



Wed 8/6
at 10.00

10 DOWNING STREET

From the Private Secretary

Prime Minister ①

• NUM Rule Book

You have already seen Mr Walker's comments and we have now received comments from Mr King. The gist is that it would be extremely damaging if the rule book is adopted, though some of things it is trying to do, eg call strikes on say 20 of Executive and prevent members from joining union will not survive legal challenge.

Two issues remain:

(i) what can Government do to stop rule books being adopted?

(ii) are there any changes in law, required to thwart its provisions?
(see para 5, 6 of Mr King's paper on trade union law).

Agree a meeting with Mr Walker, Mr King, Mr Tebbit and Attorney General?

AT

24/5

Yes - urgently
ml

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Andrew Turnbull Esq
10 Downing Street
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24 May 1985

Dear Andrew,

REVISION OF THE NUM RULE BOOK

You asked for some further comments on the NUM's proposed rule 26 restricting the power to authorise official strike action to the NEC alone. A copy of the new and old rules is attached.

There is considerable cause for concern over the proposed new rule-book generally and, as you know, my Secretary of State dealt with the main points in his minute to the Prime Minister of 10 May. New rule 26 would give the NEC a dominant position in relation to Areas with respect to strike action, and in the light of recent events it is reasonable to view such a move with suspicion. It may be designed to prevent individual areas rejecting a strike call when an area ballot has gone against it. It might also be thought to empower the NEC to call all areas out on strike - that is, effectively to call a national strike - without the national ballot required by rule 26E for a national strike. Without a prior successful ballot the union would of course lose its immunity from legal action as a result of the government's legislation, but backed up by the union's new disciplinary system the call might nevertheless receive considerable support.

It is worth noting that in a different union the concentration of authority to call industrial action is not necessarily to be viewed with the same suspicion. The AUEW is, for example, changing its rules to ensure that only the national leadership and not, as formerly its district officials, can authorise official industrial action. This is partly a response to the union's involvement in the Austin Rover strike last November, when there was confusion about whether the unballoted action

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called by the Joint Negotiating Committee was official action. The proposed change in the rules will clarify the point and is to be welcomed as an example of a union taking a much firmer grip on its internal organisation.

Copies go^{to} the Private Secretaries to members of the Cabinet and to Sir Robert Armstrong.

Yours sincerely,

David Normington.

D J NORMINGTON
Principal Private Secretary

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26. INDUSTRIAL ACTION

26.A In the event of any industrial action (which expression shall include strike action) involving members of an Area (whether confined to that Area or not) taking place or appearing to the relevant Area Executive Committee likely to take place, an appropriate Area Official shall report the situation to the Secretary of the Union as soon as practicable.

26.B The NEC and no other body or individual shall have the power to sanction as official under these Rules any industrial action taking place or appearing likely to take place by any group of members whether in one or part of one or more than one Area and may do so only in respect of industrial action which has been reported to it under 26.A above. No industrial action which is not official shall be authorised or ratified under any circumstances.

26.C The NEC shall have the power to call industrial action by any group of members whether in one or part of one or more than one Area and such action shall be deemed to be declared official.
The NEC shall have the power to co-ordinate industrial action declared to be official in accordance with these Rules.

26.E In the event of a national strike of the whole membership of the Union being proposed by the Union in pursuance of any of the policy of the Union the following provisions shall apply:

That such a national strike shall only be entered upon as the result of a ballot vote of the members taken in pursuance of a resolution of Conference, and a strike shall not be declared unless a simple majority of those voting in the ballot vote in favour of such a strike. If a ballot vote be taken during the time such a strike is in progress, the strike may not be continued unless a simple majority of those voting in the ballot vote in favour of continuance. Such ballots shall be taken in accordance with regulations made by the NEC.

STRIKES AND LOCK-OUTS

41. — In the event of a dispute arising in any Area or applying to the workers in any Branch likely or possible to lead to a stoppage of work or any other industrial action short of a strike the questions involved must be immediately reported by the appropriate official of the Area in question to the National Executive Committee which shall deal with the matter forthwith,

41 (cont) and in no case shall a cessation of work or other form of industrial action short of a strike take place by the workers without the previous sanction of the National Executive Committee, or of a Committee (whether consisting of members of the National Executive Committee or of other persons) to whom the National Executive Committee may have delegated the power of giving such sanction, either generally or in a particular case and no funds of the Union shall be applied in strike pay or other trades dispute benefit for the benefit of workers who shall have ceased work without the previous sanction of the National Executive Committee.

