

Ind. Pol



10 DOWNING STREET

Prime Minister

15.50
PM
22/4

Trade Union Bill

Do you want contracting out
removed merely from Mr Tebbit's
paper (in case of leaks) ; or
do you want his proposal out of
the Bill ?

MUS 21/4

~~Do~~ Only the paper
- and possibly for a
letter - Bill - May 1
- have a word with
him.

SP

SECRET

*Ted
Tebbit
M/S 2/4*



Prime Minister

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213-6400
Switchboard 01-213 3000

*Do you
agree all that*

*Mr Tebbit
should
circulate*

Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

*I would leave
out the
political levy*

*20 April 1983 these
proposals on Trade
Union Reform?*

Dear Michael

... I attach a draft of the paper that Mr Tebbit wants to submit to E Committee for discussion next week. I should be grateful if you could show it to the Prime Minister and let me have any comments in time for us to circulate the paper this week. *M/S 20/4*

You will see that the paper is limited to the issue of democracy in unions. The issues raised by strikes in essential services are also live, and Mr Tebbit plans to give E Committee an oral account of his ideas in this area.

*Yours ever
Bunbury Shaw*

J B SHAW
Principal Private
Secretary

SECRET

S E C R E T

DRAFT E PAPER

Outcome of Consultations on Green Paper on "Democracy in Trade Unions" and
Proposals for Legislation

1 Consultations on the Green Paper "Democracy in Trade Unions" are now complete. There was a wide response from industry (although the TUC and its affiliated unions refused to submit comments) and the general reaction was clearly one of concern at the undemocratic nature of much current trade union practice and of broad support for legislation on each of the three topics discussed in the Green Paper. My proposals for legislation are set out below.

SECRET BALLOTS FOR TRADE UNION ELECTIONS

2 I am in no doubt that we should legislate in this area at the earliest opportunity. Our consultations have confirmed that there is widespread dissatisfaction with the existing election procedures in trade unions and that legislation on this subject will command overwhelming support. I have concluded that the legislation should be straightforward and based on easily-understood principles. That will make the legislation simple to explain and defend and, conversely, very hard to attack without appearing to be opposed to democracy itself.

3 The more detailed points of the legislation are described in Annex 1. Broadly, I propose that the legislation should require all trade union governing bodies (ie executives) to be elected in accordance with four fundamental principles. These are: that voting must be secret; that every member must be given an equal and unrestricted opportunity to vote whether at his workplace or by post; that voting must be by the marking of a ballot paper; and that each union member must be able to vote directly for the members of the governing body. These principles will put an effective end to the most serious and most frequently

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cited abuses of union election procedure: voting by show of hands, block voting and indirect elections in which the members elect delegates who may or may not be bound by the members' choice of candidate.

4 It would be possible to go further and require postal balloting in all cases. However, considerable problems could be caused by out-of-date membership records which could mean the effective disenfranchisement of up to 25% of the members. Furthermore in particular cases such as seamen and itinerant construction workers properly conducted workplace ballots could be a highly effective means of giving members a genuine choice. Finally, by allowing unions some flexibility within the principles set out in paragraph 3, we should be able to undermine the argument that the Government is imposing a legislative straightjacket without regard to the diversity of trade union structures and tradition and also to avoid any problems with the ILO.

5 I believe it would be impractical to impose similar legislative requirements on trade union officials below the level of the governing body. This was the virtually unanimous view to emerge from the consultations. However, I do propose that the election of General Secretaries and Presidents should be subject to the legislation in those cases where they have a vote or casting vote on the governing body.

6 I propose that the legislative requirements should take the form of a statutory duty laid on every trade union without any possibility of opting out by referendum of the members (as suggested in para 54 of the Green Paper). This duty would be owed by the union to each and every member so that in the event of failure by a trade union to carry out an election in accordance with the legislation any individual member would have recourse to the ordinary courts to secure compliance by the union with its statutory obligations. If the union

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ignored or defied any court order the sanction would be the normal contempt procedure. This is the procedure under which numerous actions have been brought by trade union members of left and right in disputes over alleged breaches of union rules and electoral malpractice. So as to give time for trade unions to change their procedures to comply with the legislation I propose that the legislation should take effect two years after Royal Assent.

STRIKE BALLOTS

7 In my earlier memorandum (E(82)64: para 7) I suggested that the difficulties surrounding the imposition of strike* ballots argued against legislation. Since then however a number of major strikes have underlined the important role pre-strike ballots can play and the responses to the Green Paper have shown considerably more support from industry for legislative action in this area than was apparent in the responses to the 1981 Green Paper. I have therefore concluded that legislation on strike ballots should be introduced, provided that the difficulties identified in my earlier memorandum can be avoided.

