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CABINET

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INDUSTRIAL RELATIONS LEGISLATION

Memorandum by the Secretary of State for Employment

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1. Colleagues have already generally approved my proposals for legislation on picketing, the closed shop and union ballots and I aim to introduce a Bill in December. To achieve that we need to decide now on the following outstanding points.

CLOSED SHOP

2. We have already decided to provide that any new closed shop entered into after our legislation shall not be able to operate as a defence against an unfair dismissal claim unless at least 80 per cent of those entitled to vote in a secret ballot support it; that existing employees shall be protected; that, where an unfair dismissal takes place under union pressure, the employer can bring the union before the tribunal to meet some or all of the compensation; and that best practice in the operation of a closed shop will be set out in a statutory Code.

3. We also intend to extend the protection to those with conscientious grounds against union membership in a closed shop situation and what we have to decide is how wide should be the grounds of conscience - religion only at the moment - and whether these should be limited to objection to belonging to any union at all or whether they should also include objection to belonging to a particular union. The Confederation of British Industry (CBI) were divided on the latter question - a substantial minority (including the Engineering Employers Federation) fearing that the right to object to belonging to a particular union would be used by dissidents to splinter unions and disrupt established bargaining arrangements. Nonetheless, a majority of the CBI favour allowing objections to joining any particular union, but on as objective a basis as possible and limited to objections that are religious, ethical or moral.

4. There is a difficult balance to be struck here between the rights of the individual and the orderly conduct of industrial relations. On reflection, I think it is right to allow for objections against a particular union. This would give individuals support and protection in closed shop situations of the kind which have arisen in the ambulance and fire services.

5. I therefore propose protection for those who "have religious, ethical or moral objections to being a member of any union whatsoever or of a particular union". By limiting the exemption to these cases we should lessen fears that it will seriously disrupt stable bargaining arrangements, though we may still stimulate increased demands to do something about "free riders".

#### UNREASONABLE EXCLUSION OR EXPULSION FROM A UNION

6. We have agreed to provide a new statutory right against unreasonable exclusion or expulsion from a trade union, leaving the reasonableness to be determined by tribunals on the equity and substantial merits of the case. I have, however, also been considering whether to strengthen the effect of this in countering intimidation by stating expressly in the legislation that it would be unreasonable to expel a member solely for crossing a picket line or for refusing to take part in a strike which has been called in breach of procedure.

7. On re-examination, I am confident that the general test of reasonableness could be expected to encompass these types of case. In fact, most industrial action is unofficial and unions therefore do not generally discipline members for refusing to take part in it. But where expulsion arose in circumstances of the kind described a tribunal would be able to take into account the reasonableness of the industrial action in which the individual had refused to participate and the manner of its inception and prosecution.

8. I feel, nonetheless, that it would be desirable to give tribunals a clear guide to regarding expulsion in the circumstances described as prima facie unreasonable. I do not favour doing this by express statutory provision. Interference in the disciplinary relationship between unions and their members is an explosive issue and we could be dragged deep into it by statutory definition, with the risk even so that the express provision could be evaded or result simply in unofficial intimidation taking the place of official disciplining.

9. I now propose instead to proceed by including in the draft statutory Code of Practice on the closed shop guidance to the effect that disciplining by expulsion should normally be regarded as unreasonable behaviour if taken solely on such grounds as that a member crosses a picket line or refuses to take part in industrial action which is in breach of a procedure agreement. A plaintiff would be able to draw attention to this in pleading his case before the tribunal, which would then be able to consider it among all the circumstances of the case.

10. This will increase the Parliamentary pressure to defer operation of the legislation until Parliament has approved the Code. We may have to concede this in relation to the unreasonable expulsion provision, but otherwise there is no need for the operation of the legislation to wait on either this Code or the Code on picketing.

#### CLOSED SHOP IN THE NEWSPAPER INDUSTRY

11. My proposal in paragraph 5 above will help give effect to our commitment to resist further moves towards the closed shop in the newspaper industry. I propose to reinforce it by providing a separate section in the closed shop Code which will relate specifically to the position of journalists. This would, among other things, make clear that a genuine belief concerning Press freedom is a conscientious ground for objecting to becoming or remaining a member of a particular union or any union at all; and that journalists and editors should not be disciplined as a result of their legitimate exercise of Press freedom.

12. These measures will be much more effective in containing this threat to the freedom of the Press than the Press Charter provisions of the last Government. These envisaged a voluntary approach which in fact foundered on irreconcilable differences between the various parties; and the last Government then failed to submit a draft Charter for the approval of Parliament. I propose therefore to repeal the provision for a Press Charter (Section 2 of the Trade Union and Labour Relations (Amendment) Act 1976).

#### SLADE

13. In fulfilment of our commitment I set up an enquiry by Mr Andrew Leggatt QC into the recruitment activities of the Society of Lithographic Artists, Designers, Engravers and Process Workers (SLADE) and I shall publish his report on 17 October. The report is highly critical of SLADE, the two most objectionable aspects of its recruitment activities being the forcing of employees to join the union against their will and the use of secondary action to achieve this.

14. The issues are complex and it is difficult to frame a statutory provision limited to catching these objectionable activities. Nonetheless, a remedy is needed and I propose to consult urgently on this with a view to incorporating a suitable provision in the Bill.

#### FURTHER CONSULTATIONS

15. These proposals would require immediate consultations with industry only on SLADE and on repealing the Press Charter. If we proceed as proposed on union expulsion, I need not consult further on that until the draft Code of Practice is prepared.

RECOMMENDATIONS

16. I invite my colleagues to agree that we should:

- i. Give a right to compensation for unfair dismissal, in the context of a closed shop, to those who object to membership of any union whatsoever or of a particular union provided that the grounds of objection are religious, ethical or moral (paragraph 5).
- ii. Make clear, through guidance in the draft closed shop Code of Practice, our intention that it shall normally be regarded as unreasonable behaviour if a union expels a member solely on such grounds as that he has crossed a picket line or refused to take part in unconstitutional industrial action (paragraph 9).
- iii. Consult the newspaper industry on the proposal to reinforce the effect of i. and ii. by incorporating a separate section on that industry in the draft statutory Code; and on that basis repeal the ineffective provision for a Press Charter (paragraphs 11-12).
- iv. Consult industry on the remedy needed to curb objectionable union recruitment activities of the SLADE type (paragraph 14).

J P

Department of Employment

12 October 1979