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Copied to Public sector Pay

Rt Hon Michael Heseltine MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London SW1

13/10

13 October 1980

Dear Michael

ARBITRATION ON PUBLIC SERVICE PAY

You wrote to me on 2 October about your concerns on the use of arbitration for the pay of local authority employees and more generally. In replying, I also comment on some ideas Keith Joseph put forward in a minute to the Prime Minister of the same date.

The only sure way by which employers can avoid the risk of an arbitrator coming to an award beyond their ability to pay is to stand on their final offer and refuse to accept that an independent third party should be invited to determine their pay bill. If employers accept arbitration, on any practical test they are committed to accept the outcome. Uniquely in the public sector there are procedural agreements which provide unilateral access to arbitration and I readily agree that, provided with this option, unions might well choose to discover whether an arbitrator might make an award above the employer's last offer rather than conclude a negotiated settlement.

The immediate issue with which you are concerned clearly illustrates the point. The local authority employers, under their freely negotiated arbitration agreement, have agreed - albeit reluctantly - that the union can put the pay claim of white collar employees to arbitration. Should they not be urgently considering, given the extent of their concerns, changing their agreements so that arbitration can only take place with their agreement? This is the main issue to which the paper which I have put to E Committee on arbtration in the public services is addressed. It is important to note that S.3 of the Employment Protection Act 1975 prevents ACAS from referring any dispute to arbitration without the consent of all the parties to that dispute.

As to your suggestions, I entirely agree that an arbitrator should take fully into account an employer's ability to pay, although the concept of what that might be does not always afford an absolute test. Even where the arbitrator's terms of reference do not specifically include this consideration, there is nothing to prevent employers arguing it forcefully before the arbitrator. Indeed, it must be expected that they would do so. And an arbitrator is most unlikely to ignore evidence from either party or ever likely to dismiss so important a consideration.

You also suggest that existing arbitration arrangements and practices might be modified in some way to ensure that arbitrators always took into account the wider national interest. An arbitrator is of course anyone appointed by the parties (or whose appointment they have agreed) to resolve an issue between them. A good many arbitrations are arranged privately and without recourse to ACAS. I find it difficult to see how arbitrators could be required by statute, as Keith Joseph suggests, to take account of some general national interest in reaching their recommendations. At the very most, such provision would be simply declaratory. If directed to arbitrators appointed by ACAS alone, the result would be that more arbitrations would be arranged privately and ad hoc. There are also objections in principle. Our system of arbitration is essentially voluntary. It is (or should be) an optional extension of free collective bargaining. It would be illogical and inconsistent to seek to impose specific restraints on arbitrators which we would not contemplate imposing on negotiating parties, eg a norm under a pay policy.

Moreover, the "national interest" is a generalised concept. To be taken into account, it would need to be particularised. If the national interest were accounted as coinciding with the employer's last offer, the independence of the arbitrator would appear diminished and unions would be less inclined to accept the outcome of any arbitration, on pay as well as other issues. Lastly only the Government could give evidence as to the national interest. The provision of such evidence would I fear drag us into disputes to which we were not a party and this I am sure should be avoided. To the extent that our evidence might appear not to have been accepted by the arbitrator, a set-back for the employer could be portrayed as a defeat for the Government. The experience we had in 1970 of providing evidence on the national interest in the dispute in the electricity industry needs to be remembered.

As to Keith Joseph's suggestion that arbitrators should be required to award only on either the claim or the offer ("flip-flop" arbitration), employers and unions are at present free to adopt this approach by agreement. But this must be a matter for them. They have never seen it in their interests to do so in this country and although the concept from time to time emerges in academic discussion it has rarely been used anywhere, even in the USA where the concept - but not its practice - was fashionable in the 1960s. I do not consider that it would be realistic to seek to impose one particular type of arbitration or indeed practical to do so.

On major wage issues arbitrators commonly specify the cost of their awards, but would their views be welcomed on how any additional cost might be met? This could inhibit managements' discretion and might well encourage reflections on priorities for public expenditure, pricing policies, etc which would be unwelcome.

I am copying this letter to the Prime Minister, Keith Joseph, the other members of E Committee, Robert Armstrong and John Hoskyns.

CF. For E folder when arbitration comes up.

Original on:
ECON POL : Public sector pay 87-

PRIME MINISTER

PUBLIC SERVICE PAY

1 John Hoskyns sent me a copy of his minute of 18 September commenting on Michael Heseltine's minute of 16 September about the arbitration exercise affecting the local authority Administrative, Professional, Technical and Celerical (APTC) grades. I think this provides an opportunity to consider a general short-coming in our existing arbitration arrangements.

2 At present there appears to have been a tendency for arbitrators to "split the difference" between the claim by the unions and the offer by the management. This pays no regard to ability to pay and provides a positive encouragement to the unions to increase their wage bids.

3 My own idea would be to ensure that all arbitrators should be required to take account of the general interest when reaching their recommendations. An alternative would be to require arbitrators to decide in favour of either the management offer or the unions' claim without giving them scope for chosing any intermediate amount. In either case arbitrators should be obliged to specify the cost of implementing their proposals and should make recommendations on how the money should be raised.

4 I am not sure how such a change could be implemented. One

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possibility might be to amend the legislation regulating the activities of ACAS to require this kind of approach. Another possibility might be to include a suitable passage in the Green Paper on trades union immunities etc which Jim Prior is about to circulate.

5 I am copying this minute to John Hoskyns and to the recipients of his minute.

K J
2 October 1980

Department of Industry
Ashdown House
123 Victoria Street

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

2 October 1980

ARBITRATION IN PUBLIC SECTOR PAY

Jim Lester will have reported to you the useful discussion we had with the local government employers here last week. It was clear that the employers are anxious to achieve settlements in this round at the kind of level which the Government would like to see; but they were very concerned that their best efforts might be undermined by the unions' recourse to arbitration. They are rightly apprehensive that, when in negotiation they have gone to the limit of what they can afford, the union can choose either to go to arbitration, with the near certainty of an award above the employers' best offer, or to take industrial action. I am writing to reinforce my personal concern about the potential dangers to our objectives if, as seems highly likely, there is a growing resort to arbitration in this pay round.

I recognise of course that arbitration procedures are an important, indeed an essential, part of the established system of pay bargaining in this country and that it is important in the general context of industrial relations that confidence in it should not be impaired. I quite see that any attempt by Government to impose a different structure on the present system would be likely to be counter-productive. But I do wonder whether some modification of present practices might nevertheless be possible, and in particular whether there is some way short of legislation in which ACAS and other arbitral bodies might be brought to take into account questions of the wider national interest and the employers' ability to pay, even in cases where these questions cannot be included in the specific terms of reference. I gather that the arbitrators customarily do not necessarily regard these considerations as relevant to the issues before them; and if that is so, I must say that it seems to me to be both unsatisfactory and unrealistic in today's circumstances. I think we should consider whether the Government should take an early opportunity to make its views known on this point, perhaps in the form of a statement by the Prime Minister or by you.

I hope that you will be able to take account of the points I have made here in the paper which you are preparing on this subject.

I should add that I am considering the Prime Minister's suggestion that we might submit Government evidence to the arbitrator in the local government APT&C case. I am inclined to think that this

might be counter-productive unless we could be assured that the arbitrator would take our evidence into account. I propose to await your paper before taking this further.

I am copying this letter to the Prime Minister and to those of our colleagues who were present or represented at my meeting with the local authority employers.

Yours ever

MICHAEL HESELTINE

Rt Hon James Prior MP
Secretary of State for Employment

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