8 There are three ways of giving effect to a provision for strike ballots:

- requiring a legally enforced ballot for all strikes;
- providing for a statutory right for a defined proportion of union members to "trigger" a ballot before a strike;
- making the holding of a pre-strike ballot a condition of immunity for organising a strike.

*"strike" here means any industrial action in breach of contracts of employment

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9 A statutory requirement to ballot before all strikes is impracticable and has little support. The "trigger" approach has however attracted support in the consultations. It has the presentational advantage of conferring rights directly on union members. However, I believe that it has three major defects. First, its effectiveness in practice would depend entirely on the ability and willingness of union members to operate inevitably complex procedures for pulling the trigger at short notice and subsequently to take what could be very costly enforcement action in the courts. Secondly, the legislation would be very complex and in some respects difficult to defend. It would, for example, be necessary to define exactly the circumstances in which the "trigger" could be pulled so as to prevent militants calling for a ballot during a strike in order to forestall a settlement or undermine a call for a return to work by union leaders. I have no doubt of the mischief making potential of an unrestricted right to call for a strike ballot. Thirdly, there would be considerable scope for protracted conflict between unions and the courts (perhaps continuing even after the original dispute had ended) as union members sought the enforcement of an order for the holding of a ballot.

10 In contrast the "immunity" approach, would, I believe, provide a much more powerful inducement for the holding of ballots because of the direct threat to union funds. The legislation could be much simpler both in form and operation. The issue before the courts would be whether or not a particular strike had been called without support for it being tested in a secret ballot. If there had been no ballot, the remedy and sanctions would be those for any unlawful industrial action and the courts would not become involved in the enforcement of orders for the holding of ballots.

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11 I propose that the pre-strike balloting requirement should apply only to industrial action which is "authorised or endorsed" by a trade union (as defined in section 15 of the Employment Act 1982). I do not think that it would be realistic to try to extend the balloting requirement to cover all strikes, including unofficial strikes for which trade unions could not be held liable even in the absence of a ballot. There would be little point in suing the individual organisers of unofficial action since they are usually "men of straw". Moreover, it would make no industrial sense to require a trade union to seek a demonstration of support for a strike which it had refused to "authorise or endorse".

12 I therefore propose that it should be made a condition of immunity for any strike which is "official" within the wide definition of S.15 of the 1982 Act that the support of the strikers for that strike must have been demonstrated in a secret ballot before the strike was called. The holding of the ballot would be subject to the first three of the principles set out in para 3. This is a more radical approach than the "trigger" approach but I believe it is much more likely to work in practice and will therefore be a more effective way of enhancing the democratic rights of trade union members. The details are set out in Annex 2.

TRADE UNION POLITICAL FUNDS

13 The consultations on the Green Paper have not caused me to revise my view that we should take steps to remedy the worst defects in the operation of the Trade Union Act 1913. The two major changes I propose are

- to reverse the clearly unsatisfactory situation whereby trade union members who do not wish to pay the political levy have to "contract out", by substituting a system of "contracting in"; and

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- to make each union's political objects and funds subject to review by secret ballot of the full union membership every 10 years. (At present, once a fund is set up, there is no statutory provision for review).

I also propose a number of further steps to safeguard the position of union members whose political levy is currently collected by means of the check-off and to improve the administration of unions' political funds (see Annex 3).

CONCLUSIONS

14 I will make an oral report to colleagues on my thinking about strikes in essential services.

15 I propose to publish a document setting out my detailed proposals for legislation (as with the 1980 and 1982 Acts) as soon as possible. This will make it clear that there will be no legislation on trade union political funds until after the General Election. Accordingly, as agreed at Cabinet (CC(83) 12th) a 1983-84 session of normal length after a General Election would include a Bill covering all three subjects. A short session in advance of an Election would contain a Bill on trade union elections alone.

16 I seek the agreement of my colleagues to the legislative proposals described above.

SECRET BALLOTS FOR TRADE UNION ELECTIONS

1 Paragraph 3 of the paper notes that the legislation will require direct election to the governing body. However, I see no reason to prevent unions reserving particular seats on the governing body (in accordance with existing practice) to represent particular trade groups or areas or for preventing unions from choosing different voting arrangements (eg 'first past the post' or the single transferable vote). Likewise I do not, in general, intend that the legislation should seek to define who should and who should not be able to vote in elections for the governing body from amongst a union's members. This would be a matter for the union's rules. In practice many unions exclude certain categories of member, such as recent entrants, from voting in elections and it would be a difficult if not impossible task to seek to define who should and who should not be able to vote. However, I do propose that the legislation should prevent the right to vote from being withdrawn by trade unions as a disciplinary measure ^{for refusing to strike} (as occurred recently in the NUR in relation to some union elections.)

