

CONFIDENTIAL

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

E (79) 43

27 September 1979

COPY NO 56

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

LEGISLATIVE PROPOSALS ON PICKETING, CLOSED SHOP AND UNION BALLOTS

Memorandum by the Secretary of State for Employment

Introduction

Having consulted on the proposed changes in the law on those matter which were approved by E Committee on 19 June (E(79)3rd Meeting) I now seek agreement to prepare legislation. The form and timing of the legislation are discussed in E(79)44 - which deals with the related question of union immunities.

2 The consultations have elicited a broad measure of agreement to our proposals from the CBI and other employer organisations, though with divided views on some points (eg para 6).

3 The TUC have expressed complete opposition to the picketing and closed shop proposals on the ground that voluntary action along the lines of their guides is more productive; and have refused to comment on the union ballot proposals so long as the Government are committed to legislate on the other items. Congress has committed the General Council to campaign against the changes as constituting a fundamental attack on union rights. The General Council did, however, earlier provide detailed comments on the proposals to which they have requested - and I shall return - a considered reply; and they have not closed the door to further discussions.

CONFIDENTIAL

In these I shall impress on them that there need be no stark choice between legislative and voluntary action and urge them not to withdraw their Guide on picketing.

4 My detailed proposals for legislation in the light of all this are set out in annexes 1-3 and the main features are discussed below.

Picketing

5 On picketing my proposals follow those set out in the working paper. It was agreed at E(79) 3rd that consultations should be conducted on the basis of limiting picketing to each employee's own place of work but that it might be necessary to fall back on a wider formula such as the premises of his employer. Further consideration in the course of the consultations has led me to conclude that it is right to adopt the more restrictive formula of "own place of work". The CBI and most other employer organisations have pressed strongly for this and it is clear that trade union opposition would not be materially reduced if the wider formula of "employers premises" were adopted. I have been particularly impressed by the argument that the "employer's premises" formula would involve serious disparity of treatment between large groups (such as GKN) which are organised in separately constituted companies and those (such as ICI) which are organised by division and not by separate company. (The question of reverting to S.13 (1) of the Trade Union and Labour Relations Act 1974 which was canvassed in the Working Paper on picketing is discussed in E(79) 44).

The Closed Shop

6 The working paper suggested the legislation could provide a remedy, either for those with personal convictions against joining any union or, more widely, those with personal convictions against joining a particular union or those who object on reasonable grounds to being a member of a particular union (as under the 1974 Act). The "reasonable grounds" option has been criticised by the CBI as well as opposed by the TUC. It would be the widest and - to judge by case law under the 1974 Act - potentially the most disruptive. It goes beyond the Manifesto commitment and I do not recommend that it should be adopted. The particular union option would open the way to an unpredictable range of objections to membership of particular unions. A number of employer groups (including the EEF and the General Council of British Shipping) have pointed out the industrial relations problems this formulation would cause. The CBI have reported divided opinions on this issue. I therefore propose that the legislation should provide for objection based on grounds of conscience against any union. This would be a significant extension of the current religious grounds objection. It has not been seriously challenged by the TUC, who recognised the need to provide for "conscientious objectors" in their Guide.

7 To give effect to the requirement that new agreements for a closed shop must be drawn up in accordance with best practice and only if an overwhelming majority of the workers involved vote for it by secret ballot, I propose that the required majority should be 80% of those entitled to vote. Such a provision will have the precision required for legislation and while the required majority is admittedly high, it seems reasonable given that the ballot should be conducted at the place of work, during working hours and profoundly effects the working lives of those involved.

8 On the new right against arbitrary or unreasonable exclusion or expulsion by a union the working paper suggested that there should either be a general test of reasonableness which would enable the action of the union to be determined according to the substantial merits of the particular case, or that the legislation should lay down detailed criteria. I propose to adopt the former approach, which the CBI broadly favoured, but to deal with intimidation on the picket line I am considering whether it would be desirable and practicable to supplement this by a provision which deems it unreasonable to expel a member for crossing a picket line.

9 The working paper suggested that the adjudicating body for this new right should be the High Court. I now propose that the procedure should be that complaints should be heard in the first instance by industrial tribunals but that enforcement orders against a union for non-compliance with a tribunal decision should be awarded by the High Court. This would enable the services of conciliation officers to be used prior to tribunal cases, would remove the High Court from the front rank in dealing with the cases, but yet would give the procedure the status which the High Court confers.

Finance for Trade Union Ballots

10 I propose that finance should be available for ballots on union amalgamations as well as elections, changes in union rules and the calling and ending of strikes. Ballots on amalgamation are already legally compulsory but it would be odd to finance ballots on changes in union rules yet not amalgamations when these involve such changes and when they usually bring about some desirable rationalisation.

11 Concern was expressed at E(79)3rd that the legislation should not provide for financing ballots which were not genuinely secret or otherwise subject to abuse. Problems of abuse arise on non-postal rather than postal ballots but special requirements to secure secrecy and fairness in non-postal ballots are likely to be seen as infringing union autonomy and would reduce the chances of unions making use of this provision. I have therefore concluded that the legislation should initially cover postal ballots only but that power should be taken to cover non-postal ballots by affirmative order should this seem desirable at a later date.

Conclusion

12 I seek my colleagues' agreement to the preparation of legislation to give effect to the proposals set out in the Annexes to this paper.

