule books would need to follow.

4. The annex to this note sets out what these statutory principles might be, with the proposed changes to the NUM rule book in mind. It establishes the range of areas in which statutory intervention might be appropriate but leaves scope for the further development and refinement of the principles themselves. It needs to be remembered that in some cases existing legislation already provides protections (either in whole or in part) that these principles would aim to provide.

5. If statutory guiding principles were established, there would need to be a process for the approval of union rules on a test of whether they conformed. It would not be satisfactory to leave the courts to decide, case by case, as and when an employer chose to seek a remedy against industrial action. The uncertainties for union/member and employer/union relationships would be too great. It would therefore be necessary to require the formal approval of union rule books by a statutory authority (most obviously the Certification Officer) who would be able to issue a certificate of conformity providing immunity. Any change in a union's rules would require a further certificate. An appeal against an adverse decision by the Certification Officer could be to the High Court or the Employment Appeal Tribunal.

6. Unions would need time to consider and adopt changes in their rules to ensure conformity. Under many unions' existing rules changes can only be made by special conferences at stated intervals, eg every 5 years. It would therefore be necessary to make statutory provision for unions to bypass their normal procedures under rule to adopt model requirements within a reasonable period of time. At the very least, unions would need a year to make changes before immunity could be automatically withdrawn from them.

ANNEX

Statutory Principles for Trade Union Rules

A. Objects

RULE 1: The permissible objects of a trade union shall be as follows:

- the regulation of relations between workers and employers or employers' associations;
- the provision of benefits and services to its members;
- the protection and promotion by lawful means of the interests of its members, including the pursuit of electoral and party political objectives as regulated by the 1913 and 1984 Trade Union Acts.

Note It would be difficult to limit more narrowly the legitimate objects of trade unions.

The restriction to lawful means would exclude certain types of activity, but would not rule out as such the pursuit of objects currently avowed eg. the control by their members of the industries in which they work (EETPU, AUEW, TGWU, USDAW) or the end of capitalism (NUR, NUTGW).

B. Membership

RULE 2: Membership shall not be unreasonably withheld.

Note Unreasonable expulsion is covered under rules 16 and 17 below dealing with discipline. There exists a statutory protection in the 1980 Act when employment is dependent on union membership. More generally it would seem necessary to allow "craft" unions to choose to take into membership only workers of a certain description, eg by reference to employment, trade or qualification, and "general" unions to choose to have a very wide range of potential members not restricted by any guiding principle.

There are of course "non-active" members in many unions (including, for example, MPs); their activities can be limited, see rule 4 below on voting.

RULE 3: Members shall have a right, on giving notice and complying with reasonable any/specified conditions, to terminate membership.

Note This reflects s.7 of the 1974 Act. The 1982 Act provides that employees in unapproved closed shops may not be fairly dismissed on grounds of non-membership of a union.

RULE 4: Members shall have a right not to be unreasonably excluded from voting in any election.

Note With respect to elections for the principal executive committee Part I of the 1984 Act protects individuals against exclusion, but permits the exclusion of specified classes. It would be possible to go further and require the exclusion of certain classes.

RULE 5: Members shall have a right not to be unreasonably excluded from being a candidate for or holding any office.

Note The 1984 Act provides this right with respect to the principal executive committee.

RULE 6: Members shall have a right not to be unreasonably prevented from nominating candidates for any office.

Note A right of this kind was provided by s.65 of the 1971 Act.

RULE 7: Members shall have a right to attend and take part in branch and other meetings in which they have an interest.

Note See s.65 of the 1971 Act.

C. Constitution

RULE 8: Nothing in the rules shall purport to prevent a member from having access to the courts at any time.

Note A similar provision was contained in s.65 of the 1971 Act. This would rule out the possibility of members' being required to go through labyrinthine internal procedures before having access to the courts.

RULE 9: The rules shall specify reasonable and practicable procedures for changing the rules.

Note The 1971 Act required the rules to specify the manner in which they could be modified.

RULE 10: The rules shall specify a reasonable and practicable procedure for dealing with complaints by members that the rules of the union have been broken.

Note Schedule 4 of the 1971 Act required the rules to specify a procedure for inquiring into complaints of action contrary to the union's rules.

RULE 11: The rules of the union shall specify reasonable and practicable arrangements for all elections.

Note Schedule 4 of the 1971 Act required the rules to make provision as to the manner in which elections were held.

RULE 12: Voting members of the principal executive committee shall be elected by direct secret ballot at least every five years in accordance with the provisions of the 1984 Act.

Note As provided by Part I of the 1984 Act.

D. Industrial Action

RULE 13: The rules shall empower the union to call for industrial action only when that action has been supported in a ballot of the members complying with the provisions of the 1984 Act.

Note The 1984 Act specifies inter alia ballot/timing, eligibility to vote, nature of the ballot question and the need to achieve a majority of the members voting.

RULE 14: The rules shall empower the union to call for or support industrial action only where such action will attract immunity from suit.

Note This would cover industrial action which is not primarily about industrial matters (eg is primarily political), indiscriminate secondary action, secondary picketing and action to impose union labour only contracts. Immunity in respect of industrial action of those kinds was removed by the 1980 and 1982 Employment Acts.

E. Conduct of Ballots

RULE 15: The rules shall require ballots to be held in accordance with the following principles:

- equal voting rights for all those entitled to vote
- secrecy of voting
- voting by the marking of a ballot paper
- voting to be free from intimidation and free of cost to to the voter.

Note These reflect standards set by all three parts of the 1984 Act. Certain additional standards imposed by the 1984 Act are appropriate in specific circumstances; see rules 11 and 12 above.

RULE 16: The rules shall provide for votes cast in ballots to be fairly and accurately counted and for ballot results to be notified to the members as soon as practicable after the ballot.

Note The first of these provisions reflects requirements in all three parts of the 1984 Act. The second reflects a requirement in Part II of the 1984 Act (strike ballots). It would be possible to go further and require the ballot results to be broken down.

F. Disciplinary Procedures

RULE 17: The rules shall specify the nature of matters which may be subject to disciplinary action and the nature of the penalties (including maximum penalties) which may be imposed for each category of offence.

Note A similar provision appeared in Schedule 4 of the 1971 Act.

RULE 18: Matters which may be subject to disciplinary action under Rule 16 shall not include refusal by a member to take action in breach of his contract of employment or to engage in industrial action falling short of a strike which is incompatible with his political or religious beliefs.

Note This could be extended to exclude other objectionable grounds for diciplinary action such as, for example, limitation on freedom of speech of the kind imposed by charges of "bringing the union into disrepute".

RULE 19: The rules shall specify a reasonable and practicable procedure for taking disciplinary action, including provision for appeals.

Note Schedule 4 of the 1971 Act required the rules to specify a procedure for taking disciplinary action including provision for appeals. It would be possible to specify elements of the disciplinary process (eg right to statement of charges and report of findings) as in s.65 of the 1971 Act.

G. Finances

RULE 20: Members, together with their profesional advisers, shall be given access to the union's detailed accounting records.

Note A similar right was originally enacted in an Act of 1871, was re-enacted in a more limited form in the 1971 Act and was repealed as a result of the 1974 Act. Most rule books provide such a right, which is interpreted by the courts as including the right to be accompanied by professional advisers.

RULE 21: Nothing in the rules of a union shall purport to give indemnity for officers or agents of the union in respect of criminal offences and contempt of court.

RULE 22: The rules shall specify:

(a) the contributions payable by members and the amount of any such contributions or the basis on which that amount is to be assessed;

(b) the procedures and penalties for dealing with failures to pay contributions; and

(c) the procedures whereby and purposes for which special levies may be raised.

Note Provisions similar to (a) and (b) were contained in Schedule 4 of the 1971 Act.

RULE 23: The rules shall specify the amounts of any benefits payable to members and the circumstances in which they are to be paid.

Note A similar provision was contained in Schedule 4 of the 1971 Act.

H. Political Funds

Note Rules governing the holding of political fund ballots and rules on the operation of political funds (including the collection of the political levy) are already provided for under statute (the 1913 Act as amended by the 1984 Act).

Industrial Relations Hs → IF → CP

Extract from a speech by Employment Secretary Tom King, to the Lobby Lunch, House of Commons, Wednesday 19 June 1985.

Step by step to success. That is the story of our Trade Union reforms, and one that few now challenge. What a contrast to all the effort and exhaustion of "In Place of Strife", and the 1971 Industrial Relations Act.

People said that our reforms would go the same way. But they haven't, and you can see why. The virtue of the step by step approach is that we did not seek to impose great extra burdens on unions, we gave rights to their members instead. And those rights were directly related to problems and grievances that were widely recognised, and for which our remedies commanded the strongest public support.

Closed Shops, unrepresentative union leaderships, failure to consult members, rigged votes, car park meetings with a show of hands - for so many in the country, this was the unacceptable face of Trade Unionism. These were the evils that we tackled in our Acts, but the first reaction of many trade union leaders was to carry on as though nothing had changed.

They reckoned, however, without their members who, time and again, have shown that they are prepared to claim their rights. Just look at the list of union leaderships that misjudged their members mood;

Mr Scargill learnt the price of not holding a ballot.

Do you remember Mr Connolly and those two abortive dock strikes last summer?

Look what happened to Jimmy Knapp and the NUR over their threatened Tube strike.

And the Civil Service unions and their proposed strikes.

And the unions at Austin Rover, where the members voted with their feet against their leaders' strike call.

Now at last most union leaders are beginning to realise that times have changed, and are starting to adopt our reforms. They are starting to ask their members for their views before calling industrial action.

And our reforms are bringing their rewards. Behind all the tumult of the miners dispute, the number of strikes in industry is now running at its lowest level for 50 years. That means more continuous production, more economic growth. These successes are a tribute to the step by step approach, pioneered by Jim Prior and Norman Tebbit.

And now the question is, are there any more steps? And the answer must be yes. Having embarked on our plan to give proper and effective rights to unions members, we must ensure that these rights are fully developed, so that they provide the ordinary member with the protection that he is entitled to enjoy in a free society.

The right to go to work, despite a strike call.

Protection against the abuse of the closed shop.

Proper management of his funds.

A decent standard of democracy in his union.

Moreover, do we need more particular arrangements to reduce the risk of disruption of essential services?

We have made a good deal of progress on these objectives, and union members are the first to appreciate it. But what is equally clear is that there are questions still to be answered.

MB/A18

cc DL 2
cc Richard
Hatfield CO.
cc Unwin CO

PRIME MINISTER

INDUSTRIAL RELATIONS LAW : THE NEXT STEP

I have been reviewing industrial relations law in the wake of the miners strike and considering the extent and timing of the next step in our programme of industrial relations reform. This minute sets out my provisional conclusions.

The background for any further step is one of real achievements from the first three Acts. There is no question that the climate of industrial relations has been changed in a fumdamental way, as shown by the remarkably short time in which our most recent change - the requirement for ballots before strikes - has come into play with employers showing increasing willingness to use this law. The miners strike showed also that individual members are increasingly determined to use their rights under common law as well, and this increased workload for the courts has been dealt with without any of the backlash that marked earlier attempts at reform of the law.

In spite of the still extant Wembley Resolution of the TUC to boycott our legislation all the evidence is that the vast majority of unions are taking the necessary steps to conform with the new requirements and to avoid any confrontation with the law. The confusion in the Labour Party's utterances on the subject confirm very clearly their recognition of the popularity of our legislation

This then is the encouraging background against which I have listed possible further reforms. I have grouped them under three headings which could be the main themes of our next step:

? protection for small employers for N.G.A. etc

(i) protection for union members against unfair treatment by their union;

(ii) the further extension of democratic rights to union members;

(iii) the discouragement of strikes in essential services.

In drawing up these proposals I have had very much in mind the experience of the 1980, 1982 and 1984 Acts, the lessons of the miners strike, the proposed changes to the NUM rule book, and our 1983 Manifesto.

(i) Rights and Protections for Individual Members against their unions.

(a) Protection could be established for all union members against being disciplined (eg expelled by their union) for refusing to break their contracts of employment (eg by not striking or crossing picket lines). This protection would remain even if there had been a ballot under the 1984 Act. It could be presented as a necessary reaction to the current practices of some unions, eg the fining of TGWU members who continued to work during the 1984 dock strikes and at Austin/Rover, the sanctions the NUM might come to impose on the working miners, the fines of up to £2,000 imposed by the

NGA. It would strengthen the resolve of employees anxious to continue working and allow them to retain the often valued benefits of union membership.

(b) A right could be afforded to individual union members to seek an injunction if the union was inducing them to break their contracts of employment without a ballot. Under the 1984 Act it is at the moment only the employer who can seek that injunction and this change would extend that opportunity also to an individual member. This could certainly enhance the rights of individual members but could take the tactical control out of the hands of the employer who, as we saw in the coal strike, may decide not to press for an injunction at particular times.

(c) An additional step, when no ballot complying with Part II of the 1984 Act had been held, would be to provide that a union member who had been called upon to break his contract of employment could apply to the High Court for an order requiring the union to hold a ballot. If the Union refused to obey the order, the member could then undertake contempt proceedings.

(d) The pre-entry closed shop could be ended by imposing a duty on employers not to discriminate on grounds of union membership on engagement. Our

previous steps under which a closed shop can only be lawful if it has been endorsed by an overwhelming majority of its members in a secret ballot has been most successful in removing the most unpleasant aspects of the closed shop. This further step might not be of great consequence in practice but it would be seen to address a particularly unpleasant feature of some closed shops.

(e) Additionally, it would be possible to remove immunity from any industrial action by employees to force their own employer to dismiss or not to recruit non-union employees. This would extend the provision in the 1982 Act which removed immunity only from secondary industrial action to enforce closed shops and provide a further remedy for employers who can already join a union in any claim against unfair dismissal on membership grounds.

The changes proposed to the NUM rule book, whether adopted or not, provide a case for additional provisions which would in effect override unacceptable union rules and maintain the common law rights union members now have. These could be:-

(f) A statutory declaration that no restriction shall be imposed by a union whether by its rules or otherwise on any union member seeking a remedy from a court or industrial tribunal. A change proposed to the NUM rules seeks to deny members access to the courts and a member who sought a statutory or common law remedy would consequently be in breach of the rules and potentially liable to explusion or other disciplinary penalty.

(g) A further proposed rule change is intended to indemnify members of the executive, officials and even conference delegates against the consequences of any actions whether legal or not. The probability is that some at least of the possible applications of such a rule would be found by the courts to be void on grounds of illegality. But it would be possible to legislate to limit the indemnity that a union could purport to afford individuals, for example so that indemnity for any unlawful act, including contempt of court, was not possible. This approach would seem preferable to leaving individual members to challenge in the courts such a rule or its application or possible proceedings by the Attorney General on grounds of public policy.

(h) It would also be possible to provide that unions owe a duty to their members not to put their funds at risk by acting in contravention of court orders. At present, unions and their trustees are

likely to be able to use union funds to finance activities which have been found unlawful (eg the continuation of picketing) so long as they have not acted outwith the rules of the union or the terms of the trust. The effect of such a provision would be to allow union members to challenge any "misuse" of union funds and if the officials or trustees refused to comply with a consequent order of the court, it would be further provided that on renewed application an order could be sought for their replacement. This would be to provide more certainly for the possibility that, on the suit of a union member, a union could be put under the control of a receiver to safeguard the union's funds.

(i) Most union rules allow members and other interested parties (which on the interpretation of the courts include professional advisers) to inspect the unions' book and accounts and the records of membership. A proposed change to the NUM rulebook is designed to limit access to members themselves and then only to audited accounts. A statutory right providing full access of a kind which existed until 1974 could be re-established.

(ii) Extension of democracy in trade unions

Part I of the 1984 Act, which requires the election of voting members of the executive committees of trade unions not less

than every 5 years, does not come into effect until 1 October 1985. Trade unions are already under a duty to compile by that date an accurate register of their members' names and addresses. This will remove an obstacle to full postal balloting and reinforce the pressure in the '84 Act.

The revelations about the TGWU's election last year for the post of General Secretary have, however, provided an obvious opportunity for taking a significant further step on trade union elections which could be readily justified and attract support.

(a) The first possibility I am examining is extending the requirements for elections beyond the principal executive committee of the union not just to their senior posts but down to divisional level and even branch level. One of the messages from the T & G ballot rigging was the crucial role played by officials at branch and district level.

(b) An alternative to this would be to require either the election of all union national officers of certain description in accordance with the requirements of the 1984 Act - or enforce these same requirements for all such elections as now take place, in both cases even if the officers concerned do not have a vote on executive committees.

In combination with these changes and against the background that the full registers will by then be established for trade unions we might also:

(c) Require all elections to be by full postal ballot, subject to exemption which would have to be independently authorised and only in exceptional circumstances.

(d) Require independent supervision (but preferably not by a statutory agency) of all election ballots from the issue of ballot papers against the register of members to the publication of the count.

(e) The publication of voting figures (where appropriate) on a branch by branch basis.

(iii) Essential Services

The 1983 Manifesto committed us to consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity." At that time the refusal of the unions in the water industry to abide by their agreement was very much in mind. More generally, our concern was to consider how threats of industrial action in the electricity, gas and water industries and in the NHS might be reduced. The miners' strike necessarily delayed the proposed consultations.

Since 1983, we have concluded in collective discussions that there is no better prospect now than in the past of establishing no-strike agreements which could work and hold and that any extension of the criminal law would create more problems than it could solve. We hae recognised that the

removal of immunity in essential services would inevitably need to lead to the creation of machinery to determine terms and conditions of employment which are disputed. The models for such machinery could only be the Review Bodies or binding arbitration with unilateral access to the process. Even these mechanisms could not extend to many contentious issues, eg privatisation, redundancy, closures. And we could not put to independent parties the determination of the pay bill for such large areas of the public sector because of the public expenditure implications. Additionally, a higher majority test for strike ballots in essential services would only appear to give a moral authority for industrial action which we would always want to deny.

There are, however, more limited steps which would operate via the 'loss of immunity' approach.

(a) industrial action could not be lawfully taken on any issue already determined by a substantive agreement, eg on pay, during its currency.

(b) similarly, action taken before all stages of any extant procedure agreement had been exhausted would not have immunity; it would follow that if an agreement provided for arbitration and both parties were committed to it whether on agreement case by case or otherwise, industrial action whilst arbitration took place or in opposition to an award would not have immunity (I understand that it is in this area that the continuing discussions with the NHS unions have focussed);

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

The unions in essential services are likely to resist strongly these proposals, even though they are significantly less demanding than other options that have been canvassed. Nonetheless, in going out to consultation, they can clearly be presented as perfectly reasonable protections for the community which those working in the essential services should be prepared to accept. The provisions on closed shops, and on ballots before strikes, are already improving the position, and this further step would be a useful reinforcement.

There is a further possibility I have considered which would involve removing immunity from industrial action which interfered with the performance of statutory duty. However, the more I look at the enormous range and variety of statutory duties I think that this is not an attractive route and I would much prefer the approach outlined above.

Other Possibilities

(a) Lay-off

The purpose of lay-off would be to enable employers to lay-off without pay employees whose work was affected to any extent by the industrial action of other workers. Such a power would also relieve employers of virtually all existing statutory obligations and allow the employer to abrogate unilaterally employees' common law and contractual rights, including those imported from collective agreements.

In certain circumstances, this could be a most effective response. Additionally, employers could be relieved of financial and other obligations when their businesses were affected by industrial action remote from them, eg a rail strike, interruption of electricity or other supplies. Measures were framed some three years ago, but since then it has not been possible to identify any particular dispute in the public or in the private sector when they would have been useful and defensible. I do not believe we should contemplate so draconian a step without a much better basis than so far exists for demonstrating that it is both essential and reasonable. We are prepared against the contingency.

(b) Secondary action

Section 17 of the 1980 Act severely limited immunity for secondary action which was remote from the primary dispute. It has operated with greater severity and certainty than its original critics expected. However, it does still allow some scope for lawful secondary action by the employees of customers and suppliers of an employer in dispute. Although there are no observable pressures from employers for going further and removing immunity from any industrial action other than primary action (ie action in furtherance of a dispute between employees and their own employer), there still remains the possibility of lawful secondary action of a kind and to a degree which would be damaging and unacceptable.

Depending on the nature and extent of the next legislative step we take, I do not want to lose sight of the possibility of making all secondary action unlawful.

The trade unions' opposition to such a proposal would focus on the denial of the possibility of secondary action in cases where all the employees of an employer had been dismissed, but action on such an issue is very rare and secondary action, as in the miners' strike, is usually directed to other ends.

Timing

These therefore are the areas where I believe there is scope for effective and popular reform. The key question then becomes the timing and method of presentation of these reforms. I believe that the right course would be to prepare a Green Paper for consultation on all these issues. This could be published either in July or be announced at the Party Conference and published when Parliament returns in November. We can then proceed to prepare a Bill for introduction at the very beginning of the 1986-87 session.

The approach of a Green Paper and then a Bill has been the procedure followed on previous occasions and has proved much the most effective way of getting support for our measures and in awakening public interest in the issues. In this way we would keep the subject of industrial relations reform in the public eye both during the consultation period and during the Parliamentary proceedings - from Autumn of this year to mid-1987. This has certainly been one of our most popular policies and I would expect strong support for it across the whole Party. I therefore see real attractions in pursuing this approach.

Colleagues attending our meeting on Thursday will be particularly interested in the passage on the NUM Rule Book on pages 4 and 5.

I am copying this minute to Leon Brittan, Nigel Lawson, Keith Joseph, Peter Walker, Norman Fowler, Norman Tebbit, Nicholas Ridley and Sir Michael Havers.

T K
5 June 1985

IND Rol.
I.R. Legion.

CONFIDENTIAL

file 64 881

bcc Mr Letwin

10 DOWNING STREET

From the Private Secretary

31 May 1985

INDUSTRIAL RELATIONS LAW: THE NEXT STEP

The Prime Minister has seen your Secretary of State's minute of 24 May. She has commented that many of the proposals in it are worth pursuing and she would be grateful if your Secretary of State could now circulate it to colleagues for a discussion later this month which I will arrange. Parts of the minute are also relevant to the discussion of the NUM rule book which is scheduled for Thursday 6 June. It would be helpful if the note had gone round by then. Perhaps we could have a word about who needs to be involved in these discussions.

BF

BF

TNG

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment

CONFIDENTIAL

10 DOWNING STREET

Prime Minister

Oliver's note attached. I suggest dealing with this in two stages. Tom Kings note should be circulated to colleagues to be followed by meetings on

(i) NUM rule book

(ii) wider programme of trade union legislation.

Agree?

AT
30/5

10 DOWNING STREET

Prime Minister (2)

This is Mr King's paper on whether industrial relations legislation in the light of the miners strike. He has not circulated it to other Ministers but awaits an indication from you that it is on the lines you want.

Oliver will provide a note on Tuesday, but you might like to see it over the weekend as there are cross references to the papers on the NUM rule book.

AT

I await Oliver's note 24/5

? "Model rules" for unions? Like Talk A. Co. rules?

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PRIME MINISTER 29 May 1985

INDUSTRIAL RELATIONS LAW

Tom King proposes to issue another Green Paper on Trade Union Reform during the summer or autumn. This seems thoroughly sensible. As Tom says, union reform is a popular policy that should be carried further and kept in the public mind between this autumn and the summer of 1987.

The main items in the package are:

i. Rights for individual members (not just employers) to take court action when a union calls for a strike without a ballot. Yes. The D/Emp's assertion that this would lessen the employers' "tactical control" of a strike is a red herring. The only reason why employers are at present unwilling to act against trade unions in a strike is that they do not wish to be held responsible for fanning the flames of the dispute; few employers will object when they see a union being taken to court by its own members.

ii. An end to the 'pre-entry closed shop'. Yes. This would make it illegal for employers to restrict jobs to those who already possessed union cards. Tom says that there might be little practical effect. But we disagree: in trades like printing, acting and local government, the pre-entry closed shop protects current employees at the expense of the unemployed.

iii. A right for union members to take court action leading to the installation of receivers if a union puts its funds at risk by behaving illegally. Yes.

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This would give people like the Nottinghamshire miners a very strong card to play.

iv. Extension of regular elections for union officers. Yes. At present, people like Arthur Scargill can escape from the election rules by abandoning their vote on the union's executive. Tom lists several ways in which this loophole could be closed. The most sensible method would be a regulation that enforced regular elections for senior national officers. This would make them comparable with directors of companies.

v. Postal ballots and independent supervision for union elections, with the publication of results, branch by branch. Yes. Frank Chapple, Woodrow Wyatt and others with real experience of the tactics of the Left have been calling for proper postal ballots for years. There is no longer any reason to oppose them, since registers of union members have now been compiled and a postal ballot is therefore practicable. There is bound to be considerable Party support, (though there will be some wry comments about the D/Emp's previous unwillingness to introduce such ballots).

vi. Removal of immunity for strikes in essential services, if current substantive agreements or procedure agreements are breached. Yes. Consultation on these proposals would fulfil your manifesto commitment. And there should be widespread support for the idea that unions in essential services have to act especially responsibly, given the hardship that strikes can cause.

vii. Requirement for unions in essential services to give a minimum period of notice, following the breakdown of talks, before striking. Perhaps. The requirement to give a minimum period of notice is similar to the cooling-off provisions in the United States, which have worked well, enabling unions and employers to think again, and giving the government time to prepare emergency services. But there is a danger that negotiations will break down more quickly, and that attitudes will harden during the "cooling-off" period.

