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MR SCHOLAR

cc Mr Mount
Mr Ingham

LEGALLY-ENFORCEABLE AGREEMENTS

As you know, we got in a bit of a tangle during Questions briefing today over no-strike provisions and legally-enforceable agreements. The position is not straightforward, and I have encouraged my opposite number in the Department of Employment to suggest to their Private Office that they ought to send us a proper note about it, not least because (as I need hardly say) the Prime Minister was right and their Private Office was wrong about the position of public utility workers. Meanwhile, I set out below my understanding of the position.

No-Strike Provisions

Under the 1875 Protection of Property Act, there was a general provision making it unlawful to strike if a danger to health would result; and a specific provision under which it was assumed that strikes in the water, gas and electricity industries would cause such danger. It was therefore, at least in theory, unlawful to strike in those industries until that specific provision was repealed by Mr Heath in his 1971 Act.

Since then, the general provision of the 1875 Act has remained in force. But it has hardly ever been used, because there is an easy way round it - which is for the unions simply to give due notice that their members are terminating their employment. Indeed, that is exactly what the water workers did last Monday.

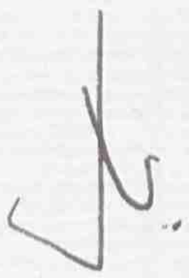
Of course, what the Prime Minister actually said in the House in response to Mr Taylor's Question about no-strike agreements was right: that they tend to be expensive.

Legally-Enforceable Agreements

There is a different issue as to when agreements concluded between employers and unions are legally enforceable. Mr Heath's 1971 Act presumed that all collective agreements were intended by the parties to be legally binding unless they included a specific provision to the contrary. But virtually every collective agreement subsequently concluded, including those in the public utilities, did have such a

proviso. So the 1971 Act did not have the effect of making it unlawful for workers in the public utilities to strike. That Act has, of course, now been repealed by the 1975 Act anyway.

Should we look again at making these agreements legally enforceable? In the light of our experience recently with the water industry, there may be some public demand for that. But consultations on the 1981 Green Paper showed that in general employers saw little or no advantage in having legally-binding agreements, which could prove to be two-edged swords anyway.



JOHN VEREKER
20 January 1983