Department of Employment
LONDON SW1

27 September 1979

JP

PICKETING

Geographical and Personal Limitations

1 I propose to amend S.15 of the Trade Union and Labour Relations Act 1974 so as to make it lawful for one or more workers in contemplation or furtherance of a trade dispute to attend at or near his or their place of work for the purpose only of obtaining or communicating information or peacefully persuading any person to work or to abstain from working. I do not think that it is necessary to specify that pickets must be party to the dispute since it is normally impossible for a worker to picket his own place of work without being in dispute with his employer.

2 It will be necessary to include specific provisions

(i) to make it lawful for trade union officials to attend at or near a place where their members are peacefully picketing (within the definition of the amended S.15);

(ii) to make it lawful for a worker whose work involves travelling from place to place (eg a lorry driver) to attend at or near only the premises of his employer from which he works;

(iii) to make it lawful for a worker the nature or location of whose work makes it impracticable for him to picket as his own place of work (eg a worker on a North Sea oilrig) to attend at or near the premises of his employer from which the operations in which he is engaged are locally managed.

Link with Immunities

3 Furthermore, since S.15 is largely declaratory, it is proposed to address these changes by an amendment to S.13. This will provide that in respect of picketing the immunities for inducing breaches of contract

conferred by S.13 shall apply only to breaches induced by picketing which falls within the scope of the amended S.15.

4 The effect of the provisions in paras 1-3 will not be to create "no go" areas where peaceful communication or even silent demonstration would in themselves become illegal, but to provide that those who picket outside the limits and who induce a breach of contract would be liable to proceedings by injunction and ultimately for damages.

Code

5 Finally, it is proposed that the legislation should give the Secretary of State the power to produce a code on picketing and should require him to lay it in draft before both Houses of Parliament.

CLOSED SHOPS

Existing Employees

1 The current unfair dismissal provisions will be amended to give protection to existing employees who were not union members when the union membership agreement (UMA) is or was introduced. The right will apply whether or not the UMA was entered into before or after our legislation.

Deeply held personal conviction

2 I propose to make a further amendment to current unfair dismissal law, in order to give new protection to those with personal convictions against joining, or remaining a member of, any union. We envisage the protection would be along the lines of covering those who "object on religious or other grounds of conscience to being a member ...".

Ballots

3 I propose to provide in the legislation, again by amendment to unfair dismissal law, that a UMA entered into after our legislation is operative should not be able to operate lawfully unless a secret ballot is held in which 80% or more of the eligible employees vote in favour of the UMA.

Joinder

4 Where an unfair dismissal complaint arises from the operation of the UMA, I propose to give the employer in the case a right to join a union as a party where he argues the dismissal was caused, in part or whole, by union pressure. The tribunal in the case could oblige the union to indemnify the employer for some or all of the compensation awarded against the employer.

Code of Practice

5 Provision will be made to give the Secretary of State powers to produce a Code of Practice, as an alternative to an ACAS Code. The legislation need no be deferred to await publication and Parliamentary approval of this Code.

CONFIDENTIAL

Arbitrary Exclusion or Expulsion by a union

6 The procedure for dealing with this new right will be the same as that put forward in the now repealed S.5 of the 1974 Act ie - application at first instance to industrial tribunals, with any enforcement orders for non-compliance with a tribunal decision awarded by the High Court.

7 Legislation will generally leave it to the industrial tribunal to determine what is reasonable action by a union in the circumstances having regard to the equity and substantial merits of the case.

CONFIDENTIAL

SUPPORT FROM PUBLIC FUNDS FOR UNION BALLOTS

Matters to be covered

- 1 It is proposed that the scheme should cover initially:
 - (a) Election to full-time trade union office and to the executive or other governing body of an independent trade union.
 - (b) Matters involving changes in union rules.
 - (c) Ballots on amalgamations and transfers.
 - (d) Ballots on the calling or ending of strikes.

The power to extend this list by affirmative order would be included in the legislation.

Method of Balloting

2 Initially it is proposed that only postal ballots should be covered. The definition would include ballots where papers are issued at the place of work but returned through the post but would exclude cases, where only a proportion of the membership vote by post. Non-postal ballots raise difficult questions of secrecy and fairness but there would be a power to cover them later by affirmative order if this appeared desirable.

Costs

3 In addition to the postal costs the scheme would cover the printing and stationery costs of postal ballots, together with the costs of explanatory election material sent out with the ballot forms. Power to extend this list by affirmative order would be included in the legislation.

Administration

4 The scheme would be administered by the Certification Officer (CO) who would have a fund from which to reimburse applicants. The fund would be open to audit by the Comptroller and Auditor General.

5 Before he makes reimbursement the CO would be required to satisfy himself that the union rules governing the ballot had been observed, that secrecy was preserved and that, so far as it was reasonably possible in the circumstances of the ballot, every member had a fair opportunity of voting.

6 It is proposed to provide for a six week period to elapse between the receipt of an application for reimbursement and payment during which the CO would be able to take account of any information or complaints which might call in doubt any aspects of the matters on which he was required to satisfy himself.

7 I do not propose any statutory provision for appeal from the CO's decision. It would be open to an interested party (normally the union concerned but just possibly, in certain circumstances, an individual union member) to challenge his decision in the High Court.

8 The cost is estimated in the first full year to be about £1m rising in subsequent years according to take-up to probably around £2m.