Prime Minister (1)

21 October 1982

POLICY UNIT

PRIME MINISTER

Content for Ferdie to send this to the CPS?

MCS 22/10

TRADE UNION REFORM

I think there is a danger of complacency and timidity creeping into our approach to the reform of trade union law. Both the paper from Norman and the discussion last week were extremely defensive and limited.

It is important that we recognise that on almost every aspect of trade union reform, our progress so far needs consolidating in the next Parliament What we have done so far is to soften up the ground; we have not ploughed it and cultivated it. The more powerful trade unions are still quite capable of returning to their old bad habits at the first signs of labour shortage. In fact, this is implicitly accepted in the argument that "we must allow the new provisions time to bed down" - before we go onto the next, equally vital stage.

But unless we clear our minds now about what we want to do next, there is not going to be a significant next stage, at least not in 1983-85. And if we miss the early years of the next Parliament, experience suggests that the momentum is likely to be irrecoverable.

Alfred and I have asked Len Neal's group at the Centre for Policy Studies to gird their loins again. They were a great help last time. Could you please give their efforts your blessing?

The attached paper is intended to set them going. I apologise for its terrible length. But the arguments for resting on the status quo do need pulling apart.

- Please see that the paper is kept strictly confidential -

JM

I agree - and should be very pleased for Len Neal's group to be set up again. I must mention to Norman Tebbit before the paper goes out. MT

FERDINAND MOUNT

20 October 1982

TRADE UNION REFORM

In 3½ years, we have enacted two major pieces of trade union reform. A third is approaching the Green Paper stage. This is a considerable legislative effort. The first signs are that this step-by-step approach may have begun to improve the behaviour of trade unions in such things as picketing and blacking - although it is hard to disentangle the effects of our reforms from the effects of the recession.

But we should not forget that the last Labour Government took barely 2 years to demolish the far more elaborate architecture of the Industrial Relations Act - and, into the bargain, to provide fresh legal privileges for trade unions and to burden employers with a host of extra costs and duties.

We must not lose steam. We must not even contemplate complacency. Three tasks present themselves:

1. We must constantly re-examine the steps already taken to see how they are working out in practice and establish whether they are adequate or whether they need to be strengthened in changed circumstances.

2. We must constantly re-examine the possibilities for further action. What was "politically impossible" yesterday may be quite practicable and hence urgent today. We must not tamely accept arguments for the status quo which have been undermined by time and experience.

3. We must constantly evaluate and keep in mind the legal and social position of trade unions which we wish to see in the long run - the Trade Unions 2000 question. Without this sort of clear conception, we shall simply be hopping from perch to perch with no real destination.

In most cases, the arguments against continued change have not been properly examined. And we ought to test them with a view to extending the boundaries of the possible in the next Parliament.

The Employment Act, 1980, opened up possibilities to various interested parties - possibilities of legal action to workers sacked because of closed shops; possibilities of free ballots to trade unions wishing to hold elections, and so on. It enforced practically nothing. In each case, therefore, the question is whether we wish to move from facilitating better practices to enforcing them. The 1982 Bill is a solid advance in this direction, but it is only a starting point, not a terminus.

Picketing

The code of practice is couched in admirable terms. But why should we not make it fully enforceable at law by creating the appropriate torts and offences? To do so would not affect the discretion of the police as to whether or not to prosecute (one frequent objection). Nobody seriously argues that more than six pickets are needed at any one access point for the purposes of "peaceful persuasion".

There was and is much to be said for a "settling down" period. But that settling-down period only reinforces the public feeling that we never want to see mass picketing back again. In the next Parliament, we could surely consolidate into law the new tradition of armbanded, six-only pickets.

It should never be forgotten what a peculiar legal privilege the right to picket is. It should accordingly be carefully defined and limited in law.

Secondary Action

The distinction drawn by the 1980 Act between a first customer/supplier and other customer/supplier is unfair and illogical. There is indeed no good reason why the law should provide immunity for any secondary or "sympathetic" action. And we promised in our Manifesto to "ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading)". We must meet this commitment in full.

Section 17 of the 1980 Act has now been successfully construed in the courts and union funds are now at risk. There may be a case for waiting until the next Parliament to establish a tradition of judgments against blacking etc. But we should not delay beyond that before outlawing blacking altogether.

Union Democracy

The trade unions' refusal to take up government subsidies for the holding of secret ballots shows the limitations of the enabling, permissive approach. As in so many other questions, there are no painless options for Government. If we are serious about strengthening and spreading democratic practices inside trade unions, there is no alternative to grappling with the complexities of trade union structures and rulebooks.

And once government intervenes in such questions as elections to the Executive Committee, rule changes and transfers and amalgamations, can government abstain from the great and crucial question for the individual member, particularly in a closed shop: viz whether to go on strike? This, after all, involves two of the most central questions in a man's practical life - the ability to support his family and his contract with his employer. In comparison, measures to ensure (by substituting contracting in for contracting out) that he does not unwittingly or involuntarily contribute to a political party which he does not support are surely of minor importance.

