

Briefing Note

No. 5
10.2.82.

THE EMPLOYMENT BILL

At the time of the 1979 General Election, the 'winter of discontent' and the state of industrial relations were uppermost in everyone's minds. The country had felt the effects of the Labour Government's legislation to increase trade union privileges; it did not like them. On all sides it was recognised that action was needed urgently.

Both major parties had favoured comprehensive reform. The Labour Government published in 1969 "In Place of Strife", only to abandon it in face of TUC opposition. The Conservative Government brought in the 1971 Industrial Relations Act. The 1974 Labour Government abandoned the aim of reform altogether, repealed the Conservative Act and opted for strengthening still further the unions' already uniquely favoured position.

The Conservative Party in its 1979 Manifesto promised urgent action in three key areas - picketing, the closed shop and wider participation through secret ballots for union elections; and envisaged possible further changes.

The three priorities were covered in the Employment Act 1980. Mr. Prior published the Green Paper "Trade Union Immunities" (Cmnd. 8182) in January 1981 as a prelude to further measures.

The present Bill takes account of over 300 submissions received on the Green Paper. It also includes one or two modifications to the proposed Bill that Mr. Tebbit outlined on 23rd November - notably a new proposal to provide compensation at the Secretary of State's discretion to people who lost their jobs because of the legislation on closed shops passed by the Labour Government in 1974 and 1976, and who would have been eligible for compensation if the 1980 Employment Act had been in force at the time.

'A modest measure in both size and purpose' was the way the Secretary of State for Employment, Mr. Norman Tebbit, described the Bill. The Government had not sought, he said 'to transform the whole framework of industrial relations law. Nor have we fallen into the error of assuming that good industrial relations can simply be legislated into existence. We have not attempted root and branch reform ... We have tried to provide specific remedies for real abuses, to provide effective protection where it has been shown to be necessary and to redress the imbalance of bargaining power to which the legislation of the last Government had contributed so significantly.' (Hansard, 8th February 1982, col. 738).

The Bill's main purposes are:

- To increase the protection for non-union employees working in a closed shop by making it unfair to dismiss an employee for not being a union member in a closed shop which took effect before August 15th 1980 and had not been supported by a ballot within 5 years (employees in closed shops established after August 1980 are already protected under the 1980 Act).
- To increase substantially the compensation for people unfairly dismissed for non-membership of a trade union or equally, because of their trade union membership and activities - with a special award in cases where an employer refuses to comply with a re-instatement order; and to enable the dismissed worker to sue the union as well as the employer in unfair dismissal proceedings.
- To amend the law relating to dismissal of strikers.
- To make unlawful discrimination against firms employing non-union labour in the awarding or making of contracts, and to remove legal immunities from those who press an employer to do so, or organise strikes, against non-union firms. This would prevent attempts to introduce closed shops even where neither employees or unions want them.

- To enable a trade union to be sued for an injunction or damages, up to limits related to the membership of the union, for unlawful industrial action (individual union officials are already so liable).
- To restrict the definition of a lawful trade dispute to disputes between an employer and his own workers, on subjects wholly or mainly related to those defined in the Trade Union and Labour Relations Act 1974 - thus preventing blacking or other secondary action against the firm by a trade union not involved in the dispute.

Bringing the law into line. Since the 1980 Act was passed, the judgement of the European Court that the dismissal of the five railwaymen for refusing to join a union contravened the European Convention on Human Rights; and the widely reported case of the four part-time school dinner ladies dismissed for the same reason have demonstrated, yet again, the need for further action on closed shops. The new provisions will provide substantial compensation for people who suffer injustice as a result of the operation of a closed shop, and deter employers and unions from acting unjustly.

These provisions, and the limit on immunities, go some way towards bringing the law relating to trade unions into line with the law relating to everyone else. As Mr. Tebbit said: "Since 1906 trade unions in this country have enjoyed virtual total immunity from civil actions even if they have acted unlawfully, quite outside a trade dispute. No other trade union in the world is outside the law in that way ... and no other person or organisation - not even the Crown - has comparable immunity in this country" (ibid., col. 745).

Labour and SDP attitudes. The Labour Party has, predictably, raised the customary and bogus outcry against what it terms an attack on trade unions. The Social Democratic Party has shown for the first time all too clearly how fragile is its cohesion. Mr. John Grant, a former Labour Employment Minister and now the SDP spokesman on Employment, declared: "I think it is a bad bill." (Guardian, 6 February 1982). He was one of the 5 SDP members who voted against the Second Reading. However, he added that there might be "political mileage" in the SDP supporting the Government on the Bill, which perhaps explains why 17 SDP MPs voted for the Bill (5 others did not vote). Mr. Grant's opposition to the Bill explains why it was Mr. William Rodgers who acted as SDP spokesman in the debate. He said: "The plain fact is that on all the available evidence ... a significant majority of trade unionists believe in the Bill's provisions."

If the SDP cannot agree on its attitude to a measure as modest as this, in an area of policy where it has said that action is urgently needed, what hope has it of agreeing any coherent set of policies to put before the electorate ?

For the Government - and for the country - this measure, moderate as it is, has implications beyond the letter of the law that it amends. As Mr. Tebbit said: "I do not claim that it is the complete answer to poor industrial relations, low productivity and poor pay, which have characterised our economy for far too long. It is one step along the path to improving our performance in all those areas." (ibid., col. 746).