In short, we believe that all the main proposals (with the possible exception of the cooling-off period in essential services) are sensible. They - together with the minor increases in individuals' rights listed in sections i(a), i(e), i(f), i(g) and i(i) , of the minute - are worth including in a Green Paper.

The options canvassed in the minute as "other possibilities" are rightly rejected: they are unattractive. But there is one major additional feature that should be present: the minute makes no mention of abuses of balloting such as NACOD's multiple question ballot. If a union asks ambiguous or multiple questions, it can manufacture apparent majorities for actions which are in fact unpopular with the members. This form of manipulation needs to be prevented.

The politics of a Green Paper are obviously delicate. There is a danger that the government will be accused of 'going over the top'. To avoid this, the drafting will have to be sensitive, aiming to elicit the response that the proposals are no more than a rational extension of present policies. The emphasis will have to be on the rights of individuals, not on breaking trade union powers.

Subject to these caveats, we recommend that you should warmly welcome Tom King's efforts, and ask him to circulate his proposals to colleagues, so that a meeting can be held in the near future.

Peter Warry

PETER WARRY

P.P.

OLIVER LETWIN

PRIME MINISTER

INDUSTRIAL RELATIONS LAW : THE NEXT STEP

I have been reviewing industrial relations law in the wake of the miners strike and considering the extent and timing of the next step in our programme of industrial relations reform. This minute sets out my provisional conclusions.

The background for any further step is one of real achievements from the first three Acts. There is no question that the climate of industrial relations has been changed in a fumdamental way, as shown by the remarkably short time in which our most recent change - the requirement for ballots before strikes - has come into play with employers showing increasing willingness to use this law. The miners strike showed also that individual members are increasingly determined to use their rights under common law as well, and this increased workload for the courts has been dealt with without any of the backlash that marked earlier attempts at reform of the law.

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This then is the encouraging background against which I have listed possible further reforms. I have grouped them under three headings which could be the main themes of our next step:

(i) protection for union members against unfair treatment by their union;

(ii) the further extension of democratic rights to union members;

(iii) the discouragement of strikes in essential services.

In drawing up these proposals I have had very much in mind the experience of the 1980, 1982 and 1984 Acts, the lessons of the miners strike, the proposed changes to the NUM rule book, and our 1983 Manifesto.

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(a) Protection could be established for all union members against being disciplined (eg expelled by their union) for refusing to break their contracts of employment (eg by not striking or crossing picket lines). This protection would remain even if there had been a ballot under the 1984 Act. It could be presented as a necessary reaction to the current practices of some unions, eg the fining of TGWU members who continued to work during the 1984 dock strikes and at Austin/Rover, the sanctions the NUM might come to impose on the working miners, the fines of up to £2,000 imposed by the

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(a) The first possibility I am examining is extending the requirements for elections beyond the principal executive committee of the union not just to their senior posts but down to divisional level and even branch level. One of the messages from the T & G ballot rigging was the crucial role played by officials at branch and district level.

(b) An alternative to this would be to require either the election of all union national officers of certain description in accordance with the requirements of the 1984 Act - or enforce these same requirements for all such elections as now take place, in both cases even if the officers concerned do not have a vote on executive committees.

In combination with these changes and against the background that the full registers will by then be established for trade unions we might also:

(c) Require all elections to be by full postal ballot, subject to exemption which would have to be independently authorised and only in exceptional circumstances.

(d) Require independent supervision (but preferably not by a statutory agency) of all election ballots from the issue of ballot papers against the register of members to the publication of the count.

(e) The publication of voting figures (where appropriate) on a branch by branch basis.

(iii) Essential Services

The 1983 Manifesto committed us to consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity." At that time the refusal of the unions in the water industry to abide by their agreement was very much in mind. More generally, our concern was to consider how threats of industrial action in the electricity, gas and water industries and in the NHS might be reduced. The miners' strike necessarily delayed the proposed consultations.

Since 1983, we have concluded in collective discussions that there is no better prospect now than in the past of establishing no-strike agreements which could work and hold and that any extension of the criminal law would create more problems than it could solve. We hae recognised that the

removal of immunity in essential services would inevitably need to lead to the creation of machinery to determine terms and conditions of employment which are disputed. The models for such machinery could only be the Review Bodies or binding arbitration with unilateral access to the process. Even these mechanisms could not extend to many contentious issues, eg privatisation, redundancy, closures. And we could not put to independent parties the determination of the pay bill for such large areas of the public sector because of the public expenditure implications. Additionally, a higher majority test for strike ballots in essential services would only appear to give a moral authority for industrial action which we would always want to deny.

There are, however, more limited steps which would operate via the 'loss of immunity' approach.

(a) industrial action could not be lawfully taken on any issue already determined by a substantive agreement, eg on pay, during its currency.

(b) similarly, action taken before all stages of any extant procedure agreement had been exhausted would not have immunity; it would follow that if an agreement provided for arbitration and both parties were committed to it whether on agreement case by case or otherwise, industrial action whilst arbitration took place or in opposition to an award would not have immunity (I understand that it is in this area that the continuing discussions with the NHS unions have focussed);

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

The unions in essential services are likely to resist strongly these proposals, even though they are significantly less demanding than other options that have been canvassed. Nonetheless, in going out to consultation, they can clearly be presented as perfectly reasonable protections for the community which those working in the essential services should be prepared to accept. The provisions on closed shops, and on ballots before strikes, are already improving the position, and this further step would be a useful reinforcement.

There is a further possibility I have considered which would involve removing immunity from industrial action which interfered with the performance of statutory duty. However, the more I look at the enormous range and variety of statutory duties I think that this is not an attractive route and I would much prefer the approach outlined above.

Other Possibilities

(a) Lay-off

The purpose of lay-off would be to enable employers to lay-off without pay employees whose work was affected to any extent by the industrial action of other workers. Such a power would also relieve employers of virtually all existing statutory obligations and allow the employer to abrogate unilaterally employees' common law and contractual rights, including those imported from collective agreements.

In certain circumstances, this could be a most effective response. Additionally, employers could be relieved of financial and other obligations when their businesses were affected by industrial action remote from them, eg a rail strike, interruption of electricity or other supplies. Measures were framed some three years ago, but since then it has not been possible to identify any particular dispute in the public or in the private sector when they would have been useful and defensible. I do not believe we should contemplate so draconian a step without a much better basis than so far exists for demonstrating that it is both essential and reasonable. We are prepared against the contingency.

(b) Secondary action

Section 17 of the 1980 Act severely limited immunity for secondary action which was remote from the primary dispute. It has operated with greater severity and certainty than its original critics expected. However, it does still allow some scope for lawful secondary action by the employees of customers and suppliers of an employer in dispute. Although there are no observable pressures from employers for going further and removing immunity from any industrial action other than primary action (ie action in furtherance of a dispute between employees and their own employer), there still remains the possibility of lawful secondary action of a kind and to a degree which would be damaging and unacceptable.

Depending on the nature and extent of the next legislative step we take, I do not want to lose sight of the possibility of making all secondary action unlawful.

The trade unions' opposition to such a proposal would focus on the denial of the possibility of secondary action in cases where all the employees of an employer had been dismissed, but action on such an issue is very rare and secondary action, as in the miners' strike, is usually directed to other ends.

Timing

These therefore are the areas where I believe there is scope for effective and popular reform. The key question then becomes the timing and method of presentation of these reforms. I believe that the right course would be to prepare a Green Paper for consultation on all these issues. This could be published either in July or be announced at the Party Conference and published when Parliament returns in November. We can then proceed to prepare a Bill for introduction at the very beginning of the 1986-87 session.

The approach of a Green Paper and then a Bill has been the procedure followed on previous occasions and has proved much the most effective way of getting support for our measures and in awakening public interest in the issues. In this way we would keep the subject of industrial relations reform in the public eye both during the consultation period and during the Parliamentary proceedings - from Autumn of this year to mid-1987. This has certainly been one of our most popular policies and I would expect strong support for it across the whole Party. I therefore see real attractions in pursuing this approach.

At this stage I have not copied this minute elsewhere and I would of course be very happy to discuss it with you at an early opportunity.

T K

~~24~~ May 1985

CONFIDENTIAL

File

AT

File

arranged for 12.30 tomorrow

CR

PRIME MINISTER (1)

POLITICAL FUND BALLOTS

Mr. Tebbit's minute attached raises a sensitive issue for the Government and the Conservative Party. It is not clear where the long-term interest of the Government side lies. If the outcome of the various ballots were a very major reduction in the funds available to the Labour Party, demand would be created for state funding or for some restriction on company donations to the Conservative Party. But if all the elections endorsed the status quo questions would be asked as to why the Government had brought forward this legislation.

It could be argued that the best outcome for the Government side would be a couple of votes against by smaller moderate unions which would not inflict serious damage on the Labour Party but would cause it to be more sensitive to the opinions of such unions.

A further issue is whether any campaign of speeches comes best from Ministers, from people speaking clearly in a Party capacity, or from the CTU.

The issue seems worthy of further discussion with colleagues. Agree a meeting with the Secretary of State for Trade and Industry, the Secretary of State for Employment, the Lord President, the Lord Privy Seal, the Chief Whip and Chairman of the Party?

Yes

AT

File

8 May 1985

This was discussed at a meeting on 14/5. Chairman / SS Emp / SS ToI agreed to consider how Government / Conservative Party case could be put across. In particular an effort should be made to counter union argument that without a political fund unions could not campaign on issues of interest to all their members eg local authority unions on rate capping, or health service unions on contracting out. It was noted that the corollary of this was that if a fund was endorsed campaigns on such issues should be a charge on political and not general funds.

AT 14/5

CONFIDENTIAL

PRIME MINISTER

POLITICAL FUND BALLOTS

I am concerned at the way that the political fund ballot campaign is going. While maintaining a discreet silence in public in the hope that moderate trade unionists will not bother to vote, the Labour Party are campaigning strongly among union activists. They are also using scare tactics suggesting that without a political fund, unions will be unable to undertake any public campaigning at all.

2 Although I know Tom King has made one or two speeches on the subject, there has largely been silence from the Government side. We also appear to have adopted a policy of not campaigning for the abolition of political funds, but rather simply calling for union members to use their votes. I am not convinced that this is the right tactic.

3 I believe that the message we must get across is that the political fund is used solely to affiliate often fictitious numbers of trade unionists to the Labour Party. It perpetuates a link which has long since disappeared in

JH4BBU

999-49

practice and which has been deeply damaging to the nation. Abolition of their political funds will not prevent unions from conducting public campaigns or even opposing Government policy; it will merely prevent union leaders from handing over their members' money to a party which the majority of those members do not support.

4 Unless this message is got across, I believe there is a danger of seeing unions vote, on low turnouts, to retain their political funds. You may have seen that John Torode - a very perceptive journalist - recently predicted that even ASTMS may vote in favour of a fund. It has also been suggested that the print unions have put pressure on newspapers to play down the ballots and you will note that SOGAT has been selected to hold the first one.

5 I believe that it is still not too late to amend this situation and would therefore like to make a speech along the lines outlined above. However, before doing so, I felt that I should seek your views — since our near silence suggests that we may have a policy of which I am not aware.

N T

May 1985

Department of Trade and Industry

JH4BBU

MR TURNBULL

8 May 1985

POLITICAL FUND BALLOTS

Norman Tebbit is right that doing nothing on this issue is tantamount to handing the ballot to Labour. The scare tactics that a no-vote would stop a union from any public campaigning may well be effective.

However, working actively for the abolition of political funds could be counter-productive if not handled subtly. Moreover, if the vote is still lost decisively, it will be perceived as a setback for the Government.

On balance, we think Norman Tebbit is right that it is better to make an attempt than not to try at all.

Peter Warry

PETER WARRY

SOGAT'S POLITICAL FUNDS
YOUR QUESTIONS ANSWERED

WHAT'S THIS BALLOT ALL ABOUT?

Since 1913, any trade union which spends money on 'political' activities must keep this money in a separate fund. Now it's been made illegal to keep this fund unless a new ballot is held to approve it.

SHOULD TRADE UNIONS BE INVOLVED IN POLITICS?

YES. Because workers' living standards are determined as much by what happens in Parliament as by industrial negotiations. Parliament decides everything from the level of income tax to electricity prices, from equal rights legislation to postal costs, from retirement pensions to health and safety at work. You name it – Parliament decides. That's why you need to be represented there as a worker in industry as well as a voter in your constituency.

IF I VOTE YES, WILL I HAVE TO PAY MORE CONTRIBUTIONS?

No. You won't have to pay higher contributions. This ballot is not about whether **you** wish to pay political contributions or not. It is about whether **SOGAT** as a whole can keep its political fund and political objectives.

You can vote **YES** without paying the political fund contributions.

COULDN'T WE KEEP OUR SOGAT MPs WITHOUT A POLITICAL FUND?

No. Companies, employers' federations, pressure groups, and professional political lobbyists of all kinds employ their Parliamentary 'advisers' and 'consultants'. As a trade union we have our sponsored MPs – SOGAT members in Parliament. It would be illegal to retain their services unless our members vote **YES** in the ballot.

DO OUR MPs REPRESENT ALL OUR MEMBERS?

Our political funds are used to represent **all** SOGAT members. Only those who want to, actually contribute to the political fund. However, **you** need to vote **YES** in the ballot to keep this option open for other **SOGAT** members as well as yourself.

WE LIVE IN A PARLIAMENTARY DEMOCRACY – YOU NEED A PARLIAMENTARY VOICE – KEEP IT! VOTE YES!

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SOGAT'82

DON'T BE GAGGED!

KEEP A SOGAT VOICE IN PARLIAMENT

MAKE YOUR VOICE HEARD

Soon every SOGAT member will be asked to vote on whether we retain important democratic rights – rights which we have exercised for many years. They include the right to engage in Parliamentary lobbying and other political activities on behalf of our members and our industry.

Everyone can vote in General Elections every five years, but what happens in between? All businesses spend time and money on political activity, donating to party funds and persuading MPs of their viewpoint. In 1983 employers donated over £3½ million to political parties. Companies in every section of our industry – newspapers, general print, books, magazines, paper & board, packaging, stationery – spend money in this way.

Trade unions, too, have realised the importance of political activity. After all, the decisions of Parliament affect every aspect of our members' lives. It makes good sense in a democracy to try to influence Governments – any and every Government – to try and make sure your voice is heard. So we have two sponsored MPs, Ron Leighton and Bob Litherland, to speak on our behalf. They're both SOGAT members, who worked on the shop floor in the print, and know well the issues of concern to members. They spend their time telling MPs and Governments of all parties what our views are, protecting **your** interests as workers in the print industry.

Our union is shortly holding a ballot, as required by law, to decide whether we continue to have a political voice. (Companies, on the other hand, don't ask their shareholders how they want their money spent in political activity).

Are we going to be the only ones who can't look after our own interests? When everyone else is loudly arguing their case, are we supposed to remain silent? When they push their point of view, are we to sit out in the cold?

SOGAT members want to make their voices heard.

DON'T LOSE YOUR DEMOCRATIC RIGHTS. WHEN THE BALLOT COMES VOTE YES TO KEEP YOUR POLITICAL VOICE.

SOGAT MPs: Working for you at Westminster

RON LEIGHTON

Ron Leighton went from the machine room of the Sun/News of the World to working in the House of Commons as MP for Newham North East. He is also a member of SOGAT London Machine Branch – and the only member of the House of Commons who has worked in a printing machine room. Since being elected he has made sure the voice of SOGAT members is always heard at Westminster.

In Parliament Ron has specialised in industrial relations and trade union affairs. Among the many subjects on which he has spoken in Parliamentary debates are wages policy, the newspaper industry, book and magazine publishing, papermaking, youth training and the Manpower Services Commission, health and safety in the workplace, equal opportunities, and the legislation on trade unions and the closed shop.

'Workers' standards of living can be determined as much by what happens in Parliament as by industrial negotiations. To safeguard and improve their living and working conditions, workers must ensure that their interests are protected in Parliament.'

BOB LITHERLAND

Bob Litherland is a bookbinder by trade and entered Parliament as the SOGAT-sponsored MP for Manchester Central in 1979. Bob worked for the Manchester Print Group for 26 years which gave him in his own words, 'the privilege of a workshop experience' – shared by precious few MPs – and an understanding of the needs of the worker on the shop floor.

During his time in the House of Commons, Bob has worked closely with other print-sponsored MPs to present the problems of the industry to the appropriate Minister. This includes the particular problems facing the paper and board industry, and the adverse effects on the printing industry of the cuts in educational stationery. Having put the arguments the Minister has to reply.

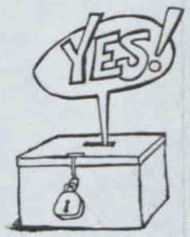
'The Government's attention has been brought to the massive decline in the industry, the redundancies that follow decline and the foreboding for the future of the printing industry. Deputations have met the minister on a number of occasions to discuss the effect of Government policies on our members and their families. Various channels of representation have been made in the past and will continue in the future.'

KEEP A SOGAT VOICE IN PARLIAMENT. VOTE YES TO KEEP YOUR RIGHT TO REPRESENTATION.

WHAT WE HAVE GAINED

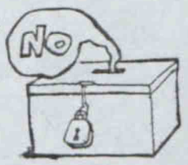
Here are just a few of the gains we have made for working people through trade union involvement in Parliament and politics.

- The right to vote for working men and women (late 19th and early 20th centuries)
- Legalisation of trade unions
- Equal pay and sex discrimination legislation
- Redundancy Payments Act
- Legislation on unfair dismissals
- Compensation for accidents and injuries at work
- Free compulsory education for all children
- Establishment of Labour Exchanges (now Job Centres)
- Setting basic minimum wages for low-paid industries
- Old age pensions
- Regulation of working hours for children
- Control of safety in factories, offices and mines
- The Welfare State – improved pensions, social services, education, the National Health Service, policies for full employment



VOTE **YES** in the ballot and we will keep our SOGAT MPs – and the right to try to influence Governments of whatever political hue.

If you vote **NO** we lose the link with our MPs. Worse than that – it would become illegal to spend any money in trying to influence or persuade Governments – of whatever party. To pay for a hall for a meeting, publish a pamphlet or leaflet, send a delegation to meet MPs – maybe even to post a letter to an MP – all these things could be declared **illegal.**



We urge you to vote **YES** to keep your right to representation.

SOGAT '82

Copy 1 of 8

CCND

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH

TELEPHONE 01-934 9000

FROM THE SECRETARY OF STATE

CONFIDENTIAL

The Rt Hon Tom King MP
Secretary of State for Employment
Caxton House
London SW1

30 April 1985

Dear Tom.

SELECTIVE ACTION

Your minute of 19 April to the Prime Minister highlights the reluctance of employers in the teachers' dispute to take resolute action against teachers indulging in disruption short of a strike. I believe that to be the nub of the problem and the paper which I have sent to the Prime Minister for discussion on 1 May will so contend. That will canvass three possible ways of making progress. The first is to buy co-operation through normal collective bargaining - I dismiss that, as unrealistic and unaffordable. The second is statutory imposition of new tighter forms of contract for teachers. That has attendant difficulties and, even if we were willing to face those, would not act on the nub of the problem. Employers who are unwilling to use their present powers under the law in the face of teacher disruption seem to me even less likely to behave resolutely if new contracts were imposed by central government. Thus in the contract area I think we are driven back to a strategy of exposure and persuasion backed up (if indeed that prove possible) by some test cases to illuminate the extent of teachers' present professional obligations.

My purpose in writing is to sound a cautionary note against any easy assumption that we would effectively deny teachers access to disruption as an instrument for furthering a pay campaign by legislating on contract. What must be changed instead is the present typical employer attitude towards requiring fulfilment of contract. (On that there is the smallish comfort that rather more LEAs are showing greater resolution in pressing teachers to work normally than has been the case during other spells of disruption in recent years.)

Copies of this letter go to the Prime Minister, the Chancellor, the Secretaries of State for the Environment, Scotland, Wales and Northern Ireland and to Sir Robert Armstrong.

Yours ever,

Ken

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SECRET

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

PRIME MINISTER

SCHOOL TEACHERS/SELECTIVE ACTION

I have seen Keith Joseph's minute of 26 April to you and also Tom King's minute of 19 April on selective action which raises issues which are pertinent to the teachers' pay dispute.

— Meeting Folder

— Meeting Folder

2. Keith's minute makes clear the difficulty of achieving the Government's educational aims within the present framework. I do not dissent from his general analysis of the problems. It will be difficult to secure effective appraisal of teachers' performance while both the teachers' unions and significant numbers of the teachers' managers remain hostile to our aims. Similarly, new and tighter contracts for teachers will only be an effective weapon insofar as employers are prepared to try to enforce them. I agree that we cannot legislate to force the employers to act more rigorously and with greater determination.

3. Given this analysis of the problem, I am puzzled that Keith continues to argue that we should nevertheless be prepared to make additional money (up to £250 million over three years) available for teachers' pay.

4. As his minute points out, an offer on the lines suggested would not solve the present pay dispute. Indeed, Keith is not proposing that it should even be floated during the dispute. I very much agree. Any hint of additional money now would make a mockery of the employers' argument that no more money is available.

5. Nor is it suggested that the proposal would reduce the scope for disruption by teachers, either now or in the future. In my view, there is some limited action which could be taken here; and I return to this in paragraphs 11-14 below. But it is, of course, different in kind from the action Keith is proposing.

6. I fear the proposals would do little to satisfy the teachers' imagined sense of grievance. Keith recognises that they would be difficult to negotiate into place. The fact is that the teachers oppose changes of this kind, and we therefore should not believe that the proposals would gain us much credit with them, even if that were our objective.

7. Finally, Keith implies that his proposals might be a way of avoiding a damagingly large arbitration award within the next couple of years. I very mcuh doubt this on two counts.

8. Even if we assume that the proposals could be negotiated into place for 1986-87, they would only improve the pay position of a minority of teachers. It is questionable whether this would greatly influence the view of an arbitrator on the overall effect on teachers of a given pay offer at a future date.

9. It is much more likely, however, that we would be unable to negotiate the proposals into place for 1986-87. The present dispute may not be over for another month or so, leaving a very short time for negotiation before October, when final decisions need to be taken on the RSG settlement. In any case, even if the negotiations were successful, as Patrick Jenkin has already explained in his minute of 29 March, the problems on the RSG side would be almost insuperable. If we were to float these proposals, but failed to negotiate

them into place in time, we should simply have put into circulation the idea that an extra 5-6 per cent was available on the teachers' pay bill. There would then be a real risk that a future arbitrator might decide to add something of this order to the employers' offer, without the associated management arrangements.

10. We are all agreed that we should stand firm in the present pay dispute to demonstrate to the teachers' unions that they cannot hold the Government to ransom through industrial action. But I fully accept that the position is uncomfortable. We must therefore do what we can to ensure that in any future dispute it is more difficult for the teachers to take disruptive action at relatively little cost to themselves or their unions.

11. I agree with Keith that we must put as much pressure as we can on the local education authorities to act resolutely as employers. But, as he acknowledges, the existing contractual rights of the employers are deficient in one crucial area - midday supervision. I believe we should take advantage of the opportunity provided by the Education Bill (due for introduction next session) to introduce a provision that new contracts for the employment of teachers should require the teacher to be available for the supervision of children, as the headmaster may direct, throughout the school day. We might go further and provide that contracts must impose a general obligation on teachers to act in accordance with the instructions of the headmaster.

12. However, a more potent weapon in the longer term may lie in the possible options for dealing with industrial disputes covered in Tom King's minute of 19 April to you, which I read with interest. Generally, I agree with his views.

13. I see attractions in a variant of his option two, which would give members of the public rights to sue when industrial action interfered with statutory duties and I think it is well worth further examination. We have for some time now been grappling with the problems of deterring strikes in "essential services". Tom's proposal seems to offer an alternative strategy in that area and could perhaps be considered for inclusion in the draft consultative document that he has been commissioned to prepare.

14. I also believe that Tom's option three, which would give the right to employers to lay off workers affected by selective action, could prove useful in bringing difficult disputes to a head. I understand contingency work has been carried out; but I think it is probably best left in reserve. In any case, this option would probably not provide an effective counter to the type of action which has been taken in the current teachers' dispute.

15. I am copying this minute to the Secretaries of State for Education and Science, Scotland and Wales, Employment and Northern Ireland, the Attorney General, the Lord Advocate, the Solicitor General and to Sir Robert Armstrong.

N.L.
29 April 1985

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Pt 12
Ind Relations legislation

CONFIDENTIAL file ECL

10 DOWNING STREET

From the Private Secretary

25 April 1985

SELECTIVE ACTION

The Prime Minister has seen your Secretary of State's minute of 19 April. She doubts whether new legislative action would be of help in relation to the teachers but feels that further consideration needs to be given to ways of improving the position of employers who face selective strikes of key workers. She has asked for the paper to be put on the agenda of the meeting on teachers' pay to be arranged for Wednesday 1 May so that there can be a brief discussion of it.

I am copying this letter to Rachel Lomax (HM Treasury), Elizabeth Hodkinson (Department of Education and Science), John Graham (Scottish Office), Colin Jones (Welsh Office), John Ballard (Department of the Environment), David Morris (Lord Privy Seal's Office), Jim Daniell (Northern Ireland Office), Henry Steel (Law Officers' Department), Iain Jack (Lord Advocate's Department) and Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

David Normington, Esq.,
Department of Employment.

