MR MOUNT

cc Mr Scholar
Mr Wolfson
Mr Gow
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PREVENTING STRIKES IN THE ESSENTIAL SERVICES

As I promised some time ago, I have been giving some thought to no-strike arrangements. The water strike has intensified public and Ministerial interest in the issue: but it has been on the Government's agenda for a long time - ever since the Manifesto commitment:

> "In consultation with the unions, we will reconcile these [pay bargaining arrangements] with the cash limits used to control public spending, and seek to conclude no-strike agreements in a few essential services."

Although it is not mentioned in the Green Paper inviting comment on the Government's proposals for the next round of industrial relations legislation, it remains a possibility - a possibility considerably increased by the Prime Minister's comment during Question Time on 24 February:

> ". . . So there can be agreements that are broken. We are looking at the consequences of this for future legislation and the need for a statutory duty to continue the supply of essential services."

You and others may find the attached short draft paper a helpful starting point. It represents personal thoughts only, but I have talked through the issues with one or two people in Whitehall. If it does no more than undo the damage caused by the muddled and over-simplified paper by Lionel Bloch which has received so much public attention, it will have served its purpose.

Department of Employment officials are themselves looking again at these issues, as we would expect; but I understand that Mr Tebbit has not yet decided if, or how, he wants to take it further. I think the conclusion points pretty firmly in the direction of further legislation on immunities and legally binding collective agreements, so this may be yet another category of post-election issues.

JOHN VEREKER

3 March 1983

PREVENTING STRIKES IN THE ESSENTIAL SERVICES

Note by the No 10 Policy Unit

The Government has two objectives for industrial relations in the essential services.* It wants to prevent strikes. But it also wants to keep costs down. This note addresses the difficulty of reconciling the two.

There are broadly two approaches, although they are not often distinguished in public debate: preventing strikes through agreement between management and unions, and preventing strikes through legislation by the Government. In their simple and unqualified forms, neither of them can meet both the Government's objectives.

No-strike agreements which ignore the consequences for the ability of management to control pay, manpower and working practices are easy to formulate - but a waste of time. There is no point in a no-strike agreement which gives the unions everything they might want to strike for anyway, such as a guaranteed place in the earnings league, or a veto on redundancies. And agreements can be broken.

No strike legislation, in contrast, can be imposed on the unions without a quid pro quo. But it suffers from a major weakness, as the existence of such legislation since 1875 demonstrates: it doesn't work. This is principally because it is always open to the workforce concerned to give notice that they wish to leave. Legislation could not reasonably prevent individuals from leaving after due notice, nor could it reasonably cover those who are no longer employed in a particular industry.

But if we look under the surface, the picture is a little more promising.

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* Throughout this note, "essential services" are narrowly defined, in order to minimise the coverage, complexity or cost of whatever provisions are favoured. So we are thinking in terms of electricity, gas and water supply, and the three emergency services, but not necessarily all workers in all those industries.

1. No Strike Agreements

There are two problems: cost, and enforceability.

(a) Cost. It is widely believed at present that the cost would be too high. Certainly if the cost of persuading the unions to sign an agreement not to strike is that management has to accept unilateral access to binding arbitration, or no redundancies, then the cost is too high. And most automatic pay formulae, especially those which have an inherent upward gearing (by linking basic pay increases to average earnings elsewhere, for instance), would be equally unacceptable.

But now that inflation has come to the end of its steep fall, and looks set to bounce around between 4% and 7% for the foreseeable future, the earlier disadvantages of indexation to the RPI are much less. For three years the fall in pay, largely reflecting the RPI over the previous 12 months, has lagged behind the fall in inflation, and that is why the Average Earnings Index has always been so embarrassingly high. The other disadvantages of indexation to the RPI - or "guaranteeing pay rises to match the cost of living" as it would be understood - remain: even if applied to a few, it would be envied by many, and in the present state of the labour market anything which prevents real wages falling will raise unemployment. But at present workers in the essential services generally get a cost of living increase anyway.