The machinery for triggering strike ballots is not hard to envisage: so many union members, representing a given proportion of the membership affected, would have the right to call for a strike. If that call were disregarded by the trade union hierarchy, then the industrial action would lose its immunity.

The doubts about such a trigger-mechanism relate not to morality but to practical outcome. "Troublemakers", it is said, would be able to demand strike ballots in situations in which cooler official heads would otherwise have been able to resolve the dispute without a strike; sometimes the ballot would produce the wrong result.

That, it cannot be said too strongly, is the occupational hazard of democracy. Surely the bad outcomes would be far outweighed by the favourable shifts of pressures upon union executives, both in regard to the calling of a strike and in the negotiations with the employer before and during a strike. Instead of the union executives being, in most cases, able to show a solid front and so present themselves as men who cannot budge once a strike has started without "new money on the table", they would be jumpy, listening for the click of the

trigger. And because of the risk of such a humiliation, they would be more reluctant to call a strike without overwhelming evidence of support from the rank and file.

The argument against strike ballots is in essence a hangover of the attitude infusing the Industrial Relations Act, namely, that a Conservative Government ought to want strong (ie autocratic) trade union leadership, able to impose its will on the rank and file and so make deals stick.

This attitude is still common in big business and the management of nationalised industries. It seems rather out of touch with modern conditions.

The best managements and unions surely aim for long-term deals which are then put out to a ballot of the workforce. It's the ballot which makes the deal stick, not the union officials.

Enforceable Agreements

Many people outside the trade union hierarchy are convinced that it would be valuable if agreements between employers and trade unions were enforceable at law. Another suggestion is that immunity for industrial action should be linked to the observance of procedure agreements.

The objection universally advanced to these propositions is that "employers do not want them". Even after the 1971 Act, which presumed all collective agreements to be intended by the parties to be legally binding unless they included a specific proviso to the contrary, virtually every collective agreement did include such a proviso.

Why don't most employers want agreements to be made enforceable, one way or another? We are told it is:

(a) because in real life most procedure agreements would not "bear the weight" of legal interpretation; and

(b) because the unions would withdraw from existing agreements and refuse to enter into fresh agreements if agreements were enforceable.

Reason (a) and reason (b) are somewhat conflicting. If the agreements would not bear that weight, then trade unions have no reason to be frightened of them. If, on the other hand, they would bear that weight, then trade unions can be frightened of them only because they wish to keep the freedom to break them. In which case, what real value do these agreements have in the first place?

It is absurd to claim that written agreements drawn up between experienced, paid managers and officials could not bear the weight, when the courts every day have to pass judgment on far less professional agreements - often verbal, implicit and incoherent - between individuals in matters of family and property. The fact that there might be scope for endless quibbling - as there is even in agreements between gigantic multinational corporations - would not prevent a substantial breach of agreement from being, in most cases, as easy to recognise as an elephant. And of course, as soon as agreements do become enforceable, the sensible employer/trade union would take good care not to leave himself open to accusations of breach of contract.

It is more likely that most employers are simply frightened of the unknown. To move from a world of imprecision, loose ends and boltholes to one in which you have to say what you mean and mean what you say, is to experience the wrench of adulthood.

We ought surely to educate employers and trade unions in the advantages of adult responsibility, and to encourage them to get their agreements into enforceable shape.

Closed Shop

Both the Prior Act and the Tebbit Bill include a number of proposals to improve the rights of individuals who have been injured by the closed shop: the right not to be unreasonably refused membership of the relevant union; the right not to be expelled; the conscience clause; the right to sue the trade union as well as the employer for unfair dismissal for non-membership; the 80% requirement for new closed shops; the increased compensation, and so on.

These provisions are all valuable. But they do depend on the individual having the courage and tenacity to take advantage of them.

Even new closed shops could creep into existence without a ballot if the employer is pliable and the dissenters in the workforce do not dare to resist effectively.

But it is in existing closed shops that the density of trade union membership combines with historical tradition to create trade union muscle.

Will our reforms so far have any effect on muscle accumulated over years? Anything which civilises the closed shop must help to weaken it. For the closed shop's strength resides, first and last, in the threat of violence against its own members: physical violence; verbal violence either through the language of "scab" and "blackleg" or through the silence of being sent to Coventry; financial violence through the denial of livelihood. The protection of the individual does bring the outside force of the Government into an otherwise closed world, even if only at the margins.

But so long as we leave the core of the closed shop itself outside the law, we are perpetuating the legend of its invincible, raw, ugly power. Even in protecting its victims, we are testifying to its potency.

Any attempt to abolish the closed shop altogether would only reinforce the legend, if it proved unsuccessful, as would be all too likely.