CONFIDENTIAL

Prime Minister ①

A meeting to discuss teachers pay has been arranged for next Wednesday. Agree Mr King's paper be put on agenda? AT 24/4

PRIME MINISTER 24 April 1985

SELECTIVE INDUSTRIAL ACTION

Tom King's note makes it clear that LEAs can already discipline those teachers taking selective action. But he has not been able to find a practical remedy against the union or teachers generally. We agree with him that, from the point of view of the teachers' strike, the Government should therefore concentrate on strengthening the resolve of the LEAs rather than on any legislative changes.

However, this paper is unduly dismissive of the case for legislation to counter selective action in general. This can take the form of calling out key workers (such as computer operators), to act as the shock troops for a larger body. There is an inequity in such cases because the union can halt the business whilst only bearing the cost of strike pay for the key workers, whereas the employer remains legally bound to pay the full wages to all non-manual workers, including any laid off as a result of the strike.

We recommend that you should:

i. agree that no new legislative action should be taken in relation to the teachers' strike, but

ii. urge Tom King to consider what steps could be taken to improve the employer's position in the case of selective strikes of key workers.

OLIVER LETWIN

PRIME MINISTER

POSTAL BALLOTS

Up to now we have been quoting the National Union of Seamen as an example of a union in which work place ballots might be more democratic and more practical than postal ballots. I understand from Employment, however, that the NUS have now lodged with the Certification Officer a set of rules which incorporates postal ballots. The rules have yet to be approved by the Certification Officer, but it is interesting that a union with a largely peripatetic workforce should opt for a postal system. That leaves only, of the major unions, UCATT in which the nature of the workforce would seem to make a postal ballot difficult. UCATT have yet to lodge their rules with the Certification Officer. I do not think that we should mention UCATT as an example of a "work place" union rather than a "postal" union, however, since it has a bad record on violence and intimidation. The "Shrewsbury Two", for example, were UCATT members.

The decision of the NUS to go for postal ballots rather weakens the view the Government took during the passage of the Trade Union Act that work place ballots might be more practicable in some unions. It will also strengthen the case of those who press for postal ballots in all circumstances.

Nevertheless, the Government can point to the fact that the presumption in favour of postal ballots in the Act and the stringent conditions for a non-postal ballot have shifted a number of unions towards a postal system. To that extent the Act has contributed very substantially to a change in union attitudes. I suggest that this is the line that we should take, rather than a specific defence of work place ballots in some kinds of union.

24 April 1985

Opposition Day

[3RD ALLOTTED DAY]

[SECOND PART]

Trade Unions (Ballots)

4.17 pm

Mr. David Harris (St. Ives): On a point of order, Mr. Deputy Speaker. It is clear that there is going to be trouble in the House in that certain Opposition Members are trying to deny the leader of the Social Democratic party, the right hon. Member for Plymouth, Devonport (Dr. Owen), his customary seat. In view of that, and in an attempt to be helpful and constructive, would it not be a good idea if the leader of the Liberal party, the right hon. Member for Tweeddale, Ettrick and Lauderdale (Mr. Steel) vacated his seat and his expensive microphone so that the leader of the Social Democratic party could speak there. That would avoid the occurrence of any unseemly scenes in the House.

Mr. Dennis Skinner (Bolsover): On a point of order, Mr. Deputy Speaker.

Mr. Deputy Speaker (Mr. Harold Walker): There is no point of order.

Mr. Skinner *rose*——

Mr. Deputy Speaker: Order. There seems to be no point of order. What we have heard seems to have caused more trouble than it was suggested we might cure.

Mr. Skinner: Further to that point of order, Mr. Deputy Speaker. You will recall that the only provision for securing a seat in the House is if hon. Members come in for prayers, having put in their prayer cards. That is what some of my hon. Friends have done in this case—as they always do. In view of the fact that this matter is about trade unions and ballots, we thought that the leader of the Social Democratic party should sit on the Tory Benches to deliver his speech.

Mr. Dennis Canavan (Falkirk, West) *rose*——

Mr. Deputy Speaker: Order. I can see plenty of empty seats. I do not see any reason for any hon. Member to be unduly cramped. *[Interruption.]* Order. Perhaps the leader of the Social Democratic party will take one of the empty seats rather than occupy the Gangway.

Mr. Canavan: On a point of order, Mr. Deputy Speaker. Is it in order for an ex-heavyweight politician like the leader of the SDP to be sitting on the floor on my right-hand side and for the Whip of the SDP to be sitting down on my left-hand side? I have noticed that both of them have been throwing threatening glances at my hon. Friend the Member for Don Valley (Mr. Redmond) because he is occupying the seat that they have their eye on.

Mr. Deputy Speaker: It might be sensible if hon. Gentlemen made best use of the seating that is available.

Mr. Ron Leighton (Newham, North-East): Would it be helpful to suggest that, as the leader of the SDP is trying to outflank the Conservative party from the right, he should be offered a seat in the far right-hand corner which is empty?

Mr. Deputy Speaker: All the so-called helpful suggestions do not seem to be very helpful at all.

Sir Kenneth Lewis (Stamford and Spalding): Further to that point of order, Mr. Deputy Speaker. May I suggest in a purely neutral sense that the leader of the SDP, in view of his opinions on the political parties on both sides of the House, might take his seat up above the clock?

Mr. Deputy Speaker: I have to tell the House that I have selected the amendment that stands in the name of the Prime Minister and her right hon. Friends. Dr. Owen.

Dr. David Owen (Plymouth, Devonport) *rose*——

Mr. John Prescott (Kingston upon Hull, East) *rose—[Interruption.]*

Mr. Deputy Speaker: Order. When I am on my feet, hon. Members must sit down.

Mr. Prescott: On a point of order, Mr. Deputy Speaker. It would appear that the Leader of the SDP has decided to speak from this Dispatch Box in order to move the Motion. Such a proposal is not normally dealt with in this way in the House. I wonder whether you would rule that the official Opposition spokesman speaking in the debate has the right to present the Opposition's case from this Dispatch Box.

Mr. John Cartwright (Woolwich): Further to that point of Order, Mr. Deputy Speaker. May I refer you to a number of cases in which hon. Members have spoken from the Opposition Dispatch Box when they were not speaking on behalf of the official Opposition? I refer, for example, to an occasion on 4 August 1980 when my right hon. Friend the Member for Tweeddale, Ettrick and Lauderdale (Mr. Steel) spoke from the Opposition Front Bench and referred in his speech to the fact that he was speaking from the Opposition Front Bench. He said:

"In speaking from the Opposition Dispatch Box, I am sticking to the long-standing tradition of the House under which any Privy Councillor may speak from the Dispatch Box." — [*Official Report*, 4 August 1980; Vol. 990, c. 352.]

I refer also the occasion on 22 May 1984——

Mr. Deputy Speaker: Order. At this stage, I do not think that it is necessary for the hon. Gentleman to go through that, because the question to which he is addressing himself has not been raised. The hon. Member for Kingston upon Hull, East (Mr. Prescott) asked me whether it was in order that the official Opposition spokesman address the House from the Dispatch Box. Of course that is the case. But I do not know—and he has not yet raised with me the question — whether that excludes the right of any other right hon. or hon. Member to address the House from the Dispatch Box — *[Interruption.]* I know of no responsibility or authority that I have to prevent any hon. Member from so doing.

Dr. Owen *rose*——

Mr. Canavan: On a point of order, Mr. Deputy Speaker. Is it in order for any hon. Member to be called to speak who is not sitting in his or her place?

Mr. Deputy Speaker: I hesitate to suggest that the right hon. Member for Plymouth, Devonport (Dr. Owen) is sitting in his place—it is not a matter for me.

Mr. Brian Sedgemore (Hackney, South and Shoreditch) *rose*——

Craigen, J. M.
Cunliffe, Lawrence
Davis, Terry *(B'ham, H'ge H'l)*
Dewar, Donald
Dixon, Donald
Dormand, Jack
Dubs, Alfred
Duffy, A. E. P.
Eadie, Alex
Evans, John *(St. Helens N)*
Fatchett, Derek
Fields, T. *(L'pool Broad Gn)*
Foot, Rt Hon Michael
Forrester, John
Freud, Clement
Gilbert, Rt Hon Dr John
Godman, Dr Norman
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hancock, Mr. Michael
Harrison, Rt Hon Walter
Haynes, Frank
Heffer, Eric S.
Hogg, N. *(C'nauld & Kilsyth)*
Howells, Geraint
Hoyle, Douglas
Hughes, Robert *(Aberdeen N)*
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kirkwood, Archy
Lambie, David
Leadbitter, Ted
Leighton, Ronald
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Litherland, Robert
Loyden, Edward
McDonald, Dr Oonagh
McKay, Allen *(Penistone)*
Maclennan, Robert
McNamara, Kevin
McTaggart, Robert
McWilliam, John
Madden, Max
Marek, Dr John
Mason, Rt Hon Roy
Maxton, John
Maynard, Miss Joan
Meadowcroft, Michael
Michie, William
Mikardo, Ian
Morris, Rt Hon J. *(Aberavon)*
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Owen, Rt Hon Dr David
Park, George
Patchett, Terry
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Raymond *(Ogmore)*
Radice, Giles
Randall, Stuart
Redmond, M.
Richardson, Ms Jo
Roberts, Ernest *(Hackney N)*
Sedgemore, Brian
Sheerman, Barry
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Skinner, Dennis
Smith, Cyril *(Rochdale)*
Snape, Peter
Soley, Clive
Spearing, Nigel
Steel, Rt Hon David
Stott, Roger
Strang, Gavin
Thomas, Dafydd *(Merioneth)*
Thompson, J. *(Wansbeck)*
Thorne, Stan *(Preston)*
Torney, Tom
Wallace, James
Weetch, Ken
Williams, Rt Hon A.
Winnick, David
Wrigglesworth, Ian

Tellers for the Ayes:
Mr. D. N. Campbell-Savours and Mr. John Golding.

NOES

Adley, Robert
Alison, Rt Hon Michael
Ancram, Michael
Arnold, Tom
Aspinwall, Jack
Atkins, Rt Hon Sir H.
Baldry, Tony
Batiste, Spencer
Beaumont-Dark, Anthony
Biffen, Rt Hon John
Blackburn, John
Blaker, Rt Hon Sir Peter
Boscawen, Hon Robert
Bottomley, Peter
Bowden, A. *(Brighton K'to'n)*
Brandon-Bravo, Martin
Brittan, Rt Hon Leon
Bruinvels, Peter
Buchanan-Smith, Rt Hon A.
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Carlisle, Kenneth *(Lincoln)*
Carlisle, Rt Hon M. *(W'ton S)*
Channon, Rt Hon Paul
Clark, Sir W. *(Croydon S)*
Clarke, Rt Hon K. *(Rushcliffe)*
Cockeram, Eric
Colvin, Michael
Coombs, Simon
Cope, John
Critchley, Julian
Crouch, David
Dicks, Terry
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Durant, Tony
Edwards, Rt Hon N. *(P'broke)*
Eggar, Tim
Emery, Sir Peter
Evennett, David
Eyre, Sir Reginald
Favell, Anthony
Forth, Eric
Fox, Marcus
Franks, Cecil
Gale, Roger
Garel-Jones, Tristan
Goodhart, Sir Philip
Goodlad, Alastair
Gow, Ian
Gower, Sir Raymond
Greenway, Harry
Gregory, Conal
Grist, Ian
Grylls, Michael
Hamilton, Hon A. *(Epsom)*
Hannam, John
Harris, David
Haselhurst, Alan
Hayes, J.
Hayhoe, Barney
Hayward, Robert
Heathcoat-Amory, David
Heddle, John
Hickmet, Richard
Higgins, Rt Hon Terence L.
Hind, Kenneth
Holland, Sir Philip *(Gedling)*
Holt, Richard
Howell, Ralph *(N Norfolk)*
Hunt, David *(Wirral)*
Jackson, Robert
Kershaw, Sir Anthony
King, Rt Hon Tom
Knight, Gregory *(Derby N)*
Knowles, Michael
Lamont, Norman
Lang, Ian
Lawler, Geoffrey
Lennox-Boyd, Hon Mark
Lewis, Sir Kenneth *(Stamf'd)*
Lilley, Peter
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lord, Michael
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
Maclean, David John
McNair-Wilson, M. *(N'bury)*
McQuarrie, Albert
Major, John
Malone, Gerald
Maples, John
Marland, Paul
Mather, Carol
Maude, Hon Francis
Mawhinney, Dr Brian
Mayhew, Sir Patrick
Mellor, David
Merchant, Piers
Mitchell, David *(NW Hants)*
Montgomery, Sir Fergus
Moore, John
Morrison, Hon C. *(Devizes)*
Morrison, Hon P. *(Chester)*
Nelson, Anthony
Neubert, Michael
Nicholls, Patrick
Onslow, Cranley
Pawsey, James
Portillo, Michael
Powley, John
Prentice, Rt Hon Reg
Price, Sir David
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Renton, Tim
Ridley, Rt Hon Nicholas
Roberts, Wyn *(Conwy)*
Rost, Peter
Rowe, Andrew
Rumbold, Mrs Angela
Sackville, Hon Thomas
Sainsbury, Hon Timothy
Shaw, Giles *(Pudsey)*
Shaw, Sir Michael *(Scarb')*
Silvester, Fred
Sims, Roger
Skeet, T. H. H.
Smith, Tim *(Beaconsfield)*
Soames, Hon Nicholas
Speed, Keith
Squire, Robin
Stanley, John
Stern, Michael
Stevens, Lewis *(Nuneaton)*
Stewart, Andrew *(Sherwood)*
Taylor, Teddy *(S'end E)*
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thurnham, Peter
Townend, John *(Bridlington)*
Tracey, Richard
Twinn, Dr Ian
Waddington, David
Walker, Bill *(T'side N)*
Walker, Rt Hon P. *(W'cester)*
Wells, Sir John *(Maidstone)*
Wheeler, John
Wiggin, Jerry
Yeo, Tim
Young, Sir George *(Acton)*

Tellers for the Noes:
Mr. Robert Atkins and Mr. Ken Hargreaves.

Question accordingly negatived.

Mr. Deputy Speaker: If the right hon. Member for Plymouth, Devonport (Dr. Owen) will be patient a little longer, until we clear these points of order, we might have a more orderly start to the debate.

Mr. Sedgemore: May I draw your attention, Sir, to the provisions of the Mental Health Act 1959, under which you have a reserve power to call a psychiatrist to examine——

Mr. Deputy Speaker: Order. I think that the hon. Gentleman has the wrong day. Dr. Owen.

Mr. Sedgemore: Further to that point of order, Mr. Deputy Speaker. The Leader of the SDP clearly thinks that he is the Leader of the Opposition. In my respectful submission, he should be submitted to the psychiatrist's couch because, if he is mad, he is not allowed to sit in the House.

Mr. Deputy Speaker: That is not a point of order. We have an important debate before us. All this is taking time out of that debate.

Mr. Harry Cohen (Leyton): Further to that point of order, Mr. Deputy Speaker. In ruling on the point of order raised by my hon. Friend the Member for Kingston upon Hull, East (Mr. Prescott), you seemed to imply that hon. Members can speak from wherever they like in the House, including from the Dispatch Box. Are you then saying, Mr. Deputy Speaker, that all hon. Members can deliver their speeches from the Prime Minister's Dispatch Box if they so wish? If that is the case and all hon. Members proceeded to do so, I submit that there would be chaos in the House. Therefore, there is a long-established convention that hon. Members of the House do not speak from the Dispatch Box except those who by convention are allowed to do so—those on the Front Benches. As that is the convention of the House, Mr. Deputy Speaker, I think that it is your duty to uphold that convention.

Mr. Deputy Speaker: I said earlier that I knew of no authority that I had to prevent any right hon. or hon. Member addressing the House from the Dispatch Boxes, but of course the hon. Gentleman is right to remind us of the long-standing conventions of the House. It is a universally recognised and observed convention that the Dispatch Boxes are used on the one hand for Ministers to address the House and on the other for the leaders and spokesmen of the official Opposition party to address the House. I can only ask the House to observe and sustain the convention, but I have no authority to prevent any hon. Member who decides that he will breach the convention.

Mr. Ian Wrigglesworth (Stockton, South) *rose*——

Mr. John Golding (Newcastle-under-Lyme): Further to that point of order, Mr. Deputy Speaker. I see the point of order, but can I put it to you, Mr. Deputy Speaker, that it will be impossible for the Leader of the Social Democratic party to speak from behind the line if he speaks from the Dispatch Box without thrusting the Members who were already sitting on the Front Bench from their places. If right hon. and hon. Members are already occupying their places in front of the Dispatch Box and a right hon. Member comes to try to force them out of the way or speaks from beyond the red line, how can he be in order? It can hardly be in order for a right hon. Gentleman to push other right hon. and hon. Gentlemen out of their seats. It can hardly be in order to speak from beyond the red line.

Mr. Wrigglesworth *rose*——

Mr. Deputy Speaker: Order. That is not a point of order, it is a purely hypothetical matter.

Mr. Wrigglesworth: Further to that point of order, Mr. Deputy Speaker. Is it not also the convention that right hon. and hon. Members should be allowed to speak in the Chamber from the Bench upon which they normally sit — [HON. MEMBERS: "No."] — and that there is a deliberate attempt by the bully boys and thugs of the Labour party, as we saw in the miners' dispute, to stop free speech in the House—*[Interruption.]*

Mr. Deputy Speaker: Order. When I am on my feet, hon. Members must resume their seats. We have debated the miners' dispute many times, but we are not going to have it re-run this afternoon.

The hon. Member has raised a useful and constructive point of order. If it is suggested that all will be well and tranquillity restored if the leader of the Social Democratic party was allowed to resume his usual seat below the Gangway, then I would address an appeal to the hon. Gentlemen who are occupying that Bench to allow him to do so. *[Interruption.]* It is only an appeal.

Mr. Eric S. Heffer (Liverpool, Walton): Further to that point of order, Mr. Deputy Speaker. I am temporarily occupying the seat of the leader of the Ulster Unionist party, which is, incidentally, in the view of some people just another facet of the Conservative party. I am prepared to move out of this seat in order to allow the right hon. Member for Plymouth, Devonport (Dr. Owen) to address the House from here. I think that that is a very fair proposal.

Sir Anthony Kershaw (Stroud): Further to that point of order, Mr. Deputy Speaker. A joke is a joke, but is there anything in the rule book that says that this loutish and vulgar display by the Labour party should be permitted to prevent free speech in this House?

Mr. Kevin Barron (Rother Valley): Further to that point of order, Mr. Deputy Speaker. I should like you to advise me. When I came into the House at 2.30 pm to take prayers, there was a card on the Bench where my hon. Friend the Member for Falkirk, West (Mr. Canavan) is sitting containing the name of the right hon. Member for Plymouth, Devonport (Dr. Owen). Obviously, he managed to come in earlier and put down the card but could not get to the Chamber for 2.30 pm for prayers. Perhaps this incident has been sparked off by the right hon. Gentleman's inability to attend the House regularly. It is now 4.30 pm on a Tuesday afternoon, and all hon. Members know that the right hon. Gentleman attends the House for about half an hour on Tuesday and Thursday afternoons and that normally he would have left by now.

Mr. Deputy Speaker: That is not a point of order for me.

Mr. Max Madden (Bradford, West): Further to that point of order, Mr. Deputy Speaker. The motion that we are supposed to be discussing was, according to the Order Paper, tabled by the Liberal party and the SDP. We were recently told that another microphone had been introduced in the Chamber in order to facilitate the leader of the Liberal party who normally sits in the seat beneath it. As the leader of the SDP is now occupying a seat under the microphone which was provided recently at considerable

[Mr. Max Madden]

expense for the Liberal and Social Democratic parties, most reasonable people would see no reason why he should not speak from where he is sitting.

Mr. Deputy Speaker: That is not a matter upon which I can rule. The House is doing itself no credit whatever by proceeding in this way. Hon. Members shold realise that there is a very serious debate before us and that the time for it is being spent on largely bogus points of order. Hon. Members should try to get on with the debate.

Mr. Ron Lewis (Carlisle): On a point of order, Mr. Deputy Speaker. I have sat in this House for many years and I believe that the attack made by the hon. Member for Stroud (Sir A. Kershaw) was unwarranted——

Mr. Deputy Speaker: Order. The hon. Gentleman is helping neither the House nor himself.

Mr. Robert Jackson (Wantage): On a point of order, Mr. Deputy Speaker. Is it not true that the Social Democratic and Liberal parties drew a place in the ballot, and that we are now seeing a lamentable attempt to destroy their right to free speech?

Mr. Deputy Speaker: There is no question of ballots. The dispute revolves around the question whether a right hon. or hon. Member should have a particular place from which to speak. I can see many empty places in the House. If there is space, right hon. and hon. Members should try to get on with the debate.

Mr. Leighton: Further to that point of order, Mr. Deputy Speaker. As the leader of the SDP is sitting, singularly appropriately, on top of the leader of the Liberal party would it not be fitting to allow him to speak from the seat in which he has been quite comfortable for the past 10 minutes?

Mr. Deputy Speaker: The hon. Gentleman knows perfectly well that that is neither a point of order for me nor a serious approach to what is becoming a serious matter. The right hon. Member for Devonport should be allowed to——

Mr. Doug Hoyle (Warrington, North): Further to that point of order, Mr. Deputy Speaker. I just want to know what your ruling is. Does it mean that any right hon. or hon. Member can speak from the Dispatch Boxes? If so, given the arrogance and political views of the leader of the SDP, would he not be far happier speaking from the Government's Dispatch Box?

Mr. Deputy Speaker: My ruling was that I knew of no power that I had to prevent any right hon. or hon. Member from addressing the House from the Dispatch Box. I have reminded hon. Members of the long-standing and deeply held conventions of the House and appealed to the House to uphold them. I have no power to impose them, as is being suggested.

Mr. Prescott: Further to that point of order, Mr. Deputy Speaker. I am sure that you will recognise that a serious point is involved concerning the conventions surrounding where right hon. and hon. Members speak from—*[Interruption.]* The issue involves not freedom of speech but the place from which a right hon. or hon. Member speaks. That is the only point at issue. Questions have been raised about prayer cards on seats as well as about the conventions. Am I to understand from your ruling that it would be entirely proper for any right hon. or hon. Member to speak from either Dispatch Box at any stage during a debate? I understand that you are saying that this convention of the House does not have to be recognised, that it may be taken into account but that right hon. and hon. Members can speak at any time from any part of the House. Is that the point?

Mr. Deputy Speaker: I have said that I have no power to impose that convention. Questions of propriety are a different matter, and I have not said that it would be proper to act in that way. The question is whether I have any authority to prevent any right hon. or hon. member from addressing the House from the Dispatch Box. I remind hon. Members again of the conventions, and hope that they will be observed.

Mr. David Steel (Tweeddale, Ettrick and Lauderdale): Further to that point of order, Mr. Deputy Speaker. It should not be allowed to pass into the record that there has been a sudden outbreak of religious fervour on the Benches in front of me. The truth has nothing to do with prayer cards. It is well known to hon. Members that ever since my right hon. Friend the Member for Plymouth, Devonport (Dr. Owen) became leader of the SDP, he has occupied a place on this Front Bench and has always spoken from there. You may not have noticed, Mr. Deputy Speaker, but we noticed that throughout the Division that Bench was deliberately occupied by a movable group of hon. Members to prevent him from taking his seat. What we are seeing is not the Militant Tendency but the yobbish tendency in this House. I believe that there are procedures and conventions in this House, and that one of them is that my right hon. Friend should be able to address the House from the Front Bench without there being a conspiracy to prevent him from doing so.

Mr. Deputy Speaker: The right hon. Gentleman knows that that is not a matter for me and that no right hon. or hon. Member has a seat in the Chamber as of right, other than is provided for in our Standing Orders by the prayer card procedure.

Mr. Guy Barnett (Greenwich): On a point of order, Mr. Deputy Speaker. The House is clearly in a difficult position, partly because you cannot rule upon the matter as it is one that involves convention. I wonder whether you would be prepared to accept a motion on this matter from me as to where the right hon. Member for Devonport should speak from.

Mr. Deputy Speaker: I think that the difficulty arises because of the determination of the leader of the SDP to disregard the long-standing convention. I have no power to prevent him from doing that. We should get on with the debate. Dr. Owen.

Mr. Alan Williams (Swansea, West): Further to that point of order, Mr. Deputy Speaker. Is it not a fact that it is the duty of any hon. Member who wants a particular seat in this House to make sure——

Mr. Deputy Speaker: Order. The right hon. Gentleman has heard me already deal with that point. I do not think that there is any need to go over it again. All these points of order, many of which are bogus, are only detracting from the fulfilment of our serious responsibilities and from the debate that we ought to have embarked upon quite some time ago.

4.41 pm

Dr. David Owen (Plymouth, Devonport): I beg to move, That this House calls upon the Government——

Mr. Roland Boyes (Houghton and Washington) *rose*——

Mr. Derek Fatchett (Leeds, Central) *rose*——

Mr. Boyes: On a point of order, Mr. Deputy Speaker.

Mr. Deputy Speaker: The hon. Gentleman must address me from where he is standing. He must not move around the Chamber.

Several Hon. Members *rose*——

Mr. Deputy Speaker: Order. We cannot have this kind of nonsense. Hon. Members must address the House and the Chair from the place where they rise.

Several Hon. Members *rose*——

Mr. Deputy Speaker: Order. Hon. Members must resume their seats when I am on my feet. It seems to me that a very large number of hon. Members are seeking to disregard conventions this afternoon. Will the hon. Gentleman who now wishes to raise a point of order please address it to me from the place which he is now occupying?

