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SECRET AND PERSONAL

cc JR 13/2/84

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SECRETARY OF STATE FOR EMPLOYMENT

PRIME MINISTER

STRIKES IN ESSENTIAL SERVICES

1 In the light of our discussion at the meeting you held on 15 November, I was asked to consider whether the general approach we agreed should be confined to the three basic tests we considered or whether the legislation should go further in prescribing minimum procedures with the possibility of such procedures always including compulsory arbitration.

2 The proposed basic tests, which would need to be satisfied if immunity were not to be forfeit for official or unofficial action, are:-

(i) industrial action should not be taken on any issue already determined by a substantive agreement during its currency;

(ii) in addition, industrial action should not be taken until all stages of any extant procedure agreement have been exhausted;

(iii) a minimum period of notice of industrial action would need to be given which could not begin until negotiations were evidently deadlocked (eg on the formal designation of a "failure to agree" under a procedure agreement, on the employer making clear that a final offer had been made.

3 In addition, the Trade Union Bill will, when enacted, deny unions immunity for industrial action authorised or endorsed without a secret ballot.

4 I have carefully considered whether there are any other procedural steps or conditions which could be usefully imposed by legislation and which might in total provide a detailed but still minimal procedure for all essential industries and all issues on which industrial action could be threatened. I have had to conclude that there are not.

5 We need to remember that there are no doubt a wide variety of different procedure agreement in these industries on such relatively minor but still important matters as individual grievances, discipline, transfers, promotion, etc. They may well provide for successive stages of consultation and negotiation with the progressive involvement of more senior levels of management and trade union officials. Each will be fashioned for the circumstances of the industry and the nature of the issues which can arise. I have no evidence that they do not generally work well or that they do not accord with managements' needs. I believe that they are best left undisturbed and that we should avoid the risks and difficulties which could well follow the statutory imposition or other, minimal arrangements which could result in the unions withdrawing from such agreements.

6 On the other hand, the main terms and conditions of employment in these industries, on which damaging industrial action is more likely to be threatened, are settled only at national level and usually at a single, annual negotiation. The most senior levels of management and national trade union officials are invariably directly involved from the outset. What is more these negotiations are characterised by early, if generalised, claims and lengthy, indeed often stately, negotiations. Settlements are usually only reached some long time after the due settlement date. Similarly, with the

exception of a one-day strike in the water industry in 1982, any explicit threat of industrial action has not emerged until after lengthy negotiations and invariably only after the agreed settlement date. With this in mind, I do not believe that it would be sensible or worthwhile to prescribe minimum procedures to govern such negotiations.

7 The three basic tests we have considered have the advantage of both being easily understood and applicable in all circumstances. They are wholly reasonable and can be readily explained and defended, not least to the employees of essential industries themselves. This being so they have a better chance of being accepted with the retention of agreed procedure arrangements than if more detailed procedural steps were imposed. Moreover, the further we went in detailing procedure arrangements, the more difficult it would be not to make them even-handed so that unions had a potential legal remedy if it could be claimed that managements had not observed the procedures. We have decided against making procedure arrangements legally enforceable by either party.

8 As for compulsory arbitration, I have concluded that this must be avoided. Indeed, we have for some time been successfully urging public sector employers to free themselves from agreements which provide for unilateral access to arbitration because this removes managements' ultimate control over a major element of costs. Arbitration on wages in such key areas of the economy would run counter to the essential need to reduce public expenditure and could also be seriously repercussive on the level of wage increases in other industries. To legislate for arbitration arrangements and, inevitably thereafter in my view, to have to set up appropriate standing arbitration bodies ourselves would make it impossible to do anything other than accept the eventual

awards. To make powers which would enable to Government to set aside or modify a resultant arbitration award, whether by a Parliamentary override or otherwise, would be likely to involve the Government directly in major disputes. I am sure that it is best to avoid any arrangements which would limit for employers and the Government a flexibility of response to difficult issues. Additionally of course, not all issues which could result in industrial action could ever be arbitrable, eg closures, redundancies, pensions, contracting out. Decisions on such matters must be for management alone.

9 For all these reasons, I am sure we should not contemplate statutory arrangements for arbitration. If however there were voluntary agreements providing for arbitration, whether on agreement case by case or otherwise, the second of the three basic tests would mean that industrial action whilst arbitration took place or in opposition to an award would not have immunity.

The next step

10 I would propose to invite colleagues to endorse the proposals discussed

above. I would then propose to work them up into a consultative document. Unless industrial action of a kind on which the proposals would "bite" should take place in one of the essential services in the coming months, I would propose to issue this document in the autumn with a view to legislation in the 1985/86 session.

11 I am copying this minute to those who attended the meeting on 15 November.

TK

13th February 1984

IND Por : Relaciones

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