There might be a better case for further reducing the lawless strength of the closed shop by extending the civilising process.

Suppose we made the 5-yearly ballot and the 80/85% requirement <u>mandatory</u> by a method something like the following:

Every employer would be required to notify the Department of Employment of any closed shop within his company. The relevant trade union would then be required to state whether or not it agreed that it did indeed maintain a closed shop in the workplace. For reasons of internal morale, it would have to state the truth. The closed shop in question would then be required to hold a ballot within 5 years on whether or not the arrangement should be continued.

Although most closed shops would no doubt continue, they would become dependent on renewal by democratic process, because any trade union which failed to secure the 80/85% would have suffered a humiliating blow which would make it very difficult to use non-legal forms of coercion against individuals who wished to disobey or to leave the union and yet retain their jobs.

A proposal of this type would be different from the provisions of the 1971 Act relating to the agency shop, for here we would not be registering the closed shop or endowing it with especial privileges. We would simply be ensuring that the imposition of 100% membership reflected the wishes of the members.

Selective Dismissal and Lay-Off

Strikes by selected and relatively small groups of workers with disproportionate disruptive powers have been growing, especially in the public sector. Two types of power have been put forward to counter this: the power to dismiss without right of appeal or compensation the selected group of workers who are causing the trouble; and the power to lay off without pay the greater body of workers for whom there is no work as a consequence of the action.

The first is the more direct and equitable route. When the Tebbit Bill becomes law, employers should have little difficulty in taking it.

The second raises the objection of whether the Government should not encourage employers to break their contracts.

But it is unreasonable to insist that employers should have to wait until they are made bankrupt before they can temporarily vary the terms of contracts which they can no longer fulfil without damaging the company's prospects of survival.

Legislation on these lines is certainly worth further exploring. No doubt qualifications could be built in if desired; it might be reasonable to expect the employer to show that he was unable to dismiss and replace the strikers and/or that he was suffering serious financial damage.

Trade Unions 2000

The points made above certainly do not exhaust the possible areas of reform. They do, however, suggest that we have only begun to bring the trade unions within the ambit of ordinary civilised behaviour.

In our step-by-step approach, it is important to realise that some of our early actions may only have been "steps-towards-steps" and that, to have any permanent effect on trade union behaviour, they must be reinforced and strengthened.

But we can do that only if we also have a clear perception of where the steps are designed to lead us.

What do we want to see in the year 2000?

1. A trade union movement whose internal procedures are democratic. This is not a question of "legitimising" the trade unions. It is a basic requirement, which flows from the fact that to lock 11 million people - millions of them Conservatives and Social Democrats - into a politicised mafia is wrong.

2. A trade union movement which regularly uses the law, not just as a source of immunities, but, like individuals and other organisations, as the set of rules by which we live. We must move towards the enforceability of contracts in the late 1980s.

3. A trade union movement much reduced in size. So long as over 50% of the workforce is unionised, British industry and commerce can never hope to respond to change with anything like the speed needed to regain competitiveness.

We must neglect no opportunity to erode trade union membership wherever this corresponds to the wishes of the workforce. We must see to it that our new legal structure effectively discourages trade union domination of new industries.

4. A trade union movement whose exclusive relationship with the Labour Party is reduced out of all recognition. Again, it is absurd and unjust that millions of Conservatives, Liberals and Social Democrats should be supporting the Labour Party directly or indirectly. This relationship fossilises the Labour Party and stultifies the whole political dialogue.

If contracting-in is changed to contracting-out, it will no doubt revive the general argument about the financing of political parties. But if the incomes of political parties continue to decline at their present rate relative to the national income, the argument will revive itself, whatever we do.

We might hope that trade unions which had changed along these lines would have changed in other ways too; for example, they might develop an interest in the profitability of the companies in which their members work; such trade unions might then fruitfully take part in management.

And once agreements became enforceable as a matter of course, it would become much easier to make no-strike agreements stick in essential public services. At present, involving the criminal law to forbid such strikes would be more likely to intensify gangsterism and violence than to deter it.

But these are more distant prospects. The minimum surely is that we should be aiming for trade unions which are more democratic, more law-abiding, smaller and less political.

We shall not succeed in moving towards this destination unless we are prepared to contemplate not only the options on which Norman Tebbit is now beginning consultations -

(a) enforcing secret ballots within the unions for the election of union leaders;

(b) enforcing secret ballots on strikes;

(c) changing contracting-in to contracting-out of the political levy;

- but also other steps to consolidate our progress to date, such as

(d) enforcing in law the code of practice on picketing;

(e) withdrawing immunity for all secondary action;

(f) linking immunity to the observance of procedure agreements;

(g) making it mandatory for every closed shop to hold a ballot every five years;

(h) granting employers the right to lay off workers made idle by industrial action.