Mr. Boyes: In view of the fact that we have been continuously harassed by Social Democratic Party members, did you notice that in order to get from the Front Bench and to speak from that Dispatch Box it was necessary for the leader of the Social Democrats physically to assault members of the Labour party? Did you further notice that the leader of the Social Democrats already had an established place?

You have just insisted, Mr. Deputy Speaker, that when I raised a point of order I had to speak from the place in which I was standing and that I had no right to go to the Dispatch Box. Why is it all right for the leader of the Social Democratic party to leave the place where he was sitting? He is only a Back Bencher, the same as I am, so why is it all right for him to move but not for me to move?

Viscount Cranborne (Dorset, South) *rose*——

Mr Deputy Speaker: Order. Perhaps I had better deal with one point of order at a time. The difference is that the hon. Gentleman started to address me and raised his point of order from the position which he at present occupies. The leader of the Social Democratic party started to address the House from the Dispatch Box and, to the best of my recollection, had not spoken earlier.

Mr. Williams: On a point of order, Mr. Deputy Speaker. If I understood correctly, you gave a ruling a few moments ago that a Member must address the House from the place at which he is called. Will you confirm that when you called the leader of the Social Democratic party he was sitting in the second row below the Gangway, as we all saw? Should he not, therefore, in keeping with your ruling a moment ago, have to make his statement from that position?

Mr. Deputy Speaker: I have given my ruling and it seems to me that the right hon. Gentleman is now challenging it. That he must not do. I will read to the House the relevant passage from "Erskine May", which we take as our guide on these matters. We find on page 418, running over to page 419, the following:

> "Upon a Member inquiring whether a private Member was acting within the conventions of the House in speaking from the ministerial despatch box, the Chair declined to intervene and the Member concerned continued his speech from that place."

It then goes on to say:

> "A Member should not move his place while speaking."

To the best of my recollection, the right hon. Gentleman the leader of the Social Democratic party did not commence his speech until he put his notes on the Dispatch Box. The hon. Member for Houghton and Washington (Mr. Boyes), having raised a point of order, proceeded to move along the Gangway. It was on the basis of what is in "Erskine May" that I ruled as I did. I have ruled and I do not think that there is any need to go over that ground.

Viscount Cranborne: On a point of order, Mr. Deputy Speaker. If hon. Members care to go along the corridor to another place, they will see an important debate being carried on by non-elected people in this Parliament. Any hon. Member who then returns to this more important Chamber will see that a debate on an important subject upon which many of us on this side of the House feel extremely strongly is being deliberately resisted in an undemocratic manner by democratically elected Members. *[Interruption.]* May I finish?

Mr. Deputy Speaker: The hon. Gentleman may not, because quite clearly he is delivering a speech which is expressing his opinion. I do not question the strength of feeling or the sincerity with which the hon. Gentleman holds his views, but the matters which he is raising are not matters for me.

Mr. Heffer (Liverpool, Walton): On a point of order, Mr. Deputy Speaker. It is quite clear that the situation in the House at the moment is reaching an impasse, and it has to be resolved. It can be resolved on the basis of common sense if the right hon. Gentleman who speaks for the Social Democratic party is prepared to occupy another seat. Obviously he is not. Have you no powers at all, as a Deputy Speaker of the House of Commons, to make a ruling? It seems to me to be very strange that if you were the chairman of the Labour or Conservative party you would have such powers and could make a ruling, but that the chairman of the House of Commons—that is what the Speaker is—has no power to make a ruling. Surely the time has come for you to make a ruling to resolve this impasse.

Mr. Deputy Speaker: The task of Mr. Speaker and his Deputies is to interpret and apply the Standing Orders and to seek to ensure the observance of the courtesies and conventions of the House. It is not for me or any other occupant of the Chair to make the rules, except by way of decisions which create precedents. I think that it would be very unwise for me, in what is for me and for the House a somewhat unprecedented situation, to make an off-the-cuff ruling that might be binding on other occupants of the Chair and their successors and have far-reaching implications for the liberties of the House.

It might be sensible for us to have a cooling-off period and for the House to have an opportunity to reflect on the situation and the impasse into which it seems to have got itself.

4.48 pm

Sitting suspended.

5.2 pm

Sitting resumed.

Dr. Owen *rose*——

Mr. Canavan: On a point of order, Mr. Deputy Speaker.

Mr. Deputy Speaker: Order. I shall not take any further points of order.

Dr. Owen: I beg to move——

Mr. Canavan: On a point of order, Mr. Deputy Speaker.

Mr. Deputy Speaker: Order. The hon. Member for Falkirk, West (Mr. Canavan) must resume his seat. We have had enough points of order for one afternoon. We ought to get on with the debate.

Dr. Owen: I beg to move——

Mr. Canavan: On a point of order, Mr. Deputy Speaker.

Hon. Members: Name him.

Mr. Deputy Speaker: Order. I am not prepared to take any further points of order. We have had a good run. I hope that the hon. Member for Falkirk, West will now allow the House to get on with its proper business, which is the motion set down for debate.

Dr. Owen: I beg to move,

That this House calls upon the Government immediately to amend the Trade Union Act 1984 to ensure that, unless absolutely impossible in a particular case, all strike ballots, political fund ballots and elections for trade union executive committees are held on the basis of full secret postal voting conducted by independent returning officers and scrutineers so as to minimise the risk of abuse.

This is an important issue, relating to the role of the trade union movement. First, it needs to be clearly established that in this country there are millions of trade unionists who belong not just to the Labour party, the Conservative party, the Social Democratic party and the Liberal party, but to the nationalist parties and to the Ecology party. It would be a great mistake for this House to debate trade union matters and think that any single party had a pre-emptive right to speak for all trade unionists. Furthermore, I believe that it is in the interests of the trade union movement, of trade unionists and of the prosperity of this country for the trade union movement not to feel itself to be politically bound or institutionally linked to any political party.

It is a reflection of the inadequate financial support for political parties that the political situation is so polarised, and that because of long-standing financial links politics have come very close to the vested interests which financially support particular political parties. That is just as much a problem for the Conservative party, because of its links with big business and its funding by large companies, as it is for the Labour party. I believe that all of us wish that a better system could be devised.

Mr. Robert Hughes (Aberdeen, North): Will the right hon. Gentleman give way?

Dr. Owen: I should prefer not to do so but instead to develop my argument. We need to reflect on the fact that at the last general election only 39 per cent. of trade unionists voted for the Labour party and that 61 per cent. voted for the other political parties. Therefore, the Labour party can no longer claim to speak for the majority of trade unionists. For that reason, I think that we would all agree with the views of the Secretary of State for Employment, who said during the Third Reading on the Trade Union Bill:

"We believe that the law should protect the whole community—employers, employees, union members and non-union members alike—from the abuse of industrial power."—[*Official Report*, 25 April 1984; Vol. 58, c. 832.]

I believe that the right hon. Gentleman spoke for everybody when he used those words, but I do not believe that the Trade Union Act 1984 is fulfilling those expectations.

We have before us the sad situation which is facing the Transport and General Workers Union. Most people are glad that there is to be an emergency meeting of the union on Thursday next. We must hope that, as press statements appear to indicate, the request of the general-secretary elect, Mr. Ron Todd, for a ballot is agreed to, but I have serious misgivings about such a ballot taking place under the existing procedures. It is not my job to conduct a witchhunt into the procedures of the Transport and General Workers Union, and I do not intend to go into those matters. They have been fairly well discussed and other hon. Members will no doubt refer to them.

Ever since the scandal that affected the Electrical Trades Union, as it then was—it is now the Electrical, Electronic Telecommunication and Plumbing Union—the view held in this country is that trade union balloting arrangements leave a great deal to be desired. It is important to realise that before the Trade Union Act 1980 some of the major trade unions were prepared to make payments out of their own funds in order to establish democracy. They were prepared to pay for postal ballots.

The Secretary of State ought to make it clear that some of his statements in recent weeks about the way in which the old ETU scandal first broke are incorrect. As was stated by its general secretary:

"The postal element in this union's balloting system prior to 1961 was very limited."

It was based upon branch returns. Mr. Eric Hammond, the general secretary, said yesterday:

"We do not wish to intrude into the TGWU's difficulties but we cannot allow the present burst of distortion to go on unchallenged. We regard our system as fiddleproof and we urged the Secretary of State to adopt it if he was intent on legislating. He failed to do so, and it is reprehensible that he and others who have ignored our advice should now misrepresent our position."

The 1961 procedure was not a quasi-postal ballot. The Secretary of State knows that well, and I urge him now to listen, as he did not listen in Committee, on Report, on Third Reading and to the House of Lords, to the criticisms that have come from a substantial body of opinion—not, perhaps, within, the House but outside the House—from shop stewards in union after union who warned him that work place ballots were open to great abuse.

What happens if on Thursday the TGWU decides to hold a re-ballot? The new Act will not stop what happened. Part 1 does not come into force until October. Even if the re-ballot were not held before then, the Act does not cover non-voting general secretaries. Most general secretaries, including that of the TGWU, are non-voting. We have all realised that that is a gap in the legisation.

Even if non-voting general secretaries were covered, the Act allows unions to have a work place ballot. The system used for the 1984 TGWU general secretary ballot could be used again. The only changes would be that all

ballot boxes, not just most, would have to be at the workplace. Some were at the branches. The boxes would have to be open for longer in some cases. The count would have to be more secure. No doubt arrangements will be made to change the cardboard boxes and a few other issues, but the substantive issue would not change.

Since the Act was passed we have seen how the National Union of Mineworkers has changed its rules. Mr. Arthur Scargill has arranged for his casting vote on the NUM executive to be taken away. *[Interruption.]* I agree that that has not happened yet.

Mr. Skinner: The right hon. Gentleman is wrong again.

Dr. Owen: Mr. Scargill will not be covered by the Act, as I understand it. If I am incorrect, I withdraw that remark.

Mr. Alexander Eadie (Midlothian): The right hon. Gentleman will not want to mislead the House. He said that the president of the NUM has arranged for his vote to be given away. That is inaccurate. He never had a vote. The chairman of the executive had a vote. Whether the present chairman of the national executive or the president will have a vote will be decided at the national conference. I hope that the right hon. Gentleman will correct what he said. A national conference will decide on the new rules.

Dr. Owen: The hon. Gentleman is a fair man. I said a "casting vote". As I understand it, the present chairman is Mr. Arthur Scargill. He uses his casting vote. The recommendation may not be followed, but it shows how the Act does not cover all circumstances.

I should like to consider the General, Municipal, Boilermakers and Allied Trades Union's election for the successor to David Basnett. It will be by branch block vote. A vote, for example, of 10 to 6 in favour of one candidate could cast thousands of votes for that candidate. The Act does not stop that, as the general secretary does not have a vote. The new general secretary, Brenda Dean——

Mr. Skinner: The right hon. Gentleman has got it wrong again.

Dr. Owen: —has just been elected by workplace ballot.

The Secretary of State for Employment (Mr. Tom King): Wrong again.

Dr. Owen: The right hon. Gentleman will no doubt make clear whether the GMBATU election is covered. I think he will find that it is not.

We then come to the role of the Certification Officer under part 1 of the Act, which covers union executive elections. It comes into force on 1 October 1985. Unions can choose workplace instead of postal ballots. The right hon. Gentleman had better realise that there is a good deal of anxiety on his back Benches about that issue. There is a general feeling that if he had listened a little more he would not find himself in the mess that he is in. The right hon. Gentleman did a fiddle. He knew that that point would cause a great deal of trouble and he made an arrangement with the trade unions, which he now regrets.

Mr. Richard Tracey (Surbiton): The right hon. Gentleman is perhaps being premature when he refers to my right hon. Friend's Back Benches. The relevant part of the Act does not come into force until 1 October this year. Most of us wish to see how it will work.

Dr. Owen: That is a possibility, but it is also possible to anticipate some of the problems that will arise. The first two things that we have to face is that even if we argue about the role of the Certification Officer under part 1 of the Act we must remember that 47 unions, with 8·5 million members eligible to vote, will have to vote on political funds between April 1985 and March 1986. That will be the largest number of union ballots to take place in one year. They will take place not just under union rules but, nominally, under an arrangement made in the House to provide for true democratic procedures. The ballots must be held by 31 March 1986.

The unions have a choice between postal and workplace ballots on political funds. Three unions only at the moment —I hope, that it will be more—are expected to use full postal ballots on the political fund. They are the Electrical, Electronic, Telecommunication and Plumbing Union, the Amalgamated Union of Engineering Workers and the Furniture, Timber and Allied Trades Union.

Mr. Skinner: The National Union of Seamen.

Dr. Owen: I hope that that is the case. I had always understood that there was a strong case for workplace ballots for the NUS. It has often been quoted as a case for special arrangements. The NUS is a special union. Most people recognise that there must be some flexibility. I shall be delighted if it holds a postal ballot. There is likely to be a postal element in most of the other ballots, with 10 per cent. of the members in the categories of being on holiday, sick, retired or applying for a postal vote.

Mr. Patrick Nicholls (Teignbridge) *rose*——

Dr. Owen: Some unions will operate a semi-postal ballot system with ballot papers sent to the workplace for distribution and then returned by post by each member to head office or indepenedent scrutineers. What is wrong with workplace and semi-postal ballots? Why has there been disquiet about them for many years? The points at which workplace ballots can be open to abuse are, in the number of ballot papers claimed for distribution at each location, in the unsupervised distribution of ballot papers, in the return of ballot papers, in the improper use of discarded papers, which, in many cases are over 50 per cent. of those issued, and in undue influence exerted on the voter. The variety of the form of pressure is legend. The abuse can be in the local count and in the national return.

Semi-postal ballots usually involve the distribution of ballot papers at the workplace and the posting back of the papers to union head office or the independent scrutineers. They are usually only a variant on the workplace ballot.

Why is there a resistance to postal ballots? The 1980 Act——

Mr. Canavan *rose*——

Dr. Owen: The hon. Gentleman can make his own speech. There has already been fairly substantial Labour party disruption during the debate.

The House must ask why there is such resistance. In the past one could understand that postal ballots were a costly procedure. For some unions it was not easy. I, like many other people, decided that some of those things had to change. We lived through some of the results of

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unrepresentative trade union decisions. The Government were right, under the 1980 Act, to make it possible to provide funding for democratic postal ballots, and, I support that.

Mr. Nicholls *rose*——

Dr. Owen: If the hon. Gentleman intends to make the obvious point that I did not vote for it, he is right. I voted against it, and I regret that. When we formed the SDP, we made it clear that we regretted it. We decided to back democracy in trade unions. We should like to have democracy in political parties and other organisations. Postal ballots, as the SDP knows, are expensive. We know that the Labour party will not trust its members to vote for its leader. We know that the Labour party will not trust the one-member-one vote system,. We will not have lectures on democracy from the Labour party. *[Interruption.]* I have had those arguments. I went to the Labour party conference and urged it to adopt the one-member-one vote system.

Mr. Canavan: If the right hon. Gentleman is so obsessed with the idea of secret ballots, why, when he set up the SDP, were he and all the other SDP MPs who defected from other political parties afraid to give their constituents the opportunity of an immediate secret ballot? The only one who did, Douglas-Mann, was thrown out on his neck.

Dr. Owen: It is clearly a constitutional issue. Once elected, a Member of Parliament is answerable to the House, not to the general management committee of the Labour party. He is elected to the House to speak for his constituents. When this issue was put the to constituents of Plymouth, Devonport, they well understood it, as did 7·75 million people who voted for the Liberal party and 3·5 million who voted for the SDP. It may stick in the gullet of Labour Members to realise that many of those people were trade unionists. Many of them want to see, as do the SDP and the Liberal party, a strong, democratic trade union movement in this country——

Mr. Hugh Dykes (Harrow, East): So does the Conservative party.

Dr. Owen: If the Conservative party really means that, it will carefully consider making amendments to the legislation—and the sooner the better.

The Secretary of State appears to be taking the matter personally, as though we should not make any criticism. The legislation contains substantial achievements and he should not be ashamed of them. He knows that the Government changed their mind during the passage of the Bill. After all, the Paymaster General and chairman of the Conservative party, the hon. Member for Suffolk, Coastal (Mr. Gummer), who was the Minister of State, Department of Employment, during the passage of the legislation, had the grace to say on Report:

> "I admitted to him in Committee that I began by believing that postal ballots were the best, and perhaps the only, way of electing the executive committee of a union. I must explain why I moved from that position."—[*Official Report*, 26 March 1984; Vol. 57, c. 99.]

The hon. Gentleman must be regretting that he moved from that position. It was not until an amendment was carried in the House of Lords that we put back into the Bill any presumption of postal ballots, and that is still only in part 1.

The House must remember that that provision does not cover strike ballot procedures. Why is that important? It could be argued that in electing a general secretary there are many different views among the officials of the union. We know that this is true of the Transport and General Workers Union. A substantial body of people support Ron Todd, with an equally substantial body of officials and others supporting Mr. George Wright. There is a discipline within the union to ensure that there is no fiddling of the ballot—yet there have been serious allegations.

What about a strike ballot, when almost all the officials of a union want a strike? They will supervise the workplace ballot, and there is no provision for a postal ballot. They will have the temptation to take all the shortcuts involved in a workplace ballot.

More than 82 per cent. of the political fund goes effectively to support the Labour party.

Mr. Skinner: Members of Parliament are sponsored.

Dr. Owen: It is for individual Members of Parliament to decide whether they wish to be sponsored. I was never a sponsored Member of Parliament.

Mr. Skinner: The right hon. Gentleman had union money.

Dr. Owen: It is extremely difficult for members of the Labour party to examine the issues objectively, yet it would be in their interest to do so. Mr. Ron Todd appears to understand that if there is doubt about a ballot, there is doubt about the authority of the general secretary. Therefore, Ron Todd would not be in a position to carry credibility——

Mr. Skinner: The right hon. Gentleman had £10,000 over the years.

Dr. Owen: I hope that the hon. Gentleman will never make such an allegation. If he would like to say that standing up, I would be grateful. I was never sponsored, and no money was given to me—*[Interruption.]*

Mr. Deputy Speaker (Sir Paul Dean): Order. The right hon. Gentleman is entitled to a hearing.

Dr. Owen: I beg the Secretary of State to look at this matter seriously. All the officials in the unions believe that the political fund should be involved, and they supervise the massive elections. Those elections will not simply be under union rules which we can all disown. If we hear reports of incidents, such as those affecting the TGWU, we will all be involved. This House will be involved. The workplace ballot on the political fund to support the Labour party is, in effect, a straight question of a political levy—it is Labour's levy. We are being asked to accept that the supervision of workplace ballots for the levy and for strikes should be undertaken by full-time officials of the union at their place of work.

Whatever the Secretary of State may say about the onus of proof in part 1—and the reading of counsel is that the wording leaves it open to any union which so wishes to use a workplace ballot and not a postal ballot—the onus is not on the union to hold a postal ballot. The Government and the Prime Minister have misled their supporters. I do not believe that they did so deliberately, but the fact is that under part 1 any union which so wishes

can hold a workplace ballot. If that is then challenged to the Certification Officer by an individual member of the union, it is possible under part 1 for the Certification Officer to reject the workplace procedures and to insist on a tougher procedure or a postal ballot.

The Secretary of State has been on radio and television and given the impression that under part 1 the onus of proof is on someone to show why he should not have a postal ballot. The reverse is the truth. The alliance wanted the onus of proof to be on those who wished not to have a postal ballot to show why that should be so. For those unions with special circumstances, we suggested that they went to the Certification Officer and asked for an exemption. That is the right way. Postal ballots should be the norm, and workplace ballots the exception.

It is not quite an accident that SOGAT '82 has been chosen to be the first trade union in relation to the political fund. It is not an accident that this union has been carrying out its procedures with hardly any examination in the press. If the SOGAT '82 ballot is to become the hallmark of ballots for the political fund over the next year, the stories that we have heard about the TGWU will run on throughout the year.

Mr. Golding: Where is the evidence?

Dr. Owen: We find the evidence if we examine SOGAT '82. Its official journal describes why its members should support the political fund. The Labour party is not mentioned on any page. It is well known that the only way that SOGAT '82 can get its members to support the political fund is to pretend that it has nothing to do with the Labour party; that the funds go nowhere near the Labour party.

Matters are even more serious than that. Members of SOGAT '82 are being asked to vote for a voice in Parliament. They are told that they will not be able effectively to carry out their union activities unless they have a political fund. It has been made clear time and time again that any normal trade union activity, including lobbying, can be provided for from normal funds. I hope that the Secretary of State will confirm that they do not need a political fund to campaign or to lobby.

Mr. Leighton: Is the right hon. Gentleman aware that SOGAT '82 has a very good voice in Parliament? Is he further aware that our union wants the unfettered right to campaign on anything that the right hon. Gentleman might call politics? It does not want to be dictated to by him or by anybody else. No other country in western Europe dictates to a union how it will spend its money. When we want advice from renegades and turncoats, we will ask for it.

Dr. Owen: That is diametrically opposite to what the Act states. It states that the members should decide fully, openly and democratically whether they wish to make contributions to the Labour party. If they decide to do so, openly and democratically—*[Interruption.]* The Act is a bit like the *SOGAT Journal*. It does not mention the Labour party, but 82 per cent. of the political fund goes to the Labour party, and everybody knows that. It is not for normal, traditional lobbying.

In case anybody is in doubt about what the *SOGAT Journal* says, I shall read it out. It says:

"'We would like to say on behalf of our members . . .' If we lose our rule which allows unions to be active politically we could soon be banned from campaigning publicly on questions which affect our members. And it would be illegal to lobby Parliament!"

The journal is entitled "Say yes to a voice". That will not lead to a fairly conducted ballot and everybody knows it. The tragedy is that the Secretary of State for Employment will be seen to be putting the veneer of respectability over this process. It is vital that we say no. These political fund ballots must be conducted democratically. They should be contracted in. If a political fund ballot is to take place, it should be postal and the cost should be borne by the country as an investment in democracy.

Any of us who advocate fair elections in trade unions will be traduced up and down the country and will be told that we are anti-union. We are not. It is part of the assumption of a monopoly of conscience that the Labour party believes that only it can speak for trade unions. Many hon. Members of all parties believe in the need for collective action and for unions and members to organise. They believe that there should be some special safeguards in the law, as the present legislation rightly gives trade unionists.

However, these hon. Members desire from trade unionists that if they are given special privileges and protection in the law, they should have within their procedures a fully open and democratic mechanism so that the commonsense judgment of the members can be carried out. We would like to see that more widespread. I urge the Secretary of State and the Government to listen this time. They did not listen to the House of Commons or the House of Lords, and instead partially made an adjustment to the House of Lords amendment.

What has happened in the case of the Transport and General Workers Union is, I fear, the tip of a particularly ugly iceberg. It is giving too much temptation to any person with strong views in a trade union to ask him to supervise an election. We have not yet reached the stage where the Labour party, the Conservative party, or the alliance parties supervise the collection of the ballot boxes in a general election, or are involved in the counting of votes. The supervision of the ballot is completely separated from us as politicians, and rightly so. Supervision should be conducted independently, even if there is a workplace ballot, and even if we allow some unions to go ahead before the full operation of the 1984 Act. It is incumbent upon us to insist that there should be independent supervision at all stages of any workplace ballot. I urge the Secretary of State to think again.

5.33 pm

The Secretary of State for Employment (Mr. Tom King): I beg to move, to leave out from "House" to the end of the Question and to add instead thereof:

"welcomes the success of the Government's step-by-step approach to the reform of industrial relations law and to the strengthening of rights of individual trade union members; welcomes the new and stringent provisions of the Trade Union Act 1984 concerning secret ballots before strike action, for trade union elections and for the maintenance of political funds; notes the fundamental change in trade union attitudes and practices now taking place; welcomes in particular the increasing interest and involvement of trade union members in the conduct of their unions' affairs; and congratulates the Government on making the achievement of greater democracy in trade unions a central objective of its industrial relations policy."

I took no exception in any personal sense to what the right hon. Member for Plymouth, Devonport (Dr. Owen) said, but on an issue as important as this, he could have

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done the House the courtesy of being more careful about his facts. He was wrong about the position of the president of the National Union of Mineworkers, about the position of the general secretary of the GMBATU and about the powers of the certification officer in the example that he used. He was also wrong in the letter that he wrote to me, and I sought to set out his inaccuracies. This is an important subject, and the right hon. Gentleman owes it to the House to come better prepared and equipped to deal with the argument.

I assume that the right hon. Gentleman was not wrong in referring, as he does in the motion—I had assumed that this was a mistake—to the need for postal ballots before all strikes and presumably before those to end strikes. If that is what he intended—he referred only briefly to it—this is the first time that it has been mentioned. The hon. Member for Stockton, South (Mr. Wrigglesworth) sat through all the proceedings — Committee, Report, Third Reading and the debates on Lords amendments—and said nothing about it. Is this a new policy proposal or merely a mistake in the motion? If the right hon. Gentleman rehearsed his arguments on the merit of compulsory postal ballots before all disputes, he might find it difficult to rally the support for which he is looking.

We welcome this debate, not least because it is an opportunity to correct some of the gross inaccuracies that the right hon. Gentleman has perpetrated, not only in the House but outside. I and my right hon. and hon. Friends are not embarrassed to discuss the cause of trade union reform. I am glad to see my right hon. Friend the Member for Waverney (Mr. Prior) here. He initiated the step-by-step approach that has been such a significant success. I look across at some of the remainder of the participants in the battle on "In Place of Strife" and of the battles of the Industrial Relations Act 1971. Any honest observer will recognise the significant difference in the successes of our step-by-step approach. It is improving the climate of industrial relations, and its measures are here to stay.

