

APPENDIX III



INDUSTRIAL
RELATIONS

THE RIGHTS OF THE INDIVIDUAL

HOUSE OF COMMONS
LONDON SW1A 0AA



INDUSTRIAL RELATIONS: THE RIGHTS OF THE INDIVIDUAL

I N T R O D U C T I O N :

In considering the group of loosely related topics which can broadly be described as the rights of the individual in the industrial relations context we have made certain assumptions as to the general posture which the Party wants to adopt in this field. We have assumed that it is considered inappropriate to seek once again to introduce comprehensive legislation over the whole field, however justified such legislation may have been in 1970 and however unresolved the problems for which it was designed may be. We have also assumed, however, that where possible the Party would wish to encourage the growth of union leadership which is more representative of its members, and therefore, on the whole likely to be more moderate. We have ~~also~~ assumed that although we as a Party do not wish to introduce legislation which would regulate or interfere in the carrying out of the basic purposes of the unions, we are nonetheless prepared to take steps to prevent the oppression of the individual by a trade union.

We consider that this is an attractive general posture as it is manifestly not one of seeking a confrontation, while at the same time it is not a supine policy of allowing union power to be exercised in an unbridled fashion. Where

we recommend intervention it is not on behalf of some interest group ranged up in opposition to the trade unions, but in support of the wholly justified and politically attractive principle of standing up for the rights of the individual. The concept is not one of attacking the unions, but of supporting the individual, and it is so simple that it would be possible to present it convincingly to any audience.

In line with the general approach outlined above, even when we consider that intervention is justified, we have sought, wherever possible, ways of intervening by means of the use of the Government's own normal executive power, or by means of facilitatory legislation, rather than by the introduction of directly operating coercive legislation, although this cannot be totally excluded.

Editorial note:

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VOTING IN UNION ELECTIONS

The power of trades unions is now so great that if an individual is to have adequate rights in the employment context this must include a fair say in the conduct of his union. If the arrangements made for the expression of the individual's view are so inadequate that in practice only a small proportion of people avail themselves of the opportunity to vote, the individual's rights in this respect are not being adequately safeguarded. It is of interest that the comment on this matter in the Donovan Report came in the chapter headed "Safeguards for Individuals" and said:-

"The low polls typical of union elections are an unsatisfactory feature of union life..... a very low level of participation runs the risk of placing power in the hands of unrepresentative minorities and weakening the authority of elected officers. In many unions polls are low because voting continues to take place at branch meetings although the focus of union activity has shifted from the branch to the work place".

There is some evidence, principally derived from events in the AUEW, to show that



the higher the degree of participation in union elections, the more moderate the outcome; but we are of the view, particularly in presenting these matters to the public, that the stress should be on the importance of giving effect to the rights of the individual, by making unions more representative, and not on seeking to make the unions more moderate by altering their electoral arrangements.

If this goal is to be pursued, by means such as postal ballots, the key question that has to be answered is whether such improved electoral arrangements should be made compulsory, or merely facilitated. The hostile reception ^{given} in the House by Labour Members to proposals for providing free post for ballots in trade union elections have led some to believe that the provision of a facility of this kind would have no practical effect, as it would simply not be taken up by any of the unions. Consequently, it has been argued, if the goal of more representative unions is seriously to be sought, the only way of bringing this about is by making postal ballots for union elections compulsory. We consider that there are very substantial objections to doing this. In the first place practices in the unions vary enormously, and include a wide variety of different arrangements relating to both full time officers and the governing body of the union concerned. The most important variation that



