W.A.D.

PRIME MINISTER

LEGISLATION ON INDUSTRIAL RELATIONS MATTERS

1. Consultations on the legislative proposals I announced on 23 November are now complete and drafting of the bill is well advanced. The purpose of this minute is to let you (and colleagues on E Committee) know of the outcome of the consultations, of the conclusions I have reached on the 2 issues I was asked to consider further in the light of those consultations and of some other modifications I intend to make to my original proposals.

2. When my proposals were discussed at E on 10 November I was asked to give further consideration, in the light of consultations, to 2 issues:

(i) whether, in the context of "joinder" in closed shop dismissal cases, the employee should be required to show evidence of union pressure to dismiss;

(ii) whether, in the context of the proposals for dealing with union labour only requirements in contracts, immunity should be removed from industrial action which interferes with the performance of a commercial contract on grounds of union membership or non-membership.

3. On the issue of joinder (i), my proposals have been widely supported and there has been no criticism of the suggestion that the grounds for employee joinder should be pressure on the employer to dismiss. These are the grounds which already apply in relation to joinder by an employer and, for the reasons set out in E(81)112 I do not believe that the alternative of automatic joinder would be workable. I therefore propose that the relevant provision in the bill should be drafted as I proposed in E(81)112.

4. On the issue of immunity for industrial action directed at the employment of non-union labour (ii), I am mindful of the dangers that an early case involving, for example, the docks might pose to the legislation. However, the consultations have shown that the majority of employers (including the CBI) are in favour of including a provision of this kind in the legislation. They take the view that, without it, the other provisions on union labour only requirements might be frustrated. I therefore propose to provide in the bill for a restriction of immunity for industrial action in these circumstances. I am still considering the possibility of delaying the commencement order for this part of the union labour only requirement provisions until there is evidence that it is needed (and to make this intention clear during the passage of the bill) but this will not affect the drafting of the bill.

5. The note attached to this minute explains the other modifications I propose to make in the proposals I announced on 23 November. These concern primarily the new compensation rates for closed shop dismissals (paras 3-9) and the definition of the vicarious liability of trade unions for the unlawful acts of their officials. In neither case am I proposing a substantial change from my original proposals.

6. My intention is to submit the draft bill for consideration by Legislation Committee on 27 January (which means that the bill has to be sent to the printers on 21 January) with a view to introduction as soon as possible thereafter. I therefore seek your agreement to the proposals set out in this minute and to the modifications described in the attached note.

7. I am sending copies of this minute to those who attended the meetings of E on 29 October and 10 November, to the Chief Whip and to Sir Robert Armstrong.

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12 January 1982

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CLOSED SHOP PROPOSALS

1 Reaction from employers and employers' organisations to our closed shop proposals has generally been favourable and I see no reason to suggest any substantial modification of what was proposed in the consultative document. In particular the need for substantially enhanced compensation for unfair closed shop dismissals remains absolutely clear as does the need to promote periodic review of existing closed shops by secret ballot.

2 Concerns have, however, been expressed by the CBI and other employers over the need to prevent enhanced awards of compensation going to individuals without genuine objections to union membership who may drop out of their union in a closed shop which has not been approved by ballot simply in order to be dismissed and gain compensation. The normal rules of contributory fault applied by tribunals in assessing compensation will of course operate to reduce this risk but in addition I judge it right to adopt some of the modifications to the compensation proposals which the CBI and others have suggested in order to reduce the potential liability on employers.

Compensation where reinstatement is not sought

3 Colleagues will recall that under our proposals compensation in closed shop dismissal cases will vary depending on whether the dismissed employee seeks reinstatement or not. If he does not do so then compensation will comprise the normal basic award dependent on length of service, age etc but subject to a minimum of £2,000, and a compensatory award dependent on the actual loss suffered. The CBI and others have suggested that we retain the maximum on the compensatory award which applies to unfair dismissal cases generally (£7,000 as from 1 February) instead of making this award unlimited as we had proposed, and I think it right to accept this suggestion. The change will in fact affect only the very rare case since the vast majority of compensatory awards made in unfair dismissal cases are well under the maximum.

Compensation where reinstatement is sought

4 If reinstatement is sought but not ordered - normally because the tribunal considers it impracticable - or is ordered but the employer refuses to comply, then under our proposals either a special or an additional award will be payable in addition to the basic and compensatory awards. The consultative document proposed that the special award - where reinstatement is not ordered - should be 2½x annual salary subject to a minimum of £12,000. The additional award - where reinstatement is ordered but not complied with - was proposed as 3x salary subject to a £15,000 minimum. While I see no need to alter the proposed additional award, I am persuaded by the argument of a good many employers that there should be a greater differential between this and the special award. What worries employers is that the latter may be seen as there for the asking whether or not the dismissed employee genuinely wants reinstatement or not. I therefore propose to reduce the level of the special award from 2½ to 2x salary subject to a minimum of £10,000 rather than £12,000, and subject also to a maximum of £20,000.