The right hon. Member for Devonport was candid enough to admit that he voted against the first step of the step-by-step approach. He does not, however, rush forward to say that, while he supports the use of public funds for postal balloting, he voted against my right hon. Friend the Member for Waveney when he introduced that proposal.

Mr. Cyril Smith (Rochdale): I did not vote against it.

Mr. King: It comes as no surprise to find that different Members of the two alliance parties voted in different ways. The real surprise would be if they voted in the same Lobby at the same time. There have been some thoroughly unwelcome scenes in the House, but it is welcome to see the new development of such a good turnout from the alliance parties.

The right hon. Member for Devonport has chosen to lecture the Conservative party on the system of balloting for elections, secret ballots for union elections, a system of ballot before strikes and secret and periodic ballots for trade union funds. However, he would not have had the opportunity to comment on any of those items if we, as the Government, had not carried them through on to the statute book. We see this as a further development in our programme. We have tackled the abuse of the closed shop, have introduced financial support for postal ballots and have outlawed secondary action. We have introduced secret ballots for the union elections to principal executive committees, for strike ballots and for political funds.

Many of our critics, some of them on the Opposition Benches, have said that these measures would never be used and that they would blow back in our face, but the record does not bear that out. The National Graphical Association may have second thoughts when it is £750,000 lighter because of its efforts towards intimidation and mayhem at the *Stockport Messenger* and have begun to realise that, in the end, the law will have to be observed.

The Transport and General Workers' Union learnt painfully and to its cost, at Austin Rover, that the car park meeting will no longer be tolerated and that the members must be consulted. The south Wales area of the NUM thought that it could black two hauliers with impunity. It found—it was another painful exercise—that unlawful actions will be punished and that the law must be observed. Most recently, in the Post Office at Mount Pleasant and even in the Civil Service, the requirement to consult the members, imposed through injunctions or through the serving of a writ, has ensured that disruption or strike action did not take place.

Our legislation seeks to give rights to union members, not to the Government. That has led to a major change of attitude. I cannot vouch for it, but according to a newspaper report, the TUC has referred to

"the apparent wish of many members for ballots in any event, regardless of the provisions of the law".

That underlines the fact that we are right to give members rights, and easier access to remedies when those rights are obstructed.

Our determination has been to improve democracy in trade unions. Unions belong to their members. It is to the members that we must look and to whom the rights must be given. Many politicians jump up and down about ballot rigging and allegations of ballot rigging, but it is the members who are robbed and deprived of their rights by unfairness or injustice.

Mr. Cyril Smith: Will the right hon. Gentleman give way?

Mr. King: Because of the exceptional circumstances, I owe it to the House to reply. I will give way in a moment.

The worst abuses in union practices took place either at branch meetings or in the car park voting procedures. I do not think that any hon. Member would dispute the fact that the Act will render both those forms of abuse illegal.

Mr. Smith: Is the Minister aware that I was the Liberal party's spokesman on employment while the legislation to which he has referred—apart from the Trade Union Act 1984 — was passing through the House? Both in Committee and on the Floor of the House, I and my Liberal colleagues consistently supported the Government in the passage of those Bills. The right hon. Gentleman's claim that the legislation is the achievement only of the Conservative Government is not based on fact. Furthermore, if the right hon. Gentleman is so concerned that the unions should belong to the members, why is he tonight denying those members the right to vote by post, so ensuring that the results would be unchallengeable?

Mr. King: Is the hon. Gentleman suggesting that, in order to carry through the legislation, we had to depend solely upon the support of the Liberal party, or that we

should equate the Liberal contribution with the effort of the Conservative party? I cannot readily accept those propositions.

We have been at pains to tackle the problems. I note, for instance, the reference to the need to get away from branch voting. The right hon. Member for Devonport knows a great deal about such problems. I believe that he is a member of the Association of Scientific, Technical and Managerial Staffs. The branch voting procedures of ASTMS may be among the most inadequate. I do not know whether the right hon. Gentleman has raised the matter with the president or the general secretary of the union. I understand that, at the last election for their president, some 400 branches of the union either failed to return a vote or returned a nil vote. Some 10,000 members voted in the election — about 2 per cent. of the membership. It is interesting to note for how long the right hon. Gentleman has belonged to that union.

I wish to deal with the innuendos that the right hon. Gentleman introduced into his speech. Immediately after talking about the failure of the operation of the 1984 Act, he referred to the situation in the TGWU. However, the right hon. Gentleman knows that the procedures for secret elections will not come into operation until 1 October. The right hon. Gentleman said that the TGWU situation will give the green light to many other people, showing them the opportunities for rigging. I have come to the opposite conclusion. To the union's credit, the complaints were raised under the existing procedures. A cook in a secondary school in my home city of Bristol found that someone had incorrectly stamped her membership card. She raised the matter, and further procedures led, I believe, to the dismissal of two trade union officials. The message is that we are giving the members rights that they are prepared to use.

Mr. Kevin McNamara (Kingston upon Hull, North) *rose——*

Mr. King: I do not wish at the moment to labour the point, but there is another message for us in the situation of the TGWU. Any senior trade union official standing for election and seeing the problems and difficulties that the TGWU is facing in connection with allegations of ballot rigging will not consider that he has been given a green light. The TGWU's problems will reinforce the determination of responsible unions to see that their procedures are properly carried out.

Mr. McNamara: Will the right hon. Gentleman give way?

Mr. King: I must make progress, so that other hon. Members will have a chance to speak.

We outlawed branch voting and car park proceedings. Under the original provisions in the Bill, either workplace ballot or postal ballot requirements could meet the situation. Allegations have been made that I met Mr. Moss Evans and was completely persuaded by his arguments, and that as a consequence the Bill was weakened, Infact, the Bill, far from being weakened, was significantly strengthened.

There have been so many misleading allegations about the procedures in the Act—in some instances from ill-informed people—that I should like to make clear what they involve. The Act lays down a whole series of new statutory requirements that will override existing union procedures entirely. For the first time ever, it lays down statutory requirements about the frequency of elections, balloting arrangements, who can vote and who can stand. It lays down that elections must be secret, free from interference or constraint, that votes must be fairly and accurately counted, and that all those entitled to vote must be given an equal chance to do so at no direct cost to themselves.

Those are powerful new safeguards, and they are statutory. They do not depend on which union a member belongs to or what the union rule book happens to say. Any election that meets those standards will be a free and fair election. From 1 October, anyone claiming that a union has failed to meet those standards will be able to apply to the independent certification officer for a declaration to that effect, or to the court, at no expense to himself.

That is one of the measures designed to help members with any problems connected with raising grievances. Conservative trade unionists attach great importance to the opportunity to be able to make representations.

We have added a new requirement that will pave the way for the opportunity for postal ballots on the widest possible basis. We have already imposed upon the unions a duty to compile and maintain a register of the names and proper addresses of their members. That duty was imposed upon the unions on Royal Assent. The registers must be completed by 1 October and kept up to date thereafter.

Mr. Peter Thurnham (Bolton, North-East): Will my right hon. Friend assure the House that such a register, like any other electoral register, will be open for inspection, so that all the members may be satisfied that it is in order?

Mr. King: It should be available to members of the union.

Any failure to comply with the requirements of the register will make the union open to the risk of being challenged by its members in the High Court or before the certification officer.

We have gone further than that, as we have given much greater emphasis to postal voting. Postal voting is the system most likely to be free from interference and intimidation. The motion refers to "full secret postal voting", and I should like to consider why others think that an exception is justified. I should also like to tell the right hon. Member for Devonport why I have said that sections 2 and 3 of the 1984 Act introduce the most powerful presumption in favour of postal ballots.

A union that is considering holding a workplace ballot must meet all the existing requirements for free and fair postal elections, meet additional ones concerning the supply of ballot papers and giving electors a convenient opportunity to vote, and satisfy itself in advance of the ballot that there are no reasonable grounds for believing that any of the Act's electoral safeguards will be breached. A union member can go to the certification officer in advance of the ballot and get his support with a view to getting the High Court to act. That was the error of the right hon. Member for Devonport, because the certification officer has no power in this regard. If there is malpractice or intimidation, the ballot is put at risk.

If a union is not challenged by its members before an election, but the conduct of that election is found to have fallen short of the legislation's requirements, the High Court has a duty to order a re-run of the election to be conducted by a full postal ballot unless that is plainly

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inappropriate. A few unions seem not to have taken those provisions fully on board as they are making fairly relaxed comments about them. It would be wise for union leaders to reflect on those provisions and the events of the past few months.

This is not an argument about mandatory full postal ballots. On 1 December 1983, the hon. Member for Stockton, South said:

"We strongly favour the principle of one member, one vote and believe that postal ballots should be the norm. That is as far as we go. We do not say that it should be laid down as the only way of organising ballots within unions."—[*Official Report, Standing Commitee E,* 1 December 1983; c. 135.]

On 25 April 1984, the hon. Member said:

"Postal ballots could not be adopted in every instance."—[*Official Report,* 25 April 1984; Vol. 58, c. 844.]

On 24 July 1984, the hon. Member said:

"There is a need also for some flexibility in the operation of postal ballots. We accept that it is wrong that postal ballots should be imposed on every union."—[*Official Report,* 24 July 1984; Vol. 64, c. 864.]

My hon. Friend the Member for Gainsborough and Horncastle (Mr. Leigh) also accepts that there are cases when exceptions might have to be made. It is accepted that there is a case for postal ballots. The question is, therefore, under what terms and arrangements they are to be permitted. I am anxious to ensure the greatest possible democracy and to establish higher standards of democracy in trade unions where they have been lacking. I do not include all trade unions in that criticism. Two criteria must be met. We must ensure fair and secret elections, which are free from intimidation and malpractice, and we cannot walk away from the problem of encouraging every member to vote, because turnout matters in a democracy.

If properly organised, workplace ballots tend to attract a much higher percentage ballot. The classic illustration of that is the National Union of Mineworkers. There was an 11 per cent. turnout in a fully postal ballot in the furniture trade union. For those who believe that workplace ballots can always be rigged by a union leadership, we should remember that Mr. Scargill was defeated twice in such ballots. He had polls of 87 and 93 per cent. and lost both ballots. Most recently he tried to persuade his members to vote for the 50p levy, which proposal was also defeated by a workplace ballot.

I have already said that the postal ballot can be the best solution if the avoidance of intimidation and malpractice is the overriding consideration. I accept that there must be postal ballots in some circumstances, because of the activities of the union leaders. There has been some interesting research on the problems of organising a postal ballot and getting the electoral roll in order. Right hon. and hon. Members know about the problems associated with parliamentary elections. I understand from the research that, in a fully postal ballot conducted by the AUEW, which has confirmed these findings, 200,000 members never received a vote and 20,000 received a vote to which they were not entitled. The Electrical, Electronic, Telecommunication and Plumbing Union has tried hard to establish the best possible postal ballot system, but there are still problems. Right hon. and hon. Members know that people who come to our constituencies after October are not able to vote for us for 15 months—[HON. MEMBERS: "After March."] I am grateful. I hope that I am better on union law than perhaps I am on electoral law. Democracy must be about giving the maximum number of people the maximum opportunity to vote. However, they must be able to vote free from intimidation and malpractice in a secret ballot. Our legislation ensures that they have the best possible chance to do that.

The argument between us is whether it is better to give the power of determination of when there should be workplace ballots to a public officer—the certification officer—or to members, who should be given access to the courts. I have chosen the latter course. Our approach will succeed because it works with the grain of all union members. We are giving them rights, not imposing obligations on them. The defence of freedom and the avoidance of malpractice and intimidation, which all responsible right hon. and hon. Members deplore, will lie with the vigilance of union members. But it is our duty to see that they have proper rights and proper access to remedy. Because, in that spirit, our legislation embarks most effectively on that course, I commend the amendment to the House.

6 pm

Mr. John Prescott (Kingston upon Hull, East): I had better get to the Dispatch Box quickly, while I have the opportunity to do so.

The amendment reflects the Government's anti-trade union attitude, and their legislation applying to unions must be seen in the light of their overall policy.

SDP opportunism is reflected in the motion, which was not particularly ably moved by the right hon. Member for Plymouth, Devonport (Dr. Owen)—*[Interruption.]* On the facts, the right hon. Gentleman did not make a good case. As he was motivated to initiate this subject at the first opportunity he had from the alliance point of view, he should have mugged up on the facts, particularly in relation to the unions to which he referred.

From the comments made in the debate, it would appear that neither side believes that the universality of the ballot is in issue. There are clearly problems in the trade union movement about how ballots should be applied. That is why flexibility and choice are allowed. Flexibility is necessary. It appears in the legislation and it even appears in the alliance motion.

We can assume, therefore, that the universality of the ballot is not in issue and that we are essentially concerned with proper practices in the development of ballots. We are also concerned with the democratic participation of union members and the importance of achieving the maximum participation in ballots.

I wish to make it clear from the outset that no hon. Member on the Labour Opposition Benches would have any truck with the interference of, or irregularities in, ballots, and the same goes for the proper democratic expression by trade union members on whatever issue may be in question. There need be no doubt or division on that aspect of the matter.

I speak as having been a seaman with 10 years' experience in the shipping industry. I recall taking part in debates in 1972 with the present Secretary of State, particularly on legislation about the closed shop. Exemptions were then made for seafarers because of the difficulties they face in relation to ballots. The right hon. Member for Waveney (Mr. Prior) featured in the debates at that time. Clearly, therefore, my experience of the subject is bound to influence my attitude to the subjects of ballots and participation.

For years I have been active in a trade union as an official and as an ordinary member. I have taken part in ballots—some postal—for executive councils, AGMs and delegates. Those ballots have occurred at the workplace, on sites, on ships, at branches, in executive councils and, for unofficial and official strikes, on sites. I can claim, therefore, to have participated in every type of ballot known to the trade union movement including those covered by the Electoral Reform Society.

I learnt from those experiences. I am convinced of the role that ballots can play. My trade union actively ballots, in most cases by way of postal ballot, on matters concerning strikes, the election of officials, the political fund—the political fund will now be governed by legislation—and various other matters. In other words, ballots are an integral part of my union.

I recall one case when I was led to complain about a ballot irregularity. I complained through the normal procedures within the trade union movement and, as a result, the rules applying to ballots were tightened up. The ballot in question, with which I was closely concerned, was a postal ballot. The irregularity occurred because the postal ballot papers were sent to a ship which was due to remain in port at Southampton for only 24 hours. All the postal ballot papers were sent to the ship and we had a particularly active member who, in an effort to increase participation, collected all the envelopes and voted as he thought fit for members who had not received their voting papers.

I regarded that as a gross irregularity, which it clearly was, and, when I laid my views before the union and its executive, the procedures were changed. Indeed, the change was such that every member then had to sign for his or her ballot paper, to be sure of receiving it. The trouble was that, because everyone had to sign, so few participated in the ballot that a mockery was made of the vote.

There were bound to be difficulties because seamen cannot always be contacted. Indeed, the population of seafarers, so to speak, changes to the extent of 20 per cent. every year. Not only do their home addresses change, but seafarers may be out of the country for as long as a year or two years. That is the scale of the difficulty that my union has in dealing with ballots.

Every union, on receiving evidence of irregularity, will act. We do not need a commission or legislation to make it possible for people to take legal action. Many cases have arisen in the courts as a result of people pursuing breaches of union rules. Often the common law is invoked in that respect. In other words, the right of ordinary union members to pursue cases in court has always been available.

The interference directly in a ballot about which I am talking is improper. The sort of interference, as exemplified by Bernard Levin's article in *The Times*, however, is considered to be proper. He named candidates whom he thought should be elected in a ballot held by their union. He used the fact of his access to a national newspaper to influence a ballot. Apparently it is considered democratic for him to do that, even though he is not a member of the union concerned. He believes strongly, it seems, that moderates should be elected, and he uses *The Times* for that purpose.

I hope I have said enough to show that I need no lectures from alliance or Conservative Members about trade union ballots and their importance. I have explained that I am well aware of the way in which ballots operate, and I have described my involvement in them.

In my notes, when preparing this speech, I wrote, "SDP evidence," and left a gap which I thought I could fill in when listening to the speech of the right hon. Member for Devonport. In the event, he did not produce a scrap of evidence to justify any of his assertions. *[Interruption.]* I shall deal with the various points that the right hon. Gentleman made, including that applying to SOGAT.

When speaking of the TGWU, the right hon. Member for Devonport said that he was prepared to leave the issue as it applied to that union. I wish that he had decided earlier not to proceed with that. He was prepared to make all sorts of scurrilous charges on the basis of what he said he had heard from individual members who were making allegations about ballots.

The Secretary of State was right to point out that that union acted, without recourse to legislation, firmly in the case of Bristol and dismissed two officials. *[Interruption.]* Whether or not my agreement with the Secretary of State is an alliance in truth I do not know, but the facts are clear on the issue.

Mr. Michael Meadowcroft (Leeds, West): The hon. Gentleman must know that I, as a member of the TGWU, wrote to Moss Evans and Norman Willis long before the wounding of the TGWU had continued for this length of time. In that letter I suggested, being aware of what was likely to happen—because of the way in which such matters tend to develop—that the best course would be for the TUC, as an independent and non-hostile body, to carry out an inquiry into what was happening. Does the hon. Gentleman agree that it would have been better if that course had been agreed to some weeks ago?

Mr. Prescott: Whether or not the hon. Gentleman feels that the response to his letter was undertaken quickly enough is another matter. The fact remains that the union and the candidates in that election made their position absolutely clear. The union and Mr. B. Evans, have been calling for evidence all along. I should have thought that this debate provided a good opportunity for that evidence to be produced. Instead, we have had only inuendo. We have not been given information of any kind to enable us to judge why the right hon. Member for Devonport believes that everything should be done by way of postal ballot.

The position seems clear enough. The TGWU executive will meet and deal with the matter. It has a history of dealing correctly with such complaints, and a similar history runs right through the trade union movement. If the union does not act, there will then be cause for concern. Either way, those who make allegations must justify what they say.

In that context, we must consider some of the statements that have been made by the hon. Member for Portsmouth, South (Mr. Hancock). I have read his party's press releases on this subject. The hon. Gentleman makes various scurrilous remarks in press handouts and then, when he writes to the certification officer, produces no evidence whatever. He can only refer to what some trade union members have told him they think is going on. A campaign base on such a lack of evidence reflects the opportunism which we have come to expect from the alliance.

Mr. Michael Hancock (Portsmouth, South): Following the letter that I sent to the certification officer and Mr. Willis the TUC, there was ample evidence for the TUC to step in and authorise a ballot to take place and for the certification officer to investigate the claims contained in the letter that was sent to him. In other words, ample evidence was provided for the investigation to take place.

Mr. Prescott: If the hon. Member is the SDP spokesman for industrial relations if he believes that is the TUC's role and if he has been advising his right hon. Friend it is no wonder his right hon. Friend made a mess of the facts. My point was that the letter sent to the certification officer had no evidence in it. I have a copy here. No evidence was given apart from conversations that the hon. Gentleman had with members of a trade union, whose suport he presumably canvassed when he was a Labour party member, without one murmur about whether it was legitimate to receive such support. It is only since these people became members of the alliance that they are concerned about what they regard as matters of democracy. Therefore, this is an act of opportunism by the SDP.

If we want further evidence, we find that they voted for the Second Reading of the Trade Union Act 1984 and then abstained on third reading. When I looked through the debates on that legislation, I found that the hon. Member for Stockton, South (Mr. Wrigglesworth) moved an amendment to a House of Lords amendment proposing that there should be a postal ballot for the political fund but then, at approximately 12.30 am, he said:

"In view of the lateness of the hour, and the fact that we have discussed these matters on previous occasions, I beg to ask leave to withdraw the amendment." — [*Official Report*, 24 July 1984; Vol. 64, c. 492.]

The right hon. Member for Devonport was not even in attendance when there were votes. On that occasion the SDP did not pursue the amendment, which it thinks is so important, to require a postal ballot on the political fund. Why did the SDP not pursue the matter then? I am perhaps cynical. Shortly after that there was a statement by Shirley Williams, about which there was much publicity in the press, offering a deal to the unions—that if they gave some money to the SDP, it would not lead a campaign against a ballot on the political fund.

I do not know what happened, but now we have this motion before the House. Perhaps the SDP thought that it might get involved in bargaining and would have a case for saying, "Give us some of the money, Barney." When one considers the arguments and the statements that have been made, the matter does not seem very profitable for the SDP.

If the SDP's strong view on abuse of such political funds was reflected in the motion—companies giving money to political parties without balloting their shareholders—I might understand the motion. I think companies give donations to the SDP. It received £8,300 last year, and I think £5,000 of that was from the Norwich Union. The right hon. Member for Devonport is nipping round to companies, having lunch, and asking for money. If he thinks it is wrong to have political funds, it would be useful to legislate for postal ballots of company shareholders before companies decide that money should be made available to political parties. If the right hon. Member is nodding his head in agreement, why is he receiving money from companies when he does not know whether the shareholders agree that the money should be given to the party? I do not think that things like that worry the right hon. Gentleman. So long as he is getting the cash, so long as he is making a political point and so long as he can get more votes in the process, that is all he is concerned about.

When one considers that that kind of money is given to the SDP it reminds us of the point that was made earlier about SOGAT. Of course, the SDP expressed its view about the SOGAT ballot. It bought space in *The Sun*. I have a copy here. It placed an advertisement, costing £6,000, to lead an attack on SOGAT. It had received £5,000 from the Norwich Union. Therefore, one could say that that money from the Norwich Union helped to pay for the advertisement to have a go at SOGAT. It was a scurrilous advertisement, seeking to intervene in the election going on in that union. If I may be more cynical, perhaps placing it in *The Sun* was looking for a bit of aggro with the printers. It might have been seen as a good investment if there had been opposition to printing the advertisement. As the Chancellor of the Exchequer said about the miners' strike, it might have been a good investment. That may have influenced the attitude of the SDP.

The SDP's concern seems to be mainly about political ballots. As we know, the strike ballot does not come into force until October. The right hon. Member for Devonport addressed himself only to the political fund ballot. I draw to his attention the fact that there is a dispute in Devonport at present. As I understand it, the men walked out without a ballot. Of course, the Government are closing down the yard, so one can understand the lads reacting about that. Did the right hon. Member demand a postal ballot before they came out?

I thought I had better read the intellectual newspapers in that area, so I scoured through the *Western Evening Herald* for comments. All I could find was that the right hon. Member had said:

"Though anger and frustration may lead to protest today, by next week we must develop a constructive strategy for fighting back with alternative proposals."

That is quite proper. That is what a Member of Parliament should be doing. But he did not say that the men should get back and have a ballot. He did not say that what they had done was illegal and that he had supported the 1984 legislation which laid down that they should have a ballot before taking industrial action. That was another act of opportunism by the right hon. Member, in line with accepting trade union money and trade union nominations, all of which he did in his earlier career but which he now rejects as undemocratic.

I come to the Government's case.

Mr. Golding: Before my hon. Friend does that, will he deal with the point on campaigning made by the leader of the SDP? Is it not true that if the main purpose of any literature used on a lobby is held to be to further the interests of any party or candidate, it can only be financed from the political fund? If there were no political fund, it would be illegal. We are telling hon. Members that they have to vote yes in the ballot so as to keep the unfettered right to campaign.

Mr. Prescott: That is a very sound point. It was the concern of the SDP when it put that advertisement in the newspaper that the question was not about whether people voted for the Labour party. That was another mistake by the right hon. Member for Devonport. The question

concerned whether a union has political objectives and uses its funds for those objectives. That question is determined by the certification officer and, as I understand it, by Parliament. It is determined by law and is carried out under the law. The question is not whether the money is given to the Labour party, the SDP or the Tories, but whether funds are used for political objects. That is the question that has been put to union members.

In regard to the Government's case, most of the conditions for ballots are determined by the Government. They set up the certification officer procedure. In some cases they pose the question. All these matters are determined by legislation, so in many ways this is direct intervention in trade unions which are voluntary bodies. No other voluntary body is faced with legislation like this.

It may be the Government's case that trade unions are different and have to be treated differently. I believe that the Government see the trade unions as different. They are a target to be dealt with. Therefore, a case can be made that the Government are anti trade unions. The Secretary of State claims that his policy is different in that it is step by step. The objectives are no different from those of other Tory legislation in the past, but the Government are achieving their aims by stealth with a little assistance from the mass unemployment that they have brought about with their policies.

The Government's policy is to discipline the trade union movement. What else would one do with the "enemy within"? Is not that how the Prime Minister sees the trade unions? They have to be disciplined; they have to be made into friends; one needs legislation to bring them into order. The Government's language is entirely anti-trade union. Their legislation has been designed to cocoon the trade unions in court actions, where they are sued for damages and costs. Those are academically different from fines, but they are heavy on the funds. The legislation is designed to achieve a fundamental shift in power in the workplace. It is designed to attack the trade unions, impose legal controls on them and enforce the Government's ideas about ballots and how they will be conducted.

Therefore, the Government are not motivated by concern for good industrial relations. The idea is to strengthen management. We often hear that it is the right of management to manage. The Government want to influence the power structure in the place of work. It is one step towards weakening the trade union movement before they implement the rest of their policy, which is more unemployment, lower wages, reduced benefits, the reform of the welafare state and, indeed, the reduction of statutory employment rights.