occurs for these purposes relates to the choice of the full time paid officers of unions. In some unions they are directly elected, but in others they are appointed. This is an arrangement which the Industrial Relations Act made no attempt to disturb, as it did no more than lay down that registered unions have to provide in their rules for the election of their governing body and the election or appointment of officers and stewards. If the use of the postal ballot was made compulsory, it would be open to the unions to change their arrangements, so that an increasing number of union officers were not elected at all, but merely appointed. It is true that the governing body is invariably elected, but to confine postal ballots to the governing body would not do more than touch fringes of the problem, as it is in practice far more important to ensure that the full time officers are representative of the rank and file. The only way of ensuring this if compulsory postal ballots were introduced would be to introduce a further compulsory obligation on unions to hold elections in every case for full time officers. This would amount to a degree of regulation of union rules which has not hitherto been attempted. In our view it would undoubtedly stir up massive opposition and would prove quite unenforceable. To put oneself in a position whereby the unions could say that the degree of intervention that was being attempted was greater than that in



the 1971 Act would be to hand the unions a propaganda weapon of the first order of magnitude, which would unhesitatingly be used to misrepresent and discredit all our proposals in this field.

We accordingly consider that a Conservative Government should not seek to compel postal ballots in trade union elections, but should introduce legislation to provide free postal ballots for such elections on an optional basis. The extent to which this is used will depend on the details of the scheme, the manner in which it is presented, and the general political climate from time to time. The existence of the facility will, however, remove the alibi that is put forward within the unions by those who oppose postal elections, but are reluctant to put forward the real reasons for their opposition. Such people at the moment can argue that the cost of postal elections is excessive rather than say frankly (as Jimmy Reid has done) that participation should be restricted to those members who "are informed of issues at branch meetings rather than relying on information presented by a biased press".

In working out the proposals there are a number of detailed points that will have to be decided. In the first place in which elections should a postal ballot be available? It is tempting to limit the potential cost of the proposal by confining the elections to those at national level. Unfortunately, however, in some unions the structure is so decentralised that this would be most



undesirable. We accordingly recommend that free post should be available for a ballot for any issue or office above branch level mentioned in the rule of the union concerned. "Office" should include full time officer , part-time council man, and temporary conference delegate, but it should not include purely party political posts, which are sometimes elected.

The next question that has to be determined is who should have the right to apply for free post? We consider that this should be determined according to the level of election for which free post is sought. The governing body at that particular level should be entitled to make the application. At the same time, the governing body of the union as a whole should be entitled to make the application either if the application is in respect of a nationwide ballot, or if it is in respect of a series of ballots throughout the union. The purpose of this is to prevent a local body resisting the postal ballot, but enabling it to seek one in spite of national opposition. When the right to a free postal ballot has been exercised it should take the form of a free posting of the ballot paper and the free return of the ballot paper. The payment would not be made to the union, but to the Post Office, which would distribute the voting papers and reply paid envelopes, just as it at present distributes election addresses during a General Election.

We would recommend that an incoming Conservative Government should make it clear



that it is not committed to the details of any scheme for the provision of free post for union ballots, and wants to discuss them with the TUC.

By far the most difficult problem, however in this area, is the extent, if any, to which the provision of free post should entail with it a degree of supervision of the ballot. In Australia on application by a union or a branch or a specified percentage of members a ballot is provided out of public funds, but the Industrial Registrar actually arranges for the ballot to be conducted by an Electoral Officer. Although such an arrangement would be the only absolutely full proof way of ensuring that the elections were fairly conducted, it is likely that if it were made a condition of the entitlement to the free post, this would in itself make it likely that the facility was used on a much smaller scale than would otherwise be the case.

On the other hand there can be no doubt that if postal ballots are to be paid for out of public funds some degree of safeguard would be regarded as essential. By paying the Post Office, rather than the Union it is easy to ensure that the money is actually spent on posting ballot papers, but the public is surely entitled to require a greater degree of assurance that the actual ballot is properly conducted. Our aim should be to have a system which provides



some reasonable degree of safeguard, without at the same time amounting to detailed intervention in the union's electoral processes. A useful precedent is provided by the 1913 Act in relation to political funds which states:-

"A ballot for the purpose of this Act shall be taken in accordance with the rules of the union to be approved for this purpose..... by the Registrar of Friendly Societies, but the Registrar shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting and that the secrecy of the ballot is properly secured"

Although ballots for this purpose are rarely used nowadays, there seems to have been no objection to this precedent. In the present context the appropriate person to approve the grant of free post would be the Certification Officer, and if he were governed by a provision similar to that in the 1913 Act, he would be able to adopt a flexible approach, questioning the procedure adopted by the unions, ^{Cr-14} if there were real grounds for believing that it did not provide a fair opportunity of voting and a secret ballot. In cases where there was no reason to doubt the manner in which the election was being conducted the Registrar's



approval would be virtually a formality.