The frequency of election

2 Many union governing bodies are elected annually and I know of none where the interval between elections under the union's rules is longer than five years. However, I propose that the legislation should stipulate a maximum five-year interval between elections for the governing body. This would apply equally to the election of General Secretaries etc who are voting members of the governing body. The legislation would, of course, apply to any elections which took place more frequently.

Restrictions on candidature

3 I propose that the legislation should make it unlawful to put unreasonable restrictions on candidature. For example I propose that it should be unlawful for any member to be disqualified from standing for office on the grounds that he has been disciplined for refusing to strike.

A referendum procedure

- 4 Paragraph 54 of the Green Paper suggested that if a majority of the total membership of a trade union were to support the union's existing election procedures in a referendum then the specific statutory requirements might not apply. However, there was little support for such a procedure in the consultations - the CBI for one were firmly against it - and it would in any event be difficult to justify allowing any union to opt out of the basic principles described in paragraph 3 of the paper. I have concluded therefore that we should not proceed with this alternative.

Financing of ballots

- 5 I propose that the existing provision of public funds available under section 1 of the 1980 Employment Act should continue to be available for secret ballots for union governing bodies which unions choose to conduct postally.

STRIKE BALLOTS

The main features of my proposals are as follows:

- (a) there would be no immunity for inducing breaches of contract in furtherance of a trade dispute unless there had been a ballot on the question whether the union members concerned wished to take the industrial action in breach of their contracts of employment;
- (b) this test would apply only to industrial action which was "authorised or endorsed" by a trade union, as already defined by section 15 of the 1982 Act*;
- (c) the constituency for the ballot would be all those members of the union or unions who had been or were to be called on to take industrial action;
- (d) as for elections the legislation would not prescribe the detail of the balloting arrangements (fully postal, semi-postal or workplace), given the very wide variety of circumstances in which ballots might need to be held, but instead would provide that every member should have a fair and reasonable opportunity of voting by marking a ballot paper and that the secrecy of the ballot was properly secured;
- (e) there would be no requirement for a particular size of majority: since the objective is to give union members the chance of a vote. I believe we should leave it to the members themselves to enforce the results of ballots. It would be extremely difficult for a union to

*to comply with this definition the action would need to be authorised or endorsed by the principal executive committee; by any other person who is empowered by the rules to authorise or endorse such action; by the President or General Secretary; by any other employed official; or by any committee of the union to whom an employed official regularly reports.

persist with a strike which had been shown not to command majority support (particularly with ^{the} new safeguards in the Closed Shop Code against expulsion of union members for refusing to strike)

(f) anyone suffering loss (or threatened with such loss) as a result of inducement to break contracts without a ballot would be able to sue the inducers for an injunction or damages in exactly the same way as they can now if, for example, there is no trade dispute or the inducement is to take unlawful secondary action.

Amongst the detailed provisions which I propose to introduce to improve the administration of political funds are:

- (a) a duty on employers not to collect the political levy by means of the "check-off" (whereby deductions from wages are made at source) unless the employee in question has authorised this in writing, and to itemise political levy deductions separately / ^{from} payments of general union dues in pay or deduction statements;
- (b) a requirement for greater details of political contributions to be recorded in unions' annual returns to the Certification Officer;
- (c) an updating but not a radical revision of the statutory definition of trade unions' "political objects";
- (d) a restoration of individual trade union members' right of access to their unions' detailed accounts (originally conferred by the Trade Union Act 1871, re-enacted in the Industrial Relations Act 1971, but removed by the Trade Union and Labour Relations Act 1974);
- (e) a requirement for unions to make clear in their accounts that investment income is directed to the fund from which the investment was made and that any deficits in political funds are charged to that fund and not to the general fund;
- (f) subject to advice from the Consultative Committee of Accounting Bodies whom I have consulted, a duty on auditors to ensure specifically that political funds are not subsidised from general funds.

2. I am not proposing any changes in the nature of the duties of the Certification Officer but some of the changes I am suggesting above will lead to an increase in the work of his office. This would involve a modest increase in staff in his office (at a cost of around £100,000 a year).