Mr. Roger Gale (Thanet, North): Will the hon. Gentleman give way?

Mr. Prescott: I must get on with my speech. The Government's attitude is influenced by those facts. We said that in the debates on the legislation although I did not attend them and had to read the reports. Since then the same charge can be made against the Government. There have been further announcements about the reduction of employment benefits. There has been the abolition of the fair wage clause, which led to a 12-month strike at Barking, where the women faced lower wages and a reduction in their working week. It is proposed that the wages councils should be abolished. The Government now talk of lowering the costs of industry by attacking maternity benefits, equal opportunities, and so on. All those things have been spelt out by the Government.

The one thing that brought home to me the Government's attitude was the press statement of 17 April on unfair dismissals. Now one needs to work at an establishment for more than two years to be able to bring an unfair dismissal claim. It is difficult to understand why the Government want to pursue that if they are not simply to be seen as vindictive. When I consider how many people are involved, I believe that the unfair dismissal proposal is, once again, a way of improving the strength of the manager at the place of work, and reducing the rights of workers to appeal against an injustice.

In support of that I refer to the statement made by the right hon. Member for Waveney in a Cabinet document of 17 July 1981. He was opposed to the suggestions, and he said that only 7 per cent. of all dismissals actually went to the industrial tribunals. In that document, he said to his Cabinet colleagues:

> "My conclusion, therefore, is that there is insufficient justification to amend employment legislation further in favour of employers. Moreover, I believe that any attempt to do so would allienate large sections of the working population, trade unionists and others and would therefore be politically damaging to the Government."

Now the right hon. Member for Waveney has been removed from the Cabinet, so there is action to reduce many employment benefits. That can be seen particularly in the Government's approach to unfair dismissal.

The same two-year period will not apply to the man who might join a union with a closed shop. He might join it today, but go to the other side of the world and decide that he no longer wants to be a trade unionist. He has an action for damages against the union if he refuses to remain in the closed shop—he is a sort of bounty hunter for the money. The same two-year period does not apply in that case. That can happen from day one. That illustrates the Government's approach to trade union legislation. That is why many feel——

Mr. Gale: I did not agree with much that the right hon. Member for Plymouth, Devonport (Dr. Owen) said today, but he did say that trade unionism was not the prerogative of any one political party, which is absolutely right. Will the hon. Gentleman concede that at the last election an assessed 5 million trade unionists voted for the Conservative party, that they are very well represented by the Conservative trade union movement, and that movement fully endorses the measures proposed by my right hon. Friend the Secretary of State?

Mr. Prescott: I shall not go into those arguments. I do not deny the right of any politician to make the case one way or the other. I am simply saying that the people who are arguing against the trade union legislation are making those points to me. I am arguing that the Government are anti-trade union in their legislation. They are continuing that approach by bringing in such measures.

The Government say, "Look what our legislation did for British Leyland." But there was a strike. It is interesting to note that Jaguar at Coventry did not choose to use the courts or any form of intimidation, and settled a similar matter quickly. The matter dragged on in British Leyland for several days, but it was settled quickly at Jaguar.

Let me take the more recent case of the Post Office. Management took unilateral action with which the union

[Mr. Prescott]

and its members disagreed. Eventually they came out on strike, but the matter was settled quickly. We believe that as a result of the legislation there will be more unofficial quick strikes, such as we used to see in the 1960s. That is the way to bring management to its senses without recourse to the courts. Under the Government's legislation, the individual cannot be sued. Only the union can be sued. We shall have to wait and see what happens.

In their amendment, the Government talk of their concern for greater democracy. I was reminded of that when I read in *The Guardian* today of the fifth suicide at Government Communications Headquarters at Cheltenham. There was no ballot of members. They were not asked whether they wanted a trade union. The Government imposed their draconian power and used an Order in Council, which did not even have to be debated in the House. They denied those people the right to belong to a trade union. They were not asked whether they wanted a ballot. That was denied to them. All that they were offered was a £1,000 bribe to give up their trade union rights.

At the moment the other place is dealing with legislation that seeks to abolish democracy in the metropolitan counties and the Greater London council. Some time ago the other place was asked to consider passing a law to abolish elections when there was no Bill saying what would take their place. Therefore, how can the Secretary of State talk about democracy in these matters? There is no ballot for the people to enable them to decide whether they wish to keep those local authority structures. All the polls suggest that they want to keep them. The Secretary of State also talks about greater participation at the place of work. Why are we the only country in Europe that is refusing to implement the Vredling recommendation that there should be more information for working people about their employment conditions?

At the same time the Parliamentary Under-Secretary talks about the political godfathers in the trade unions giving money to the Labour party, but he does not comment on the money that has been given to the Tory party by companies. Some £3·5 million was given last year. The hon. Gentleman does not consider any of those companies to be godfathers. That is the sort of double-talk that we have come to expect from the Government, especially when it was the non-elected chairman of the Tory Party, the hon. Member for Suffolk, Coastal (Mr. Gummer), who implemented the legislation.

We believe that the Government's legislation is an attempt to take us back to the old master-servant relationship. Labour Members believe, as we did in past legislation, in strengthening workplace participation, strengthening collective bargaining within the workplace, and bringing about greater industrial democracy and participation and harmony and co-operation in the workplace.

I want to make this clear to the Secretary of State, because he seemed to get a bit upset about it last time. I endorse the pledge given by my hon. Friend the Member for St. Helen's, North (Mr. Evans) at Question Time on 2 April, that the next Labour Government will repeal Tory anti-trade union legislation and put in its place a new employment protection Act, which we are at present discussing with the trade union movement, emphasising our belief in co-operation rather than in confro[illegible]on for all those at work. There will be many more at work when a Labour Government are returned at the next election.

6.29 pm

Mr. Robert Atkins (South Ribble): I wish to make a brief intervention. I do so as a member for some years of the Association of Scientific, Technical and Managerial Staffs and an office holder in my local branch, and one who has tried to serve on the so-called parliamentary committee of ASTMS, without any success, because it will not allow anyone on it who is not a member of the Labour party.

Secondly, I speak from the privileged position of being national president of Conservative Trade Unionists, an organisation representing a large number of members, as my hon. Friend the Member for Thanet, North (Mr. Gale) said earlier. As a matter of information, we would probably represent the largest block vote at the Trades Union Congress if we chose to exercise it at all, which of course we would not like to do. We have a substantial following. All the officers are elected legitimately within the context of the rules of Conservative Trade Unionists, and there is no reflection upon us of any of the activities that have been observed recently in the Transport and General Workers Union and other unions.

I agree with one point that was made by the right hon. Member for Plymouth, Devonport (Dr. Owen). He criticised the official Opposition for suggesting that they had the inalienable right to represent trade unionists and trade unionism in the parliamentary debate, and particularly in the House. We all know that that is not the case. The majority of trade unionists at the last election, and in the election before that, voted Conservative rather than for the right hon. Gentleman's party. In those circumstances, he cannot gainsay the facts as presented, whether or not he likes them. The facts are that we can speak with as much authority on trade unionism as he can.

The two points that I wish to make are brief. First, the misconceptions represented by the right hon. Member for Plymouth, Devonport have, I think been dealt with extremely well by my right hon. Friend the Minister. It would waste time if I were to go over them in detail. However, they bear repeating in one context only, in that the four safeguards in the Act need emphasising time and again. They are, briefly: a new right for members to complain to the Certification Officer about the arrangements for union elections before as well as after the poll, a new duty on the Certification Officer to investigate the complaint at no expense to the complainant.

Mr. John Evans (St. Helens, North): The hon. Gentleman has already said that.

Mr. Atkins: I emphasise it again because certain people who are not a million miles away appear not to have recognised what is involved.

Next, there is a new requirement that, when a court orders an election to be re-run, it will normally be done by post. Finally, there is a new duty on all unions to compile an up-to-date register of their members' names and addresses so that postal votes can be held. Let us therefore be clear about the four safeguards in the Act.

The hon. Member for St. Helens, North (Mr. Evans) has, I think just lost his standing at the next election as a result of the statements that he has made, which have been

confirmed by his hon. Friend the Member for Kingston upon Hull, East (Mr. Prescott). He has said that he will repeal all the trade union legislation passed by the Conservative party. He is referring to legislation which, if he talks to the trade unionists whom he is supposed to represent, he will find is popular with them, whether in my constituency or in any other, and he knows that that is the truth. That is the kind of approach that will lose him and his party the next election, and he had better recognise it here and now.

It is clear that the Labour party, as usual, has been nobbled by the trade unionists to take a stance which conflicts entirely with what ordinary trade union members believe in in their various trade unions. We observed the other day that at one moment the Leader of the Opposition was in favour of a re-ballot in the TGWU, and then somebody got on the telephone to him and said, "Look, this is not quite on, old boy", so he changed his view, and he is no longer in favour of a re-ballot in the TGWU.

As I said earlier, we have observed the hon. Member for St. Helens, North being supported by that man of principle, the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley), who, perhaps seeing the way that the wind is blowing, has decided that he is now in favour of a new social contract, which means that again trade unionists have been on the telephone to him making it clear where he must stand in the context of the Labour party.

Anybody who appreciates what is involved in this issue knows that the majority of people who are members of trade unions understand only too well that changes need to be made. Where we differ from the right hon. Member for Plymouth, Devonport and his party is that we do not believe that the postal vote system as he annunciates it is the answer. There is a real possibility that the necessary organisation to operate that system would become the sort of quango which the extreme Left within the unions could choose to argue against more easily than it could the views of the members of trade unions which ought to carry more weight.

As my hon. Friend the Member for Surbiton (Mr. Tracey) said, we believe that we should give this legislation a chance. The legislation of 1980, 1982 and 1984 has proved that legislation can be put on the books to cope with some of the difficulties and problems, and, above all, with handing back the trade unions to the members who ought to be participating.

In those circumstances, I believe that the motion of the SDP and the alliance is wrong. The speech of my right hon. Friend the Secretary of State has made it clear why we believe that we are right to adopt the path that we have adopted up to now and will continue to adopt. The statement of the hon. Member for St. Helens, North, supported by all the Johnnies-come-lately in the Labour party, will be a contribution to the Labour party losing the election, and it will not be helped by the antics of the alliance.

Mr. Deputy Speaker: Order. The House will wish to know that the wind-up speeches are expected to begin at a quarter to 7, so time is now very limited.

6.35 pm

Mr. Eric S. Heffer (Liverpool, Walton): I should first like to make the point that, if I live long enough, in three years I shall get a 50-year badge in my trade union. I think that I can speak with some experience of trade unionism at many levels, as an ordinary member, a shop steward and a district committee member, and as having once fought the assistant general secretaryship of my union and almost winning it when I did not want to—but these things happen.

I wish to make one point clear. The hon. Member for South Ribble (Mr. Atkins) suggested that the Government's legislation would give the unions back to their members. As far as I am concerned, the trade unions have always belonged to their members. The Secretary of State made some reference to car parks or suchlike in relation to voting in branches. I have to explain to the Secretary of State that each union has its own different methods of voting. The Amalgamated Society of Woodworkers always voted at a branch, and I will tell the House how we did it. We voted at the branch meeting. There were two tellers and the chairman recorded the vote on the sheet. It was, of course, an individual vote for each person who was standing, so that one received 25 votes and another 50 votes, and that was recorded. At the end of that part of the meeting, the chairman read it back. Therefore, it was on the sheet, read back, recorded in the minutes and sent to the national executive. At the end, we received a booklet which recorded every branch vote for every individual member—the fairest method of voting that I know in the trade union movement because checks took place at every level. I never knew anything different from that in my trade union.

With regard to voting in relation to strikes, I will give a concrete example of workers who did not have a ballot, but who took an action which I think was one of the greatest actions of solidarity that I can remember. The Canadian seamen came into the port of Liverpool, and they walked off their ship on the instructions of their union in Canada. A group of dockers were instructed to work the ship, refused to do so and were suspended. Within three hours, every dock worker in the port of Liverpool and Birkenhead was out on strike and remained on strike while that ship was tied up. It lasted six weeks. They did not get a penny. It was not for themselves; in my view it was purely an act of unselfish solidarity, the likes of which incidentally one does not often see. It was absolutely magnificent. I think that there were a few blue union members around at the time, but in the main they were members of the TGWU.

It is nonsense to say that there is no democracy in the trade union movement. As we all know, fiddles sometimes take place within every organisation. Can any hon. Member say that they do not take place within the Conservative party? I do not know how many votes take place at local level—*[Interruption.]* I understand that there are not any votes. Of course there cannot be any fiddles if people cannot vote. It is as simple as that.

But from time to time, something will go wrong over ballots in any organisation and there will be arguments about it. That is the law of nature. It happens. But it does not mean that the Government must interfere in that organisation's internal affairs. Members of the trade union movement are quite able to deal internally with the difficulties as they arise, as the TGWU and other unions are quite able to do. In all the years, only one exception to that rule is constantly trotted out, involving what was then the Electrical Trade Union.

[Mr. Eric S. Heffer]

The speech of the right hon. Member for Plymouth, Devonport (Dr. Owen) was as bad as that of any Right-wing member of the Tory party, and it made the Secretary of State look like a liberal. It was remarkable. That right hon. Gentleman was once a member of the Labour party and accepted everything that the Labour party could give him. He would not be where he is today if it had not been for the Labour party and the trade unionists and others who worked for him and backed him in the early years of his political life. I say to him as I say to others, "Don't turn your back" — although, of course, he has — "on the people who have sustained you in your political life."

I shall not make a long speech, as I think that my hon. Friend the Member for Kingston upon Hull, North (Mr. McNamara), who is sponsored by the TGWU, also has a right to speak in the debate. Today, the SDP and the Conservative party have once again stressed their basically anti-trade union attitudes. That is what this debate is all about. The move began many years ago with a pamphlet published by a group of Conservative lawyers which was entitled, "A Giant's Strength". They believed that the trade union movement was too powerful, that working people were getting conditions that were too good and they had to be cut down to size. That is what this debate and the legislation is all about, and that is what the right hon. Member for Devonport and the Government wish to do, although perhaps with a slightly different emphasis. They are trying to prevent the trade union movement from fighting for decent conditions and for workers' rights.

Mr. Deputy Speaker: Mr. Penhaligon.

Mr. David Penhaligon (Truro) *rose*——

Mr. McNamara: On a point of order, Mr. Deputy Speaker. Today we have had a statement from the Secretary of State for Employment about my union's procedures. When I sought to intervene in his speech to correct him, he refused to give way. In addition, the right hon. Member for Plymouth, Devonport (Dr. Owen) made scurrilous comments about my trade union without any evidence and did not give me——

Mr. Deputy Speaker: Order. I am not sure what the hon. Gentleman's point of order is.

Mr. McNamara: I was about to come to the point. Perhaps you can tell me, Mr. Deputy Speaker, how there can be a debate which is designed to attack the trade unions without Members who are sponsored by unions being given an opportunity to reply. I remind you that 28 Members are sponsored by the TGWU, which is more than the combined total of alliance party Members.

Mr. Deputy Speaker: I realise that the hon. Gentleman is one of several hon. Members who have been unable to speak in this very short debate, but he is a very experienced Member of Parliament, and I am sure that he will find another way of putting his point on the record.

Mr. Penhaligon *rose*——

Mr. Cyril Smith: Further to that point of order, Mr. Deputy Speaker. Might I suggest that if Labour Members had not attempted to prevent the debate from taking place, and had not carried on for an hour, the hon. Member for Kingston upon Hull, North (Mr. McNamara) might have been able to make his speech?

6.44 pm

Mr. Penhaligon: I always enjoy the speeches of the hon. Member for Liverpool, Walton (Mr. Heffer), because those of us who have been in the House for some time know that he is clearly part of the trade union movement and understands it.

However, it was slightly ironic that the hon. Gentleman should criticise my right hon. Friend the Member for Plymouth, Devonport (Dr. Owen) for changing his party, because I understand that from 1941 to 1948 the hon. Gentleman was a member of the Communist party. I do not say that there is anything wrong with that, but he is not in a particularly strong position to criticise my right hon. Friend for changing his party. Another reason for enjoying the speeches of the hon. Member for Walton is that he now represents the Right-wing of the Liverpool Labour party. That is clearly a mantle which the hon. Gentleman finds extremely difficult to bear in this House.

I should like to clarify several points that have been raised in the debate. The Minister can correct me if I am wrong, but I understand that the executive of the NUM proposes at the July conference to change the rules to make it quite clear that Mr. Scargill does not have a casting vote and so may not be re-elected under the legislation. It was ludicrous of the Minister to claim that the earlier remarks of my right hon. Friend were wrong. The Minister should be well aware that we have always taken the view—and accordingly we abstained from voting on the previous legislation — that although we want strike ballots eventually, the Government's proposals for ballots are not necessarily the best way of achieving that aim. We still think that trigger ballots are best, and much of the criticism of Labour Members about the legislation causing unofficial strikes has some substance to it.

I deal now with the political levy. I listened to what the hon. Member for Newcastle-under-Lyme (Mr. Golding) said, and I do not complain, because what he said is true. If the political levy is voted down, the trade unions will not be able to use money to ask people to vote for Labour candidates. I have a good few farmers in my constituency and, as any hon. Member who has two cows and a pig in his constituency will know, the most effective campaigning group is the National Farmers Union. It does not specifically ask people to vote Tory, but I suspect that behind the scenes it gives a fair bit of encouragement in that direction. As I understand things, the NFU would come within the legislation as currently proposed.

Mr. Golding: Is the hon. Gentleman aware that on the ballot paper it specifically says that money has to come from a political fund if it is spent

"on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate."?

Is the hon. Gentleman further aware that the Post Office Engineering Union found it impossible to persuade the Court of Appeal about our main purpose? We were defending jobs, but we were told that we were political. We lost the case because we could not persuade the court that we were pursuing trade union objectives.

Mr. Penhaligon: I can only suggest that the hon. Gentleman's union should take some advice from the NFU, which has had quite remarkable and, indeed, as a

rural Member of Parliament, I can say, has sometimes caused me slightly embarrassing results for the past two decades.

However, I shall move on as there are only 12 minutes left in which to speak. I still believe that workplace ballots have something to recommend them. The problem is that for such ballots to be seen to be above question there must be a system of independent scrutineers. That is my view, and it is the position that I have taken for some considerable time.

Mr. McNamara *rose*——

Mr. Penhaligon: There is not time—there are 11 minutes to go.

I also take the view that the provision of independent scrutineers at all workplace ballots for great unions like the TGWU is a total impossibility in terms of resources and money. To take my own constituency, to offer scrutinised ballots the TGWU would have to employ the entire staff who man a general election. I do not believe that that is possible and realistic, and therefore I am opposed to workplace ballots as currently constituted.

Clearly, the scrutineering is being done by parties which often have a very clear, firm view themselves. As I understand the legislation to be enacted in October of this year, that position will not change. If there is a ballot at a workplace, the scrutineers are likely to be the most partisan people in the entire campaign, because the chances are that they will be the leaders of the union. The Government are allowing that to continue and it is rather like, at a general election, allowing the Labour party to run the ballot in Durham, the Tories that in Surrey or the Liberals—to show that I am broadminded—that in Truro. I do not think that any of them would be the first person to spring to mind to run an absolutely independent, above-board election in any of those areas. It is my view that sheer partisanship is bound to affect a minority and that it is bound to use the opportunities available. I believe that for a minority the temptation will be just too strong.

What is required are postal ballots with a register of members, and it is to the credit of the Government that at least eventually they will produce a register of members. The postal paper ballot should be sent to the members, and the individual members should send them to an independent agent. Anything less than that is open to adjustment.

Many of us recognise that some genuine ballots take place within the NUM, but one of the ironies—and this takes some explaining—is that at every important NUM ballot that I can recall since I have been a Member of Parliament we have been told the result, except when it has been a very close call, before the ballots have gone to the Electoral Reform Society for counting. That clearly means that somebody has been looking at the ballots and counting them. I am not saying that they have been adjusted, but occasionally the temptation so to do must be too much for the independent agent.

It is worth remembering that in the demonstration that took place it was by and large the most enthusiastic union members who sat on this Bench and denied my right hon. Friend the Member for Devonport the opportunity to make his speech, and that they are the independent scrutineers whom the unions normally appoint. The truth is that the reliability of the trade unions in carrying out an absolutely independent, above-board ballot has fallen into disrepute.

The claim that 98 per cent. of the members of the TGWU and a whole series of unions voluntarily pay their political levy is quite incredible. The amazing situation that we now have is that the Labour party is arguing for the trade unions to maintain the position that is currently favourable to it, and the Government are coming to its defence in that. It is time that the Government recognised the logic of this motion and that Government Members voted for it.

6.55 pm

The Parliamentary Under-Secretary of State for Employment (Mr. Peter Bottomley): I suspect that if the hon. Member for Truro (Mr. Penhaligon) had been able to draft this motion, he would have put down a slightly different one. He has given a rather more acceptable face to it than did the right hon. Member for Plymouth, Devonport (Dr. Owen).

The leader of the SDP went through the first half-hour of what ought to have been this debate in a spirit of good humour and tolerance and I would like to recognise that. What we saw at the beginning of this debate was the kind of behaviour that some complain of at trade union branch meetings and others have experienced at Labour party meetings. When this happens anywhere, we ought to condemn rather than support it.

Mr. Evans: Will the hon. Gentleman give way?

Mr. Bottomley: No, I will not.

One reason why this debate is so important is the shoe that was not dropped by the hon. Member for Kingston upon Hull, East (Mr. Prescott). He did not talk much about political review ballots and the reason is that he knows that about 80 per cent. of that money goes to the Labour party and those who are not in the Labour party have a vested interest in stopping it. That is open and above board. What seems to me important is that, while people are saying things which are not right about the review ballots—one example was given in the SOGAT journal and others are in the TGWU *Record*, as the hon. Member for Kingston upon Hull, North (Mr. McNamara) could have said—there has been very little media interest in what union journals are saying. I think that they might go through the list of unions with a political fund, as in the cerfication officer's report on SOGAT and get in touch with the editors of the jornals and ask if they believe what they are saying. When they give examples of what they claim requires political funds, they ought to ask whether that activity has in the past been funded by political funds or by the general fund. I suspect that that way we would get many more people participating in the review ballots and I suspect that we would see some of the funds go.

I want to give a bit of advice to bank managers who are financing the political funds that are in deficit. They ought to be very careful about these, because if a union cuts off its poliical fund, the bank will be unable to get the money from any other part of union funds. That is one of the things that they ought to start looking at.

On the question whether we should have only postal ballots in this whole field, we need first of all to see what sort of employment protection Act we are promised by the Labour party. Are they going to keep the political fund review process? Are they going to keep regular elections for members of the executive of unions?

Mr. Evans: I do not know what the party's policy is yet, because we are having discussions with the trade

[Mr. Evans]

unions. However, I can tell the hon. gentleman and the Tory party what I want. I want to abolish the necessity for trade unions to have political funds.

Mr. Bottomley: We will see. It is quite clear—this runs right across the political spectrum from Ron Todd to the Leader of the SDP—that unions need to demonstrate that their affairs are in order. As Ron Todd himself has said, to have unity, trust and confidence, there must be election systems which people do not and cannot tamper with. To balance that with the sort of participation rates which my right hon. Friend was talking about requires discussion and debate not only in the House but outside. It is the sort of subject that the House can return to with advantage so that we do not just have the sort of demonstrations that, sadly, we have seen today. We should hear from the Labour party and from people such as my hon. Friend the Member for Gainsborough and Horncastle (Mr. Leigh) and the hon. Member for Kingston upon Hull, North and get the kind of participation in union affairs which is essential. That is the only way that trade union activists can represent the interests of their members and increase interest in the unions.

There is no need for union leaders to be political godfathers. The normal and ultimately the natural posture of the trade union movement is one of neutrality towards each political party and co-operation with the Government in office. That doubles their influence. When there are trade union leaders who can demonstrate that they have the widespread support of their members, they are likely to be taken more seriously in all parts of the House and not just by those who want to barrack to get all points of view other than their own submerged in the sort of demonstration that we have seen today.

It is quite clear that trade union ballots and elections will never be the same again. Even in the Transport and General Workers Union, of which I am a member—

Ms. Clare Short (Birmingham, Ladywood): Who did you vote for?

Mr. Bottomley: I did not vote this time, because it would have been a vote for the Labour party.

It is quite clear that, with political funds fairly run and with fair national executive elections, it is inconceivable that the general secretary should be elected in a different way. It is important to note that higher participation in union votes and elections is likely to result in a trade union movement that serves the interests of its members. Parliament will then serve the interests of trade unions.

Question put, That the original words stand part of the Question:—

The House divided: Ayes 25, Noes 374.

Divison No. 191] **[7 pm**

AYES

Ashdown, Paddy
Beith, A. J.
Bruce, Malcolm
Carlile, Alexander *(Montg'y)*
Dunwoody, Hon Mrs G.
Freud, Clement
Gregory, Conal
Hancock, Mr. Michael
Howells, Geraint
Hughes, Simon *(Southwark)*
Johnston, Russell
Kennedy, Charles
Kirkwood, Archy
Leigh, Edward *(Gainsbor'gh)*
Maclennan, Robert
Owen, Rt Hon Dr David
Penhaligon, David
Prentice, Rt Hon Reg
Sheerman, Barry
Short, Mrs R.*(W'hampt'n NE)*
Smith, Cyril *(Rochdale)*
Steel, Rt Hon David
Wainwright, R.
Wallace, James
Wrigglesworth, Ian

Tellers for the Ayes:

Mr. John Cartwright
Mr. Michael Meadowcroft.

