

Ref. A05920

PRIME MINISTER

Industrial Relations Legislation

(E(81) 112)

BACKGROUND

When the Committee discussed the Secretary of State for Employment's proposals for industrial relations legislation in E(81) 103 on 29 October they approved certain of the proposals (definition of a trade dispute, selective dismissal in a strike and ballots). Further work was to be done on the following proposals:

- (i) On the Closed Shop. (Where it was agreed that there should be legislation but where some Ministers, notably the Lord Chancellor, were unhappy about the provisions for joining trade unions as well as employers in the legal actions).
- (ii) On "Union Labour Only" Requirements. (Where it was agreed that there should be legislation but where some Ministers wanted to go less far than the Secretary of State for Employment or to explore other ways of dealing with the problem, such as placing obligations on local authorities).
- (iii) On Immunity for Trade Union Funds. (Where some Ministers were not convinced that the gains would justify the effort, and the dangers of confrontation).

The Secretary of State for Employment's latest paper, E(81) 112, seeks to answer these points.

2. In addition the Secretary of State is likely to mention orally his proposals relating to the political levy.

MAIN ISSUES

3. You may wish first to try and resolve the remaining points of detail about the closed shop and "union labour only" requirements and then move on to the major policy issues relating to the immunity of trade union funds and the political levy.



Closed Shop

4. This is dealt with in paragraphs 6 and 7 and Annex 2 of the paper. The Secretary of State concedes that there is some force in two points raised in the Committee's earlier discussion - that a tribunal may find it difficult to assess the relative blameworthiness of the trade union and the employer and that there may not in practice be much incentive to join trade unions in these actions. He does not favour the alternative approach of "automatic joinder". Two variants are considered but are open to several objections - notably the objection of principle against the automatic bringing of proceedings against a third party when no other party to the dispute wishes this. The Secretary of State has however proposed two modifications to his earlier proposals:

- (i) An employee who joins the union in proceedings would have to show that the union exercised pressure on the employer to dismiss (this might make it easier for tribunals to assess relative blame).
- (ii) Where a union is found to have contributed to dismissal, its contribution to the compensation is to be payable direct to the employee (this might increase the incentive for employers to join trade unions in actions; it does not however increase the financial incentive for the employee to bring the union into the proceedings).

5. The Committee will have to consider whether they regard the modified proposals as better than the original ones, and whether they are satisfied that the alternative approach of automatic joinder should not be pursued.

"Union Labour Only" Requirements

6. This is dealt with in paragraph 8 and Annex 3 of the paper. The Secretary of State accepts that there may be problems for contractors in taking advantage of the provisions for action against employers, but he argues that they may have a useful deterrent effect, especially in the case of local authorities where there may be scope for an action for mandamus, for the intervention of the District Auditor and for the surcharging of individual councillors. He does not think that it would be sufficient to confine the legislation to local authorities, but is prepared (paragraph 12, Annex 3) to consider including a specific requirement that local authority standing orders relating to contracts should be in conformity with the requirements of the general provision of the law in discrimination. He suggests that various

other options for dealing with the "union labour only" problem (eg through the Director General of Fair Trading and Government Departments) should be seen as supplements to, rather than replacements for, his proposed legislation.

7. The Committee will need to consider whether, in the light of these arguments, they regard the proposed provisions for action against employers as justified and worthwhile. There is the separate question of action against unions and employees for interfering with the performance of contracts. In their earlier discussion the Committee recognised that the exercise of these additional powers (which the Secretary of State accepts are contentious) could lead to confrontation in the docks and on building sites, but the majority of Ministers appeared willing to take the risk.

Immunity for Trade Union Funds

8. This was the issue on which the Committee was most divided on 29 October. In paragraphs 3 to 5 and Annex 1 of his paper the Secretary of State has sought to clarify further the difficult legal issues (and particularly those relating to vicarious liability), to show how the proposals would work in practice, and to assess the likely effects. The Committee will need to consider in particular:

- (i) Whether the proposals for vicarious liability will clear up the uncertainties which arose under the 1971 Industrial Relations Act in establishing a union's responsibility for unlawful industrial action.
- (ii) Whether they are satisfied, despite the objections of the Lord Chancellor, that there should be limits on the damages which could be awarded against trade unions.
- (iii) Whether the proposed legislation will actually reduce trade union power and lead to less industrial action.

9. The point at (iii) is the most important one. The Secretary of State argues (paragraph 22) that the knowledge that unlawful official action may lead not only to proceedings against a trade union official but also to putting the unions funds at risk may act as a useful deterrent. On that argument the limits on damages should perhaps be set higher than those proposed. He concedes however (paragraph 23) that the effect on unofficial action is less certain and there might be some undesirable weakening of the unions' authority over such action. The Committee noted that 90 per cent of industrial action is unofficial. He also concedes



(paragraphs 24 and 25) that the success of the proposal depends on the unions' willingness to obey the law, that they may be particularly keen for historical reasons to defy these provisions and that, in the short term at least, the chances of industrial confrontation are likely to be increased.

Political Levy

10. We understand that the proposal under consideration is that trade union members should have to "contract in" rather than "contract out" of the political levy but that this should take effect only after the next General Election. This proposal, like that relating to the immunity of trade union funds, has a historical background; the present provisions date from 1913, were repealed in 1927 and were restored in 1946. As well as considering the proposal on its individual merits, the Committee will need to look at it in the context of the overall balance of the package.

HANDLING

11. When the Secretary of State for Employment has introduced his paper, you may wish to suggest that the Committee deals separately with each of the issues on the lines indicated in paragraph 3 above. The Lord Chancellor is likely to be the major contributor on the detailed issues relating to the closed shop and "union labour only" requirements. On the immunity of trade union funds, the main opponents of the proposal in the earlier discussion were the Lord Chancellor and the Secretary of State for Northern Ireland, but doubts were expressed also, in varying degrees, by the Secretaries of State for Scotland, the Environment, Education and Science and Defence, by the Minister of Agriculture, the Home Secretary, the Chancellor of the Duchy of Lancaster, and the Attorney General; the main supporters were the Chancellor of the Exchequer, the Chief Secretary, and the Secretaries of State for Industry and Social Services.

CONCLUSIONS

12. In the light of the discussion you will wish to reach conclusions on the following points:

- (a) Whether the Committee approves the Secretary of State for Employment's detailed proposals relating to the closed shop with the modifications about joinder set out in paragraphs 9 and 10 of Annex 2 of E(81) 112.



- (b) Whether the Committee approves the Secretary of State for Employment's detailed proposals on "union labour only" requirements.
- (c) Whether the legislation should contain provisions to bring immunities for trade unions in line with those for individuals as proposed by the Secretary of State for Employment in E(81) 103 and further clarified in E(81) 112.
- (d) Whether the legislation should contain (depending on what the Secretary of State says at the meeting) a provision on the political levy and, if so, in what form.
- (e) Whether the proposals should be published as a basis for consultations after the Debate on the Address, with a view to introducing the Bill next January.

RTA

ROBERT ARMSTRONG

9 November 1981