Apart from providing free post for union elections, the other main suggestion that has been made to ensure that such elections are more representative is that balloting for them should be permitted to take place, at the union's request, at the place of work, during working hours. To some extent this already takes place, but mostly only in the case of elections for work place representatives, such as shop stewards.

The objection that has been made to a scheme of this kind is that it would encourage campaigning during work time, would involve loss of production, and impose yet further burdens on already hard pressed employers. There are also practical problems involved, where as would often be the case, a union branch covers many work places, or where a single firm employs members of many unions, or where some members (such as signalmen) work away from their base. It should also be pointed out that greater opportunities for undue influence being exerted are provided by work place ballots than by voting by post.

Nonetheless, in view of the possibly limited take up of the offer of free post, we do consider that a union should be entitled to hold a ballot in a work place during working



time provided that it has a specified number of members at the particular place of work. It would be necessary to devise a formula for the number required, based partly on the proportion of the total ^{and who were members of the Union.} work force and partly on the actual number of members.

A minimum number of 50 members might well be regarded as an appropriate requirement.

We would recommend that the precedent of the Employment Protection Act should be followed in this case, and that a general statutory right should be granted which would only come into force after the Advisory, Conciliation and Arbitration Service had devised a Code of Practice containing detailed recommendations for the operation of this right. It would then be open to a union which sought to exercise the right and was resisted to apply to an Industrial Tribunal for an adjudication.

THE PAYMENT OF SUPPLEMENTARY
BENEFIT TO STRIKER'S
DEPENDANTS:

Although we have on the whole been concerned with adding to and improving individual



rights in the industrial relations context, there may be circumstances in which individuals at present enjoy rights which should be abolished or curtailed. The entitlement of a striker to supplementary benefit or his dependants has been greatly criticised in recent years. To make such criticisms does not imply that strikers are always in the wrong. It does imply that it should be the responsibility of the unions to finance strikes, and not the state. The purpose of supplementary benefit is to assist those who are suffering hardship because of factors beyond their control. Strikers may be justified in going on strike and inflicting harm on society in so doing, but if they chose to do so, they cannot, it is argued, expect the state to support them. They have, moreover, a responsibility to support their own dependants, and therefore, even if, as is the case, the state is not supporting the striker himself, but only his dependants, it is nonetheless assisting^{him} by taking over a responsibility which is his, both morally and legally.

This argument has a very wide measure of support both in the Party and in the country as a whole. The question, however, is whether there is a practicable way of dealing with the problem, which does not have disadvantages outweighing the gains to be derived from its implementation.



Although the entitlement to assistance to support dependants during a strike is long standing, the current situation is based upon the provisions of the Supplementary Benefit Act 1966 and the Social Security Act 1971. Section 10 of the 1966 Act provides that where by reason of a stoppage of work due to a trade dispute at his place of employment a person is without employment for any period during which the stoppage continues and he has not during that stoppage become bonafide employed elsewhere his requirements for that period shall be disregarded for the purposes of benefit except insofar as they include the requirement to provide for any other person. The 1971 Act provided that strike pay be taken into account in assessing any benefit, although a maximum of £4 could be ignored. The effect of this has been to lead most unions to withdraw strike pay. Reference should also be made to Section 13 (1) of the 1966 Act which gives the power to grant benefits "in an urgent case", and the stoppage provisions of Section 10 can be overridden for this purpose.

It should also be pointed out that the last payment from the employer is required to last for the length of the normal payment period. Thus a weekly paid striker would have to wait a week before he could make a claim for his dependants and if he were paid in arrears and thus received the last payment from the employer when the strike was a week old, he would have to be on strike for two weeks before