NOES

Aitken, Jonathan
Alison, Rt Hon Michael
Amess, David
Ancram, Michael
Anderson, Donald
Archer, Rt Hon Peter
Arnold, Tom
Ashby, David
Ashley, Rt Hon Jack
Aspinwall, Jack
Atkins, Rt Hon Sir H.
Atkins, Robert *(South Ribble)*
Atkinson, N. *(Tottenham)*
Baker, Nicholas *(N Dorset)*
Baldry, Tony
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Batiste, Spencer
Beaumont-Dark, Anthony
Beckett, Mrs Margaret
Bell, Stuart
Bellingham, Henry
Benn, Tony
Benyon, William
Best, Keith
Blackburn, John
Blair, Anthony
Blaker, Rt Hon Sir Peter
Boothroyd, Miss Betty
Boscawen, Hon Robert
Bottomley, Peter
Bottomley, Mrs Virginia
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyes, Roland
Brandon-Bravo, Martin
Bray, Dr Jeremy
Bright, Graham
Brinton, Tim
Brittan, Rt Hon Leon
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Bryan, Sir Paul
Buchanan-Smith, Rt Hon A.
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Butcher, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlisle, John *(N Luton)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Channon, Rt Hon Paul
Chope, Christopher
Clark, Dr David *(S Shields)*
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Clarke, Rt Hon K. *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Clwyd, Mrs Ann
Cockeram, Eric
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Concannon, Rt Hon J. D.
Conway, Derek
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Coombs, Simon
Cope, John
Corbett, Robin
Cormack, Patrick
Couchman, James
Cowans, Harry
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Currie, Mrs Edwina
Davies, Rt Hon Denzil *(L'lli)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dickens, Geoffrey
Dixon, Donald
Dormand, Jack
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Durant, Tony
Dykes, Hugh
Eadie, Alex
Eggar, Tim
Emery, Sir Peter
Evans, John *(St. Helens N)*
Evennett, David
Eyre, Sir Reginald
Fallon, Michael
Fatchett, Derek
Faulds, Andrew
Favell, Anthony
Fenner, Mrs Peggy
Fields, T. *(L'pool Broad Gn)*
Fletcher, Alexander
Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Forsyth, Michael *(Stirling)*
Forth, Eric
Foster, Derek
Foulkes, George
Fowler, Rt Hon Norman
Fox, Marcus
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Gale, Roger
Galley, Roy
Gardiner, George *(Reigate)*
Garel-Jones, Tristan
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Glyn, Dr Alan
Godman, Dr Norman
Golding, John
Goodhart, Sir Philip
Gould, Bryan
Gow, Ian
Gower, Sir Raymond
Greenway, Harry
Griffiths, Peter *(Portsm'th N)*
Hamilton, Hon A. *(Epsom)*
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hanley, Jeremy
Hannam, John
Hargreaves, Kenneth

Harman[illegible] Harriet
Harris, David
Harrison, Rt Hon Walter
Harvey, Robert
Haselhurst, Alan
Hayes, J.
Hayhoe, Barney
Haynes, Frank
Heathcoat-Amory, David
Heddle, John
Heffer, Eric S.
Hickmet, Richard
Hicks, Robert
Higgins, Rt Hon Terence L.
Hind, Kenneth
Hirst, Michael
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Sir Philip *(Gedling)*
Holland, Stuart *(Vauxhall)*
Holt, Richard
Home Robertson, John
Hordern, Peter
Howarth, Alan *(Stratf'd-on-A)*
Howell, Ralph *(N Norfolk)*
Hoyle, Douglas
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hume, John
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Irving, Charles
Jackson, Robert
John, Brynmor
Johnson Smith, Sir Geoffrey
Jones, Barry *(Alyn & Deeside)*
Kaufman, Rt Hon Gerald
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
King, Rt Hon Tom
Kinnock, Rt Hon Neil
Knight, Gregory *(Derby N)*
Knowles, Michael
Knox, David
Lambie, David
Lang, Ian
Lawler, Geoffrey
Lawrence, Ivan
Lee, John *(Pendle)*
Leighton, Ronald
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lightbown, David
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lord, Michael
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCrindle, Robert
McCurley, Mrs Anna
McDonald, Dr Oonagh
Macfarlane, Neil
McKay, Allen *(Penistone)*
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclean, David John
McNamara, Kevin
McQuarrie, Albert
McTaggart, Robert
McWilliam, John
Madden, Max
Major, John
Malins, Humfrey
Malone, Gerald
Maples, John
Marek, Dr John
Marland, Paul
Marshall, David *(Shettleston)*
Marshall, Michael *(Arundel)*
Martin, Michael
Mason, Rt Hon Roy
Mates, Michael
Mather, Carol
Maude, Hon Francis
Mawhinney, Dr Brian
Maxton, John
Maxwell-Hyslop, Robin
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Mellor, David
Merchant, Piers
Michie, William
Mikardo, Ian
Miller, Hal *(B'grove)*
Mills, Iain *(Meriden)*
Mills, Sir Peter *(West Devon)*
Mitchell, Austin *(G't Grimsby)*
Mitchell, David *(NW Hants)*
Moate, Roger
Montgomery, Sir Fergus
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morrison, Hon C. *(Devizes)*
Neale, Gerrard
Nelson, Anthony
Newton, Tony
Nicholls, Patrick
Normanton, Tom
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Oppenheim, Rt Hon Mrs S.
Orme, Rt Hon Stanley
Ottaway, Richard
Page, Richard *(Herts SW)*
Park, George
Parkinson, Rt Hon Cecil
Parris, Matthew
Patchett, Terry
Pavitt, Laurie
Pawsey, James
Peacock, Mrs Elizabeth
Pendry, Tom
Pike, Peter
Pollock, Alexander
Porter, Barry
Portillo, Michael
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Powley, John
Prescott, John
Price, Sir David
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Rees, Rt Hon Peter *(Dover)*
Richardson, Ms Jo
Ridley, Rt Hon Nicholas
Rifkind, Malcolm
Roberts, Ernest *(Hackney N)*
Roberts, Wyn *(Conwy)*
Robertson, George
Roe, Mrs Marion
Rooker, J. W.
Rost, Peter
Rowe, Andrew
Rowlands, Ted
Rumbold, Mrs Angela
Ryder, Richard
Ryman, John
Sackville, Hon Thomas
Sedgemore, Brian
Shaw, Giles *(Pudsey)*
Shaw, Sir Michael *(Scarb')*
Sheerman, Barry
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Silvester, Fred
Skeet, T. H. H.
Skinner, Dennis
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soley, Clive
Spearing, Nigel
Spicer, Michael *(S Worcs)*
Stern, Michael
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stott, Roger
Strang, Gavin
Sumberg, David
Tebbit, Rt Hon Norman
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thompson, Donald *(Calder V)*
Thompson, J. *(Wansbeck)*
Thorne, Neil *(Ilford S)*
Thorne, Stan *(Preston)*
Tinn, James
Torney, Tom
Twinn, Dr Ian
Vaughan, Sir Gerard
Wakeham, Rt Hon John
Walker, Bill *(T'side N)*
Waller, Gary
Warren, Kenneth
Watson, John
Watts, John
Weetch, Ken
Wells, Bowen *(Hertford)*
Wells, Sir John *(Maidstone)*
Welsh, Michael
White, James
Whitfield, John
Wiggin, Jerry
Williams, Rt Hon A.
Winnick, David
Winterton, Mrs Ann
Winterton, Nicholas
Wood, Timothy
Woodcock, Michael
Yeo, Tim
Young, David *(Bolton SE)*

Tellers for the Noes:
Mr. Michael Neubert and
Mr. Tim Sainsbury.

Question accordingly negatived.

Question, That the proposed words be there added, *put forthwith pursuant to Standing Order No. 33 (Questions on amendments).*

The House divided: Ayes 224, Noes 167.

Division No. 192] **[7.15 pm**

AYES

Aitken, Jonathan
Alison, Rt Hon Michael
Amery, Rt Hon Julian
Amess, David
Ancram, Michael
Ashby, David
Aspinwall, Jack
Atkins, Rt Hon Sir H.
Atkins, Robert *(South Ribble)*
Baker, Nicholas *(N Dorset)*
Baldry, Tony
Batiste, Spencer
Beaumont-Dark, Anthony
Bellingham, Henry
Benyon, William
Best, Keith
Blackburn, John
Blaker, Rt Hon Sir Peter
Boscawen, Hon Robert
Bottomley, Peter
Bottomley, Mrs Virginia
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Brandon-Bravo, Martin
Bright, Graham
Brinton, Tim
Brittan, Rt Hon Leon
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Bryan, Sir Paul
Buchanan-Smith, Rt Hon A.
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Butcher, John
Carlisle, John *(N Luton)*
Carlisle, Kenneth *(Lincoln)*
Channon, Rt Hon Paul
Chope, Christopher
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Clarke, Rt Hon K. *(Rushcliffe)*
Cockeram, Eric
Conway, Derek
Coombs, Simon
Cope, John
Cormack, Patrick
Couchman, James
Critchley, Julian
Crouch, David
Currie, Mrs Edwina
Dickens, Geoffrey
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Durant, Tony
Dykes, Hugh
Eggar, Tim
Emery, Sir Peter
Evennett, David
Eyre, Sir Reginald
Fallon, Michael
Favell, Anthony
Fenner, Mrs Peggy
Fletcher, Alexander
Fookes, Miss Janet
Forman, Nigel
Forsyth, Michael *(Stirling)*
Forth, Eric
Fowler, Rt Hon Norman

Fox, Marcus
Franks, Cecil
Fraser, Peter *(Angus East)*
Freeman, Roger
Gale, Roger
Galley, Roy
Gardiner, George *(Reigate)*
Garel-Jones, Tristan
Gilmour, Rt Hon Sir Ian
Glyn, Dr Alan
Goodhart, Sir Philip
Gow, Ian
Gower, Sir Raymond
Greenway, Harry
Griffiths, Peter *(Portsm'th N)*
Hamilton, Hon A. *(Epsom)*
Hanley, Jeremy
Hannam, John
Hargreaves, Kenneth
Harris, David
Harvey, Robert
Haselhurst, Alan
Hayes, J.
Hayhoe, Barney
Heathcoat-Amory, David
Heddle, John
Hickmet, Richard
Hicks, Robert
Higgins, Rt Hon Terence L.
Hind, Kenneth
Hirst, Michael
Holland, Sir Philip *(Gedling)*
Holt, Richard
Howarth, Alan *(Stratf'd-on-A)*
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Irving, Charles
Jackson, Robert
Johnson Smith, Sir Geoffrey
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
King, Rt Hon Tom
Knight, Gregory *(Derby N)*
Knowles, Michael
Knox, David
Lawler, Geoffrey
Lawrence, Ivan
Lee, John *(Pendle)*
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lightbown, David
Lilley, Peter
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lord, Michael
Luce, Richard
Lyell, Nicholas
McCrindle, Robert
McCurley, Mrs Anna
Macfarlane, Neil
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
Maclean, David John
McQuarrie, Albert
Malins, Humfrey
Malone, Gerald
Maples, John
Marland, Paul
Marshall, Michael *(Arundel)*
Mates, Michael
Mather, Carol
Maude, Hon Francis
Mawhinney, Dr Brian
Maxwell-Hyslop, Robin
Mayhew, Sir Patrick
Mellor, David
Merchant, Piers
Miller, Hal *(B'grove)*
Mills, Iain *(Meriden)*
Mills, Sir Peter *(West Devon)*
Mitchell, David *(NW Hants)*
Moate, Roger
Montgomery, Sir Fergus
Morrison, Hon C. *(Devizes)*
Neale, Gerrard
Nelson, Anthony
Neubert, Michael
Newton, Tony
Nicholls, Patrick
Normanton, Tom
Onslow, Cranley
Oppenheim, Rt Hon Mrs S.
Ottaway, Richard
Page, Richard *(Herts SW)*
Parkinson, Rt Hon Cecil
Parris, Matthew
Pawsey, James
Pollock, Alexander
Porter, Barry
Portillo, Michael
Powell, William *(Corby)*
Powley, John
Price, Sir David
Proctor, K. Harvey
Pym, Rt Hon Francis
Rathbone, Tim
Rees, Rt Hon Peter *(Dover)*
Ridley, Rt Hon Nicholas
Rifkind, Malcolm
Roberts, Wyn *(Conwy)*
Roe, Mrs Marion
Rost, Peter
Rowe, Andrew
Rumbold, Mrs Angela
Ryder, Richard
Sackville, Hon Thomas
Sainsbury, Hon Timothy
Shaw, Giles *(Pudsey)*
Shaw, Sir Michael *(Scarb')*
Silvester, Fred
Skeet, T. H. H.
Spicer, Michael *(S Worcs)*
Stern, Michael
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Sumberg, David
Tebbit, Rt Hon Norman
Thomas, Rt Hon Peter
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Twinn, Dr Ian
Vaughan, Sir Gerard
Wakeham, Rt Hon John
Walker, Bill *(T'side N)*
Waller, Gary
Warren, Kenneth
Watson, John
Watts, John
Wells, Bowen *(Hertford)*
Wells, Sir John *(Maidstone)*
Whitfield, John
Wiggin, Jerry
Winterton, Mrs Ann
Winterton, Nicholas
Wood, Timothy
Woodcock, Michael
Yeo, Tim

Tellers for the Ayes:
Mr. John Major and
Mr. Ian Lang.

NOES

Anderson, Donald
Archer, Rt Hon Peter
Ashdown, Paddy
Ashley, Rt Hon Jack
Atkinson, N. *(Tottenham)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Benn, Tony
Blair, Anthony
Boothroyd, Miss Betty
Boyes, Roland
Bray, Dr Jeremy
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Bruce, Malcolm
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carter-Jones, Lewis
Clark, Dr David *(S Shields)*
Clarke, Thomas
Clay, Robert
Clwyd, Mrs Ann
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Concannon, Rt Hon J. D.
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Corbett, Robin
Cowans, Harry
Craigen, J. M.
Crowther, Stan
Cunliffe, Lawrence
Davies, Rt Hon Denzil *(L'lli)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dormand, Jack
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Eadie, Alex
Evans, John *(St. Helens N)*
Fatchett, Derek
Faulds, Andrew
Fields, T. *(L'pool Broad Gn)*
Foot, Rt Hon Michael
Forrester, John
Foulkes, George
Fraser, J. *(Norwood)*
Freud, Clement
George, Bruce
Gilbert, Rt Hon Dr John
Godman, Dr Norman
Gould, Bryan
Gourlay, Harry
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hancock, Mr. Michael
Harman, Ms Harriet
Harrison, Rt Hon Walter
Haynes, Frank
Heffer, Eric S.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Howells, Geraint
Hoyle, Douglas
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Simon *(Southwark)*
Hume, John
John, Brynmor
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kinnock, Rt Hon Neil
Kirkwood, Archy
Lambie, David
Leighton, Ronald
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Litherland, Robert
Loyden, Edward
McCartney, Hugh
McDonald, Dr Oonagh
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
McNamara, Kevin
McTaggart, Robert
McWilliam, John
Madden, Max
Marek, Dr John
Marshall, David *(Shettleston)*
Martin, Michael
Mason, Rt Hon Roy
Maxton, John
Maynard, Miss Joan
Meacher, Michael
Michie, William
Mikardo, Ian
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Patchett, Terry
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Raymond *(Ogmore)*
Prescott, John
Radice, Giles
Randall, Stuart
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Richardson, Ms Jo
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Rowlands, Ted
Ryman, John
Sedgemore, Brian
Sheerman, Barry
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, Rt Hon J. *(M'kl'ds E)*
Snape, Peter
Soley, Clive
Spearing, Nigel
Steel, Rt Hon David
Stewart, Rt Hon D. *(W Isles)*
Stott, Roger
Strang, Gavin
Thomas, Dafydd *(Merioneth)*
Thompson, J. *(Wansbeck)*
Thorne, Stan *(Preston)*
Tinn, James
Torney, Tom
Wainwright, R.

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CONFIDENTIAL

PRIME MINISTER

SELECTIVE ACTION

At the conclusion of our discussion in Cabinet on 7 March about the teachers' dispute, I was invited to review the scope for effective Government action to counter selective strikes and to consider the possible need for further changes in the law.

The attached note, on which the Law Officers were consulted, examines these questions. In addition, I am getting further details on the approach adopted in certain other countries. I will write further if this produces anything of particular value or suggests further options.

This note identifies three main legislative options:

(i) the withdrawal of immunity from all selective action as such;

(ii) the withdrawal of immunity from all industrial action, including selective action, in employments where selective action is most prevalent or damaging;

(iii) the provision of a statutory right for employers to lay-off without pay employees whose work is to any degree affected by the industrial action of other employees.

The third of these options, which we have considered before, would be of no practical assistance in combating industrial action of the kind being experienced in

schools, where the need is to encourage the maximum number of teachers to remain at work and, if possible, cover for teachers taking industrial action. But there could be circumstances, albeit relatively rare, in other employments in which an employer's statutory right to abrogate contractual terms unilaterally might prove a useful tactical weapon.

The other options involve complex issues and neither is free of serious objection. However, although it raises a number of particular difficulties which extend beyond industrial relations considerations, I have included a variant to the second option which would involve legislating to withdraw immunity from interference with the performance of a statutory duty. This could allow, for example, parents of school children to sue the organisers of industrial action in schools. I am examining this possibility further against the very wide range of statutory duties imposed on local government, other public authorities, nationalised industries and Ministers.

While these steps through legislation all have problems, what is clear is that there are a whole range of steps available now that could readily be taken, including dismissal, if the employer is determined to combat selective action. We have recognised the reluctance of employers in this dispute to take such action, not least I believe because of the totally unsatisfactory position about teachers' contracts. I believe we must make a real effort to put this right, and thus ensure in the future that industrial action short of a strike, even if conducted on a selective basis, exposed individual teachers and their unions to the full weight of existing sanctions, subject only to their employers' willingness to apply them.

SECRETARY OF STATE FOR EMPLOYMENT

CONFIDENTIAL

+ Env. LPs

I am copying this minute to the Chancellor of the Exchequer, the Secretaries of State for Education, Scotland, Wales and Northern Ireland, the Attorney General, the Lord Advocate, the Solicitor General and to Sir Robert Armstrong.

T K

19 April 1985

CONFIDENTIAL

SELECTIVE ACTION

This note, with the industrial action being taken by teachers in Scotland and England and Wales very much in mind, considers the forms selective action can take, the sanctions now available to employers and further legislative options.

A. The problem

2 "Selective action" means that at any one time only a minority of employees involved in a dispute take industrial action while the remainder work normally. This action can take two main forms:-

(i) a small group of "key workers" (eg computer operators) go on continuous strike or take other action and cause disruption to the employer's business which is wholly disproportionate to their number; the result can be that normal work of the non-striking majority of employees is disrupted and their output affected whilst the employer may nonetheless be contractually bound to pay their wages;

(ii) "rotating industrial action", whereby different groups of workers are called out at different times, or the same groups take action from time to time.

Some of the current industrial action in schools is selective action of the second type, but the "withdrawal of goodwill" and the refusal to undertake "voluntary duties", the most damaging forms of disruption in the current disputes, do not in themselves constitute selective action though of course

they may be applied selectively. Whether or not they are so applied, the way of proceeding for the employer may be in tightening the contracts of employment of those concerned.

3 Both forms of selective action have the effect of minimising the cost of striking to both the union and the employees in dispute. The "key worker" form, although relatively rare, is more common in the private sector where loss of production is likely to be the employers' predominant concern. "Rotating industrial action" is more likely to occur in the public services, where trade unions may be concerned not to appear responsible for disrupting services to the public totally and judge that it is unlikely to be possible to have a significant proportion of the employees concerned on continuous strike.

4 Selective action has not been generally adopted as a tactic of industrial action. It is largely confined to white collar employment: in recent years there have been instances in the Civil Service, British Telecom and the NHS. It is more difficult to organise in manual employment where substitution of workers is easier and where the tradition is one of "all-out", "solid" action. The need for unions to minimise the cost of striking has tended to be more pressing in white collar employment where individual financial obligations and the consequences of loss of earnings may be greater than in manual employment. Selective action may also be easier to organise where traditions of striking are not well established and unions have to rely on the enthusiasm and commitment of minorities.

B. Existing sanctions against selective action

5 The most obvious and immediate sanction against strike action, selective or otherwise, is to withhold all salary payments from all the employees involved, possibly with a consequent effect on pension and holiday entitlements.

6 Additionally there is a wide range of other sanctions against individual employees all of which can be available to the employer:-

(i) selective action (including action short of a strike) in breach of contracts of employment may be grounds for dismissal with loss of all contractual and statutory rights: S.9 of the Employment Act 1982 has made it easier for employers to dismiss groups of strikers without risk of claims of unfair dismissal;

(ii) dismissed employees could be offered re-employment only under new contracts (eg specifying that covering for absent colleagues, collaboration with curriculum development etc are contractual obligations);

(iii) employees can be suspended without pay on a refusal to work in accordance with their contracts of employment or until they are prepared to give an undertaking to do so;

(iv) deductions from pay can be made in respect of any work not performed, eg for refusal to cover for absent colleagues (subject to any express or implied contractual provisions to the contrary).

7 It is also, following the Trade Union Act 1984, open to employers to take legal action against any union which organises industrial action in breach of contracts of employment without first securing majority support in a secret ballot.

8 other sanctions available to a determined employer include the withdrawal of check-off facilities (for the collection of union subscriptions by automatic deductions from pay) which, if not reinstituted after the dispute can weaken union organisation permanently and a decision that striking will be taken into account in considering individual suitability for promotion to management posts, which can be a powerful deterrent in some white-collar employment.

C. Legislative options

9 The analysis of the problem in paragraphs 2 to 4 shows that, leaving aside the creation of criminal offences in view of the substantial difficulty of involving the criminal law in industrial relations, the three main legislative options available are:-

(1) to legislate in respect of selective action, whether generally or in relation to specific occupations;

(2) to legislate to outlaw industrial action selective or otherwise in areas where selective action is most prevalent and damaging; or

(3) to give employers powers that will ameliorate the effect of selective action if it were decided that options (1) and (2) should not be pursued.

Option (1) - legislation in respect of selective action

10 The first option is to remove immunity from suit for organising any selective action whilst retaining immunity for all-out action. It would be necessary to frame the legislation so that it did not penalise local action in furtherance of a purely local dispute. Whilst it is not impossible to legislate to create that result, its interpretation by the courts would be uncertain and could produce perverse results.

11 Obtaining evidence could be difficult in the case of "key workers" selective action. It would be necessary to prove that employees concerned were the torch bearers for the membership as a whole and not merely striking on their own behalf. In the case of rotating selective action the evidence would, in most cases, be obtainable over time. However, in cases where there are a number of employers, eg teachers, it would not be easy for individual employers to prove rotating action since the dispute could be represented (to the courts) as a series of local disputes rather than as part of a national dispute particularly if employers were chosen with whom there was some sort of local dispute.

12 The advantage of this option is that it would force unions and their members, if they decided to resort to strike action at all, to bear straight away the cost and hardship of all-out action. This could reduce both their readiness to embark on strike action and their ability to sustain it and thus produce a more moderate and realistic posture in negotiations.

13 Its disadvantages are, first, the considerable problems of definition and uncertainty of legal interpretation mentioned in paragraph 10. Second, although its objective is clearly to remove from the armoury of the unions a weapon which can prove very effective in that it hurts employers at little cost to themselves, it would be very difficult to find any ground of principle upon which to justify it. Third it may have the effect (and is likely to be perceived as intended to have the effect) of escalating industrial disputes which could otherwise be contained in a limited compass. It could therefore result in the odium for the hardship and damage caused to the public being transferred from the unions to the Government. The result would be that it would be lawful for teachers' unions to organise industrial action which closed all schools, but not lawful to organise action which closed only some schools or parts of schools. This would be difficult to defend. Furthermore, legislation which had this effect might not prove attractive to many employers who could not afford to risk all-out action. These employers might therefore be reluctant ever to use the legislation, a reaction which would inevitably bring it into disrepute and lead to demands for further, more effective, measures.

Option (2) - legislation to remove immunity from suit from organising industrial action in specified occupations selective or otherwise

14 The occupations chosen should be those where selective action is most prevalent or damaging. In principle there are two ways of defining the employees involved. The first is to refer to employees in a class of occupations. An example would be employees in occupations of special importance, including perhaps teachers. This criterion would not coincide

with the boundary between the public and private sectors and would involve considerable definitional problems.

15 The second way would be to link removal of immunity from suit to breach of, or interference with, the performance of a statutory duty. There is already some authority, admittedly only obiter, for the view that trade unions are acting unlawfully if they cause an employer to break or interfere with the performance of his statutory duty, though there is no precedent for members of the public successfully suing trade unions on these grounds. As the law stands at present, the specific nature and scope of this potential liability must remain uncertain and speculative until the matter is fully tested in the courts (see Annex attached).

16 One possibility would be to provide specifically in legislation that there is no immunity from suit for inducing the breach of a contract of employment where the effect is to interfere with the performance of a statutory duty. Since the effect would be to withdraw immunity from inducing breach of contract only the employer and those who had contracts with the employer would be in a position to sue. As public services are rarely if ever provided under contract to those who receive the services and since employers are often reluctant to sue, a further possibility would be to create a right for members of the public (eg parents of school children) to sue the organisers of industrial action - whether selective or general - in services which are operated under a statutory duty if they are deprived of those services by the industrial action. The intention would be to give members of the public the same sort of rights that an employer has if he suffers economic loss as a result of an unlawful strike. From the point of view of a trade union the effect would be to

increase enormously the number of directions from which it might be sued.