5 Overall, these changes do not weaken the compensation proposals to any significant extent; for example someone on average male earnings of £7,500 could still expect to receive at least £17,000 in compensation if he sought but failed to obtain an order for reinstatement. However, the changes will, I think, make the sums payable less open-ended and will on the whole be welcomed by our supporters in industry.

Contributory fault in relation to an order for reinstatement

6 Currently tribunals in deciding whether to make a reinstatement order must take account of both the practicability of any such order and of whether the employee contributed to his dismissal in the first place. The consultative paper proposed removing the latter consideration but the CBI and others have pressed strongly that it should remain. Given the strength of employer feeling on the question of the person who contributes

to his dismissal solely in order to gain compensation I judge it right to keep the status quo. This will in practice have only marginal significance as the great majority of refusals by tribunals to order reinstatement are on account of impracticability rather than contribution.

Periodic review ballots

7 The major issues left open for consultation on periodic review concerned the maximum interval at which ballots must be held if a closed shop is to remain "approved" (suggested as 3 or 5 years in the proposals) and the percentage support which will need to be obtained in a ballot if a closed shop is to be approved (suggested as 80% of those covered or 85% of those voting). There is also the question of when these balloting requirements should bite for the first time.

8 On the interval between ballots the bulk of employer opinion is in favour of a five year interval and I therefore propose to embody this period in the Bill. As far as the percentage level of support in a ballot is concerned, most employer opinion has either been silent on the issue (eg the CBI) or in favour of the limits in the consultative paper. I see no reason therefore for modifying our proposal that the level of support needed should be either 80% of those covered by the agreement or 85% of those voting. I think it essential that closed shops should only continue if one of these overwhelming levels of support can be demonstrated. Finally the CBI and others have suggested that the period between the legislation taking effect and the requirement to have held a review ballot becoming operative should be more than one year in order to allow time for ballots to become a regular and acceptable practice. This seems sensible and I therefore propose announcing when the Bill is introduced my intention of introducing the review ballot provisions two years after Royal Assent. However, the Bill will be drafted so as to allow me to bring these provisions into effect at any earlier time should abuses occur during the two year period.

Shipping

9 I have had strong representations from the shipping industry about the special circumstances of the Merchant Navy, which was of course exempted under the closed shop provisions of the Industrial Relations Act, 1971. I am considering whether some special provision for merchant seamen would be justified in the forthcoming Bill.

TRADE UNION IMMUNITIES

10 I intend to make small changes to two aspects of my proposals for restricting trade union immunities. None of the changes, however, affects the basic proposition that the immunities for trade unions should be brought into line with those for individuals - which the majority of employers and employers' organisations support.

Vicarious liability

11 Most of those who have commented on this subject agreed that it was necessary to define as precisely as possible when a trade union was liable for the acts of its officials and they are broadly in favour of the proposals in the consultative document. But, as was only to be expected, few had detailed comments to offer.

12 As a result of further consideration of this issue, including a further examination of union rule books, I have concluded that the approach set out in paragraphs 33 and 34 of the consultative document is on the right lines but that a number of refinements are desirable to make it clearer and to ensure that it operates as intended:

(i) I think it is right that, as set out in paragraph 33 of the consultative document, the starting point should be whether the body or official calling the industrial action has authority to do so under the rules or has had such authority conferred upon it by a body or official

with authority to do so under the rules. But I propose that the test of liability should be not simply whether such a body or official has formally authorised or ratified the action, but whether, if it has not done so, it can be shown to be supporting it in some other way.

(ii) on the proposal in paragraph 34 I believe we should try to deal with the situation where the union rules are not clear about who has authority to call industrial action. However, I have concluded that there would be considerable dangers in holding trade unions automatically liable in such circumstances. I propose instead that where the rules are unclear the union should be held liable if the action has been authorised, ratified or supported by a paid official of the union or a committee of the union to which such an official is responsible and unless it has been repudiated in writing by the national executive. This would mean that, where the rules were ambiguous a trade union would be liable if the unlawful action had been authorised by any official other than a lay official (ie an official such as a shop steward who is employed by an employer and not by the union).

13 My officials are still discussing the details of the drafting of this provision with Counsel but I do not anticipate that there will be any fundamental change to the above proposals.

Limitation on damages

14 I have received representations from the Conservative Trade Unionists that the proposed limits on damages (paragraph 35 of the consultative document) represent too high a proportion of the annual income of many smaller unions with the risk that a single claim might bankrupt them. Since the CTU is one of the few trade union bodies which has commented constructively on my proposals I am anxious if possible to go some way towards meeting them on this point. I, therefore, propose that the proposed limits on damages for unions with fewer than 5,000 members should be reduced from £12,500 to £10,000 and for

unions with between 5,000 and 24,999 members from £62,000 to £50,000. I do not propose any reduction in the proposed limits for unions with over 25,000 members.