(b) Enforceability. The UK lags behind other industrial countries in not having legally enforceable collective agreements. And there are circumstances in which they would clearly help. In the water strike, for instance, if the procedure agreement had been legally enforced there would have been no strike - but we can only guess at what the outcome of binding arbitration would have been. There are practical problems: most existing agreements are not in a form suitable for legal determination - which is why the CBI is opposed to it, and why virtually all agreements under the 1971 Industrial Relations Act were drawn up with a provision exempting them from it. But we are not concerned here with the generality of agreements, only with those in the essential services: they could surely be drawn up anew in a legally watertight way.

No strike agreements in a limited number of essential services are therefore feasible, and need not be particularly damaging. But there would need to be new legislation, possibly covering specified essential services only, to make procedural collective agreements binding in law; and agreements would then have to be reached, in each of the industries concerned, under which the unions undertook not to strike. A possible inducement to such an agreement would be a management commitment to link pay rises to the RPI. It remains to be seen whether that carrot would bring the unions to a legally binding agreement[1], or whether something more costly would be needed.

2. No Strike Legislation

There were two relevant sections to the Conspiracy and Protection of Property Act 1875. Section 4, now repealed, made it a criminal offence for gas, water and electricity workers to break their contracts of service with intent to cut off supplies. Section 5, which is still in force, made it a criminal offence for anybody to break a contract of service with intent to endanger life, to cause serious bodily injury, or to damage valuable property.

Virtually no cases have been brought under either of these sections, for three reasons. First, no offence can arise if those concerned give notice of leaving their jobs. Second, there are practical problems in enforcement against large numbers of strikers. Third, it is difficult to prove what the consequences of industrial action will be.

So/no strike effective legislation would also be far from simple, and uncertain in its effect, although it probably would be feasible. The problem of giving notice can only be circumvented by building much longer periods of notice - say, three months - into contracts[2], until the Government is prepared to let large numbers leave and replace them (see below). New legislation would be needed, to reinstate the special position under the law of those who provide specified essential services, and to widen the definition in Section 5 to something like "with intent to disrupt the provision of the specified service". The practical difficulty of prosecuting large numbers of individual strikers would remain, but could be removed

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1. The Department of Employment think it would not.

2. The Department of Employment believe this would still be circumvented by notice being given earlier.

by removing civil law immunities from unions who induce employees in essential services to break their contracts, so that the unions themselves could be prosecuted.

3. Other Approaches

It is because of the difficulties inherent in concluding no strike agreements, or in passing no strike legislation, that the Government has sought other ways of discouraging strikes. These have in some cases (eg coal mining) amounted to a powerful deterrent - but they are no more than that, and do not provide a guarantee of prevention. The best deterrent is endurance: our ability to withstand a coal strike for longer than the miners can is crucial, and our new-found ability to withstand a water strike is the silver lining to the cloud of the cost of the last settlement. We are now reasonably well equipped to endure strikes in most essential services, but not electricity or gas. There, and as a last resort in water and possibly elsewhere, we need to acquire an alternative workforce capacity in order to make the threat of dismissal real. At a time of very high unemployment that should be possible.

There is considerable public interest in arbitration arrangements. They offer the possibility of preventing strikes, at the cost of an independently determined settlement, but only if they can be enforced - which brings us back to the need for legislation to make procedure agreements legally enforceable. There is scope for reform of arbitration arrangements themselves, by improving the quality of arbitrators or by, for instance, introducing "flip-flop" arbitration (where the arbitrator has to rule in favour of one side or the other, and may not split the difference) but this is unlikely to have a major impact.

Summary

Prevention of strikes requires an arsenal of weapons. Among those which we should consider acquiring are:

(i) Legislation to make collective procedure agreements binding in law, possibly in the essential services only;

(ii) No strike agreements linked to the RPI;

(iii) Legislation to clarify section 4 of the 1875 Act;

(iv) Legislation to remove Civil law immunities from those who induce employees in essential services to break their contracts; and

(v) Sources of alternative labour in those essential services where endurance is necessarily limited.