17 In both cases there would have to be some restriction on the range of statutory duties whose performance was to be protected in this way because there is a great deal of legislation which imposes duties on public, and private, bodies which would not justify the loss of immunity (providing the other criteria relating to secret ballots, etc had been satisfied). Conversely there would have to be some enlargement of the concept of "statutory duty" since there are some essential services that are not performed under statutory powers.

18 Assessment. This option either as set out in para 14 or in the two possibilities outlined in para 16 would be the strongest response of any considered in this note. It would expose union funds to potentially ruinous legal action for organising industrial action, selective or otherwise, over much of the public sector and perhaps also parts of the private sector. It would be seen as removing the "right to strike" from many employees in the public sector. It would therefore raise the formidable issue of whether it would be necessary to provide alternative methods for determining pay and resolving disputes (eg mandatory arbitration) as are available to other groups, such as the police and armed forces, whose ability to take industrial action is specifically limited by legislation.

19 In addition the posssibility of allowing members of the public to sue in the event of breach of statutory duty, while providing a firm basis of principle for curtailing "the right to strike", would involve a number of special problems. It

would, in particular, be difficult to justify giving members of the public a right to sue a trade union for organising a strike which prevented the performance of a public service but not a right to sue the provider of the service if its disruption was the result of managerial failure. Legislation which established the concept that the public have a right to the provision of health or education services (or the supply of gas, water or electricity) could have ramifications well beyond the field of industrial action, let alone the specific issue of selective action. These would require very careful consideration.

Option (3)

20 The third option is to provide a statutory right for employers to lay off (without pay) employees whose work is in any way affected by industrial action, regardless of their current statutory and contractual rights.

21 This option has been sought by some employers (eg the newspaper proprietors, the EEF) who can be left to pay the wages of employees if "key workers" take industrial action which disrupts their business. In the main, most manual workers can in fact be laid off in such circumstances, subject to anything to the contrary in their contracts of employment. But non-manual workers generally have a right to wages, unless they refuse to undertake work which they can be contractually required to do (even if this is work normally undertaken by the strikers). A statutory right to lay off is less likely to be a solution to the problem of "rotating industrial action" - particularly where (as in schools) the effect is not that there is no work for the available employees but that there is too much work for those who are willing to work. Thus far in

the public services generally (eg the Civil Service, the NHS) the onset of selective action has meant that managements have needed to rely on the willingness of other employees to work exceptionally to maintain the service. Their lay off would have been counter-productive. There is also the difficulty of principle in legislating to allow one party to a contract to abrogate its terms unilaterally.

Conclusion

22 There is a wide range of sanctions available to employers who are prepared to penalise employees who take selective action or who refuse to do the work of fellow employees who are on strike. These depend on the willingness of employers to use them and may, in some cases, require more tightly-drawn contracts of employment. (paragraphs 5-8).

23 Legislation to remove trade union immunity specifically from organising selective action (which already has to pass all the current legislative tests, including a secret ballot, if it is to have immunity) would be problematic in its effects and would depend on the willingness of the employers concerned to sue the unions which organise the action (paragraphs 10-13).

24 Removing immunity from organising industrial action general or selective (eg in schools) - however it was achieved - would not add to the sanctions which can now be imposed on individual employees, but would expose union funds to fines or claims for damages if industrial action were induced. The problem then to be faced would be the substitution of collective bargaining arrangements by new machinery to settle issues and establish terms and conditions of employment, eg unilateral access to binding arbitration (paragraphs 14-18).

25 Additionally legislation based on a possible tort of interference with the performance of statutory duty, while extending the range of those who could sue, would create problems outside the area of industrial relations (paragraph 19).

26 An ability to lay off without pay employees who were not themselves taking industrial action would not generally provide a useful remedy and could be counter-productive (paragraphs 20-21).

ANNEX

BREACH OF STATUTORY DUTY

1. As mentioned in para 15 of the paper there is some authority for the view that trade unions are acting unlawfully if they cause an employer to break, or otherwise interfere with the performance of, his statutory duty. This is based largely on the obiter dicta of Lord Denning MR in Meade v Harringey BC (1979) and in Associated Newspapers Ltd v Wade (1979) (see below).

2. There is however no precedent for members of the public successfully suing trade unions on these grounds. The specific nature and scope of this potential liability must be speculative and the extent to which it could provide a remedy against industrial action in services subject to a statutory duty is likely to remain unclear until the matter is tested in the courts. Potentially, inducement of breach or interference with the performance of a statutory duty might make unlawful any industrial action in many parts of the public sector (including nationalised industries), thus running counter to the basic statutory immunity for organising industrial action which has existed since 1906. Whether the courts would confirm the existence of this cause of action and, if so, how widely they would interpret it in relation to industrial action must remain uncertain.

3. Section 18(6) of the Telecommunications Act 1984 created an actionable liability in respect of an act which induces a breach of, or otherwise interferes with the performance of, a duty owed by virtue of that section. This covers industrial action. But the duties covered by section 18(6) are specific and the effect of the section is not to make unlawful a strike by British Telecom employees over pay or some other issue not specified in the section.

Meade v Harringey BC

4. The background to this case was that two trade unions notified the chief education officer to a local authority that their members, who included school caretakers holding the keys to the borough schools and ancillary manual staff, would be taking strike action and that "all educational establishments" in the borough "will be closed from /a specified/date." The chief education officer gave instructions to school heads and teachers, and specifically advised that "no one should attempt to open a school." Subsequently, the local authority issued a leaflet which, expressed support for the union's pay claim. Some of the parents affected unsuccessfully complained to the Secretary of State for Education under section 99(1) of the Education Act 1944 asking her to require the education authority to discharge their duty under section 8 of the Act to provide schools (including education). After the schools had been closed for four weeks, the plaintiff, a parent, issued a writ on his own behalf and on behalf of other interested persons in the borough, asking (inter alia) for an injunction requiring the authority to fulfil their duty under section 8 by causing the schools to be opened and the pupils admitted.

5. The Court of Appeal held that although section 99 of the Education Act 1944 provided a remedy for an interested person by way of complaint to the Secretary of State where there had been a simple failure by the local education authority to perform a statutory duty, the section did not exclude any other remedy available in the courts at the suit of a person (in this case the parents) who suffered special damage. It would need to be established that there had been a breach of statutory duty by a positive act which was ultra vires by reason of being done without just cause or excuse or for improper motives. There was no just cause or excuse since the authority had acted at the behest or with the agreement of a union (with a dominating influence); it had thus acted ultra vires and unlawfully, and the tort of conspiracy may have been committed. The plaintiff's appeal was, however, dismissed since, by the time of the appeal hearing, the schools were open and no interim injunction was required.

6. In Meade, Lord Denning said:

> ".....the trade unions and their secretaries were, as I see it, acting quite unlawfully. They were calling upon the local authority to break their statutory duty - to close the schools instead of keeping them open as they should have done. Now section 13 of TULRA 1974 as amended gives them immunity if they induce a person to break a contract. But it gives them no immunity if they induce a local authority to break its statutory duty".

He added that the local authority could have moved the court for an injunction to restrain the leaders of the unions from interfering with the due opening of the schools. Eveleigh LJ echoed these views though Sir Stanley Rees was silent on the point.

7. In the Meade case, the situation concerned a trade union directly inducing a local authority to break a statutory duty. In that case, the local authority appears to have succumbed to the union's inducement. A more likely situation arises where a trade union organises a strike or other industrial action (in breach of contracts of employment), the indirect effect of which is to interfere with the performance of a statutory duty (by so hindering such performance as to effectively prevent or disable the body concerned from discharging properly or at all such duty).

Associated Newspaper Ltd v Wade

8. The question of interference with the performance of statutory duties was one of the issues dealt with by the Court of Appeal in Associated Newspapers v Wade (1979). The facts of the case were that the National Graphical Association were in dispute with a group of local newspapers in the Nottingham area. The union adopted the strategy of writing to all concerns who regularly advertised in the Nottingham Evening Post instructing them no longer to advertise in the paper, but 16 organisations continued to do so. They were then informed by the NGA and another union that all members of the unions employed on any newspapers and periodicals would be instructed that they must not handle any advertising submitted by the relevant organisation. The object of the campaign by the NGA was to put pressure on advertisers and thereby bring pressure to bear on the Nottingham Evening Post by drying up or severely diminishing its advertising revenue. Two of the plaintiffs were the Severn Trent Water Authority and the Nottingham Area Health Authority and they were seeking injunctions against the unions (as well as the General Secretaries) in relation to their interference with the statutory duty of the Authorities to publish notices and advertise vacancies. On this question the Court of Appeal held that whether it was an actionable wrong to interfere with a public authority's statutory duty to publish notices and advertise vacancies and thereby cause damage to the public authority, and whether such an act was protected by section 13 and (the now repealed) section 14 of TULRA 1974 were not suitable matters to be decided on an interlocutory appeal.

9. Lord Denning said (at paragraph 48):-

> "There remain the public authorities, the water board and the health authority. They are under a statutory duty to provide services essential to the life of the community. Water for all to drink. Doctors and nurses to care for the sick. In order to provide these services, they have to recruit expert staff. To do this, their chief means is to advertise in the national newspapers or in the specialist publications like the British Medical Journal or the Lancet. The regulations of the health service say they must. By blacking indiscriminately all advertisements - including those of these public authorities - the leaders of the union are hindering the performance of these statutory duties. Essential services will be impaired. So far as I know, the leaders of a trade union have no immunity when a public authority is disabled from performing its statutory duties. That seems to follow from the recent case of Meade v Haringey Borough Council. So this interference cannot in any case be excused. It may be that the union itself may also be held responsible. That depends on whether the interference is a "tort" or not. I would not pronounce on that point on this occasion because it is unnecessary".

10. Lawton and Geoffrey Lane LJJ in the Wade case adopted an even more cautious line in relation to this potential liability.

(2)

1. O.L
2. C.F

PRIME MINISTER AT 19/4

19 April 1985

TRADE UNION REFORM

The TGWU ballot-rigging episode has brought trade union reform back into prominence. Most topically, it may be advisable to extend the secret balloting provision of the 1984 Trade Union Act so that it covers senior officers who lack a vote on their executive. This would prevent not only a repetition of the TGWU branch ballots but also Mr Scargill's present efforts to remove himself from the scope of the Act by becoming a non-executive officer of the NUM.

Several other gaps in trade union law are also apparent:

1. In the 1983 manifesto, you promised to 'consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity'. This commitment now needs to be fulfilled.

2. Individual members have no right to sue their union if it fails to hold a ballot. Miners should have been able to sue their local branches on the balloting issue.

3. Mass picketing needs to be curbed. This should be covered by Leon Brittan's proposals to change the law on conspiracy and static demonstrations.

4. It is still possible for a trade union to confuse its members by combining several, quite different issues in a single ballot; the NACODS ballot was a prime example. Balloting provisions need to be made clearer.

5. The 'pre-entry closed shop' remains entirely lawful. Employers must now hold a ballot to justify the 'post-entry closed shop' for those who already work in a given place; but an employer may still refuse to accept non-union members as new employees if he chooses. This is clearly a pernicious practice that runs directly counter to our labour market policies: it ought to be banned.

We understand that Tom King is working on all of these issues, and that he will be bringing a minute forward, outlining the next steps which might include a Green Paper on Trade Union reform. We recommend that you should pursue him if no minute has arrived within six weeks. (Tom King hopes to produce something comfortably within this timescale) AT

Thank you

OLIVER LETWIN

NDPM
AT
16/4

CC NO

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

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

MO 21/8/5

15th April 1985

Dear Tom

EMPLOYEE INVOLVEMENT

I was most interested to see Barney Hayhoe's letter to you of 18th March on employee involvement. He suggested that E(A) might consider a paper which assessed progress in the last couple of years and possible initiatives for the future.

I strongly support this proposal and, should you agree, look forward to seeing the paper. I think it might also be helpful if it included a section on international comparisons.

I am copying this letter to the Prime Minister, members of E(A), Willie Whitelaw, Geoffrey Howe, Barney Hayhoe and Sir Robert Armstrong.

Yours ever

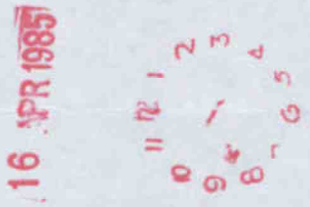
Michael

Michael Heseltine

The Rt Hon Tom King MP
Department of Employment

NAT IND Pt 10

Policy



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

28 March 1985

B Hayhoe Esq MP
Minister of State
Treasury Chambers
Parliament Street
London SW1P 3AG

Dear Barry

EMPLOYEE INVOLVEMENT

Thank you for copying to me your letter of 18 March to Tom King. Although I am keen to encourage firms to involve and consult their employees on a voluntary basis, I remain to be convinced that legislative action is the way forward. Against the background of our scrutiny of the legislative and administrative burdens which Government imposes on industry, the introduction of yet another piece of "social engineering" legislation, accompanied by enforcement procedures, codes of practice and so forth, would hardly be welcome.

2 Having said that, if others feel that there is some advantage in circulating a paper for discussion, I would have no objection. Such a paper would no doubt seek to assess the impact of Section 1 of the 1982 Act on employers, and it would be interesting to have this information.

3 I am copying this letter to the Prime Minister, Tom King, other members of E(A), Willie Whitelaw, Geoffrey Howe, Michael Heseltine and Sir Robert Armstrong.

Yours Norman

NORMAN TEBBIT

JH3BOD

CC(NO)

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
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JU127
Secretary of State for Trade and Industry

20 March 1985

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

N3/4

Dear Tom,

NATIONALISED INDUSTRIES' LEGISLATION - CONSULATION PROPOSALS

I have seen your letter of 6 March to Peter Rees which suggests that the proposed legislation on nationalised industries should contain provisions requiring them to include in their annual reports statements about arrangements for employee involvement and the employment of disabled people. I have also seen Peter Walker's letter of 14 March.

Although I appreciate the attractions of bringing the legislation affecting nationalised industries into line with that governing large private companies in this respect, I cannot say that I am happy for this proposal to go forward. There is a risk that proceeding in this way may open the door to suggestions of further matters to be required by statute to be specifically covered in nationalised industries' annual reports. We will also receive much criticism from nationalised industries for bringing forward proposals piecemeal and, as Peter Walker says, in a way suggestive of bureaucratic direction when the industries concerned already do these things voluntarily, as do those nationalised industries for which I am responsible.

I am copying this letter to the Prime Minister, Members of E(NI), Willie Whitelaw, Nicholas Edwards, John Biffen, and to Sir Robert Armstrong.

Yours Norman

NORMAN TEBBIT

Nat Ind; Policy: Pt 10

012/112

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Tom King MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NA

8 March 1985

Dear Secretary of State

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

Thank you for your letter of 6 March in which you suggest that the proposed nationalised industries legislation should have a specific requirement for industries to include in their annual reports statements on employee involvement arrangements and of their policies toward the employment of disabled people. You will have seen Peter Walker's letter to me of 14 March commenting on your proposals.

Although I accept that your proposals would do no more than formalise existing practice, I am concerned, like Peter Walker, that we should not begin now to add further detail to our proposals unless it is absolutely necessary. As Peter says, this is an area in which it ought to be possible to proceed by discussion and agreement with the industries. I very much support this. In addition, we are seeking a general permissive power over industries reports allowing Sponsor Ministers to direct the inclusion of specified information which could include the very topics that you suggest. Against this background I remain unconvinced of the case for including specific, detailed provisions.

I am copying this letter to the Prime Minister, other E(NI) colleagues, Willie Whitelaw, Nicholas Edwards, John Biffen and Sir Robert Armstrong.

Yours sincerely

for PETER REES

CONFIDENTIAL

NAT IND : Policy

CC NO.

MINISTER OF STATE TREASURY

NBPM

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

18th March 1985

Dear Tom,

EMPLOYEE INVOLVEMENT

Peter Rees has written to you about the specific proposals in your letter of 6 March concerning the proposed Nationalised Industries Legislation. However, that correspondence is linked with the broader issue of increasing employee involvement in British Industry in the most constructive way possible and as Nigel is very tied up with Budget matters he has asked me to write on this issue.

Correspondence in 1983 indicated general agreement that a voluntary approach was necessary to broadening employee involvement. Both Geoffrey Howe and Nigel said that they did not want to rule out the possibility of some kind of legislation, should a voluntary approach be inadequate. Michael Heseltine thought that a voluntary approach was unlikely to achieve substantive benefits. He advocated that we should not rule out sensibly framed legislation to give a new impetus to employee involvement and suggested the use of a code of practice with statutory backing to allow for minimum enforcement. Norman Tebbit when at Employment circulated a paper on 23 September 1983 setting out the advantages and disadvantages of such an approach which was to be discussed under Geoffrey's chairmanship. Unfortunately the planned meeting had to be re-arranged on a couple of occasions and in the event never took place.

No doubt you have been considering whether the present arrangements are proving effective and whether the requirements of Section 1 of the 1982 Employment Act have had worthwhile benefits.

Perhaps it would be helpful if you would put a paper to E(A) Committee during the spring which would record what is known about progress over the last couple of years and would consider possible initiatives for the future including Michael's idea of developing a code of practice (or a series of sector codes)? I think it would be well worth reviewing carefully whether there are any initiatives we should take in the lifetime of this Parliament.

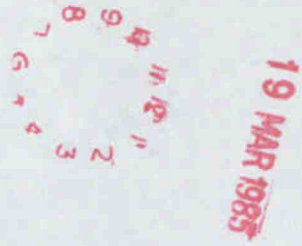
This letter is copied to the Prime Minister, members of E(A), Willie Whitelaw, Geoffrey Howe, Michael Heseltine and Sir Robert Armstrong.

Yours ever

Barney

BARNEY HAYHOE

NAT IND : Policy : Pt 10



NBPH MD
AT 14/3

01 211 6402

The Rt Hon Peter Rees QC MP
Chief Secretary
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

14 March 1985

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

I have seen Tom King's letter to you of 6 March, which asked that you add to the proposed general nationalised industries legislation two specific requirements to report on employee involvement and on the employment of disabled people.

I believe it is both unnecessary and undesirable to include such detail in the proposed Bill. Tom recognises that the proposed general enabling powers would enable us to direct the industries in these areas should that prove necessary. He also recognises that most nationalised industries already report on these matters in any event, without need of a direction from us. Certainly all the energy nationalised industries already do so.

I see the case for the requirements in existing legislation governing private sector companies generally, where it is clearly not feasible to proceed by discussion and persuasion with all concerned. But in the nationalised industry sector we already can and do achieve satisfactory results by sensible discussions. I therefore think it is a wrong approach to accumulate completely unnecessary legislative provisions on such details of nationalised industry activities. This can only encourage more requests for other worthy details to be added, and increase the erroneous impression that the nationalised industries need to be meticulously directed on every issue of serious concern.

I am copying this letter to the Prime Minister, other E(NI) colleagues, Willie Whitelaw, Nicholas Edwards, John Biffen and Sir Robert Armstrong.

PETER WALKER

NAT IND: Policy PA10

14 MAR 1985

CONFIDENTIAL

NBPM

6/3

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213.....

Switchboard 01-213 3000

The Rt Hon Peter Rees QC MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

6th March 1985

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

Sponsor Ministers are currently consulting their industries about our legislative proposals on nationalised industries, which Cabinet provisionally agreed last week to include in the 1985/86 legislative programme.

I am writing to give colleagues notice of two changes which I would want to see made by this legislation; and to seek agreement to their urgent examination by officials.

It is our long-established policy to encourage employers to develop better employee involvement arrangements, on a voluntary basis and in a manner best suited to their individual circumstances. We must be alive to opportunities to advance our voluntary approach; and to fend off the criticisms of our domestic opponents and those abroad who favour compulsion in this area.

As a result of the 1982 Employment Act, directors of large private companies are now required to include a statement in their annual reports to shareholders on what they have done to introduce, develop or maintain employee involvement arrangements. I believe that a similar reporting requirement should apply to nationalised industries. At the moment, we are vulnerable to criticism that we are apparently less concerned with employee involvement in those industries for which we are responsible than in the private sector.

The advantages of this are clear. Many nationalised industries have good employee involvement arrangements, and these would be given more prominence. On the other hand, most nationalised industries could do more to gain the loyalty of their employees-which sometimes is given first to the trade

unions - and a reporting requirement would signal the Government's concern about this, without imposing one rigid prescription on all industries.

Similar arguments apply in the case of the requirement on directors of large private sector companies to include in their annual reports a statement of their policies towards the employment of disabled people. Again many nationalised industries have demonstrated good practices in this area, and I understand that most already include such a statement voluntarily in their annual reports. Presentationally there are strong arguments for formalising this requirement, thus doing something concrete to demonstrate that we are applying the same standards in the public as in the private sector.

I would hope that our officials could examine the best way of introducing these requirements. It could be argued that we should not include these requirements specifically in the legislation, but that Secretaries of State should direct the industries to include these matters in their reports, using the general enabling powers of the legislation. I would wish to rule out this option: the political and presentational advantages of specific requirements in the legislation are compelling.

I think we should announce our intention to make these changes at an early stage. We want to be able to present these changes as Government initiatives, not as reactions to suggestions which might well come from elsewhere. (You may well be aware that, in a Lords debate at the end of last month, Lord Rochester, who was instrumental in introducing into the 1982 Employment Act the reporting requirement on private companies specifically raised the question of introducing something similar for the public sector.)

No doubt there would be difficulties, as there are for large private companies. But I do not believe that these are likely to be very great; nor that they are likely to be serious enough to justify exempting nationalised industries from those very modest requirements which we agree to impose on the private sector.

I am copying this letter to the Prime Minister, other E(NI) colleagues, Willie Whitelaw, Nicholas Edwards, John Biffen and Sir Robert Armstrong.

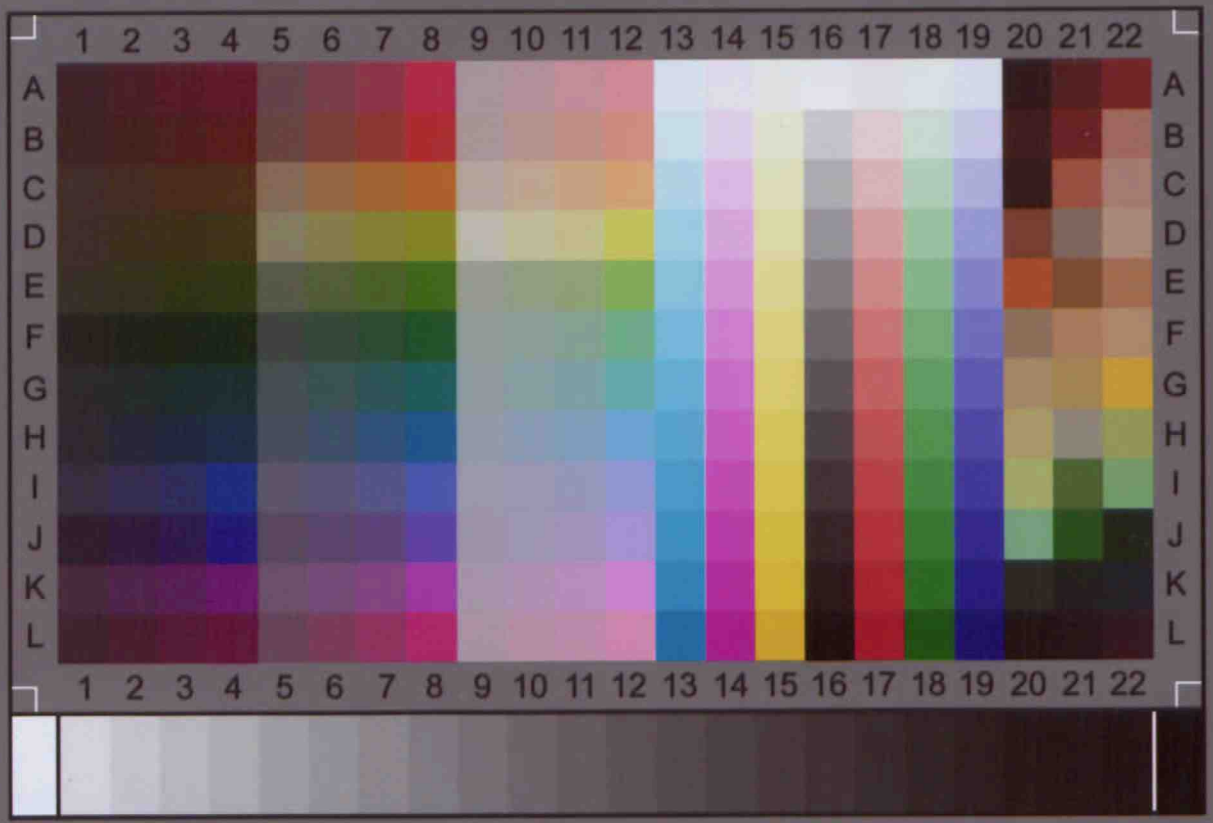
PART #2 11 ends:-

P. Gregson 6 PM 14.1.85

PART 12 begins:-

S/S Emp to CST 6.3.85.

~~OL 16 PM 19.4.85~~



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