NATIONAL ACTION

43. — In the event of national action being proposed by the Union in pursuance of any of the objects of the Union, the following provision shall apply:—

That a national strike shall only be entered upon as the result of a ballot vote of the members taken in pursuance of a resolution of Conference, and a strike shall not be declared unless 55 per cent of those voting in the ballot vote in favour of such a strike. If a ballot vote be taken during the time a strike is in progress, a vote of 55 per cent of those taking part in the ballot shall be necessary to continue the strike.

If a ballot vote be taken during the time a stoppage is in progress, such stoppage may not be continued unless 55 per cent of those

PROPOSED NEW RULE

CORRESPONDING CURRENT RULE(S)

26 F It shall be at the discretion of the NEC to determine whether any strike pay; or other trade dispute benefits shall be paid and if so, at what rates, but no such payments shall be made unless and until the action has been declared to be official under these Rules.

BENEFITS — STRIKES, LOCK-OUTS AND VICTIMISATION
42. — It shall be at the discretion of the National Executive Committee to determine whether any strike pay, or other trades dispute benefits shall be paid and if so, at what rates.

26 G The NEC may declare by resolution that a member has suffered victimisation in their view for acting in accordance with the policy of the Union and is entitled to support by the Union, and the amount of the victimisation benefit to be paid to such member shall be such sum or sums as the NEC shall resolve.

42(cont)
The National Executive Committee may declare by resolution that a member who has suffered victimisation (i.e. loss of or refusal of employment for acting in accordance with the objects of the Union) is entitled to support by the Union and the amount of the victimisation benefit to be paid to such member shall be such sum as the National Executive Committee shall resolve.

Nat Ind : Coal A 17

24 MAY 1985

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HOUSE OF LORDS,
SW1A 0PW

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Copy No 2

of 22

23 May 1985

WBM

My dear Tom:

REVISION OF THE NUM RULE BOOK

with TF

In the second paragraph of your minute of 10th May 1985 to the Prime Minister you identified the objective of the new complex complaints procedure as seeking to deny members access to the courts and you mention the possibility of countering this by legislation.

The current legal position on resort to the courts concerning disciplinary complaints procedures can be found particularly in two cases -

- (a) Law v. National Greyhound Racing Club Limited [1983] 1 WLR 1302 where the court decided that a member of a non-public body could not mount proceedings for judicial review, and
- (b) Radford v. National Society of Operative Printers Graphical and Media Personnel (NATSOPA) [1972] ICR 484 where Plowman, J. held in the Chancery Division that access to the courts is open to a member of a trade union who seeks to show a breach of the rules of natural justice in the union disciplinary procedure, such as a breach of the right to notice of hearing, the right to information as to the charge against him, or the

The Right Honourable
Tom King, M.P.,
The Secretary of State
for Employment.

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opportunity of stating his case. Plowman, J. also considered the argument that, where the rules of the union provide for an appeal from the decisions of the branch committee to the Executive Council and ultimately to the General Council of the union the member ought to have exhausted the appeal procedure before coming to the court. He found that the rules of NATSOPA did not require recourse to the domestic tribunal to be exhausted before recourse could be taken to the courts and he said "Accordingly, there can be no doubt that I have jurisdiction to deal with the matter, subject to a discretion to withhold it until the domestic remedies have been exhausted."

*There are a number of important and relevant trade Union authorities collected by Lord Wilberforce in *Calvin v Carr* [1980] AC 674*

The length of the procedure involving eight stages from mine to branch, through areas and regions to national level with balances between the Executive, the officials and appropriate conferences might, by itself, be seen as reflecting the decentralised rights of members in the federated national structure of the union and if so it might well be held not to be oppressive.

But it does not stand by itself, and it could very well be seen as an attempt to prevent access to the courts. A single tier compulsory appeal procedure is one thing. A compulsory visit to the Hampton Court Maze is another. I do not believe that it is beyond the wit of man to translate the distinction into law. It would probably not be possible or desirable to legislate for the NUM alone. The law must be in general terms and define the limits beyond which an internal remedy operates against freedom and public policy.


The summary of the proposed changed rule 29 in the NUM book shows that the domestic procedure, as amended, would require a member to exhaust the whole of the procedure's intricacies before he could seek such remedy from the courts as those envisaged

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in Radford's case. I agree that such a restriction on individual rights should be countered, if need be in general legislation, so that members of a union retain reasonable access to the courts in case of breach of the rules, or the law, or natural justice or other oppression.

I am copying this letter to the Prime Minister, Peter Walker and other Cabinet colleagues and to Sir Robert Armstrong.

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