

SECRET

~~cc Hodgkins~~
~~Repetitive~~

→ AD

2.12



~~(Handwritten initials)~~

PRIME MINISTER

LAYING OFF WITHOUT PAY

In my minute of 2 December I reported that instructions had been given for the preparation of draft Bills to permit the laying off without pay of employees who were without work because of the industrial action of others. I said that knowledge of the Bills would be tightly restricted.

Draft Bills have been drawn up by Parliamentary Counsel in consultation with officials in the Department of Employment, the legal Departments, and my Department. One Bill covers all employees; the other is confined to the civil and public services. In my view it would be unwise to widen knowledge of the Bills at this stage by sending copies of them to other Departments. Jim Prior agrees. Given priority, it should be possible to consult other Departments, and to prepare final versions, within a week of taking a decision to lay either Bill before Parliament.

The draft Bills include wide powers of lay-off but Jim Prior and I agree that this is inevitable. We also agree that we shall have to do without provision for pension protection in the Bills. My minute of 2 December warned that it would be very difficult to achieve this for the generality of employees; the study by officials has confirmed that this is so. (If we wanted to, however, we could amend the relevant civil/public service schemes without a specific provision in either of these Bills.)

In view of the severe damage which would result from a leak, I have instructed that no further work should be done on the drafts until a decision has been taken to introduce legislation.

I am copying this only to the Secretary of State for Employment and Sir Robert Armstrong.

(Large handwritten flourish)

SOAMES

9 February 1981

SECRET

EXTRACT FROM EEF SUBMISSION

11. From the foregoing it follows that some means other than restricting union immunities needs to be found to produce a fair balance of power between unions and employers, so that their vulnerability is much more evenly matched than it now is. In particular, the Federation believes that the measures outlined in (b) below need to be adopted in priority to any action on union immunities.

(b) Other Priorities for Industrial Relations Reform

12. With the steady trend of accumulating industrial power in the hands of unions and their members, the Federation believes that it is right and necessary that fair deterrents must be constructed against the irresponsible taking of industrial action. The Federation is glad to acknowledge the steps taken by the Government in this area - as, for example, by the 'deeming' of strike pay; the taxing of any social security benefit paid to strikers; and the deferment of strikers' tax rebates. Nevertheless the scale of financial loss as a result of industrial action still remains far greater on the employer's side than on the striker's, leaving aside any question of loss of customer goodwill or power to attract future investment. That is why the Federation urges that the government should as a matter of priority enact changes in the existing law that are outlined below.

- (i) Enabling an employer whose business is disrupted by industrial action by some of his employees to lay off other employees without pay

With the growing specialisation within industry - and, indeed, in employment generally - it is becoming progressively easier, and increasingly common, for unions to cripple enterprises, without great loss to themselves or their members. Thus, a relatively small number of individuals can be withdrawn from a critical area which can paralyse the operations of the whole enterprise. In this way a union's members concerned in the outcome of a dispute, and protected by statutory and contractual rights to

notice, can maintain their pay and comfortably finance a small number of their members who are actually taking industrial action on their behalf. It is essential that this abuse is countered. This should be done by enacting that an employer whose business is disrupted by industrial action taken by some of his employees should be entitled to lay off other employees without pay, even if their normal work is available. Such a measure would have a vastly more powerful, beneficial and immediate influence on the conduct of industrial relations than the highly political, sensitive and uncertain remedy of altering union immunities: and it should commend itself to the general public as an entirely fair and understandable response to the pressure of selective industrial action. Unions themselves would probably be less opposed to legislation of this character, than to measures (such as are discussed in the Green Paper) whereby their funds could be exhausted by withdrawing their existing immunity. Further, the measure could not lead to the creation of 'martyrs' since, of course, there is no possibility (again, as compared with measures discussed in the Green Paper) of anyone being committed to prison for contempt of court. Finally, there is a good prospect that such a measure would endure a change of government since the general public would support it as merely conferring a reasonable power of response on the employer who had been confronted by selective industrial action. Additionally, Section 111 of the Employment Protection Act, 1975 should be amended so as to revert to the pre-1975 position under which laid-off employees of the same grade or class as those taking part in industrial action were excluded from unemployment and supplementary benefit.

- (ii) Enabling employers to relieve themselves of the burden of having to maintain the pay of employees when large sections of the economy are paralysed by industrial action, and they are unable to continue operations.

The need for, and character of, this remedy is argued in detail in Section 3H below.

- (iii) Changing the law relating to the dismissal of employees participating in a strike or other industrial action.

Section 62 of the Employment Protection (Consolidation) Act 1978 allows a striker who has been dismissed or not offered re-engagement to claim unfair dismissal if he can show discrimination in this matter. The Federation believes that this provision tends to operate unfairly against the employer. It urges, therefore, that the law should be changed so that an industrial tribunal would be excluded from considering the fairness or otherwise of the dismissal of any striker dismissed while taking industrial action.

These measures - particularly (i) and (ii) - would have a strong and beneficial effect in reducing the present damaging over-exposure of employers to the threat and effects of industrial action. They are to be preferred to the uncertain hazard of taking immediate action to reduce union immunities.

Conclusion

13. The Federation concludes that, before action is taken to reduce union immunities, the following measures should be enacted to put employers and unions on a more even footing by providing fair deterrents against the irresponsible taking of industrial action -

- (i) enabling an employer whose business is disrupted by industrial action by some of his employees to lay off other employees without pay.
- (ii) enabling employers to relieve themselves of the burden of having to maintain the pay of employees when large sections of the economy are paralysed by industrial action, and they are unable to continue operations: (this item is dealt with in Section 3H below).
- (iii) excluding an industrial tribunal from considering the fairness or otherwise of the dismissal of an employee who was dismissed while taking industrial action.
- (iv) amending Section 111 of the Employment Protection Act 1975 so that laid-off employees of the same grade or class as those taking industrial action are excluded from unemployment and supplementary benefit.