



10 DOWNING STREET

Prime Minister

This has just arrived.

You will wish to read  
it before dinner on Saturday.

The Policy Unit will  
comment in a week.

I expect you will want a  
meeting in due course.

Paras 19-24 of the  
paper are relevant to the  
paper expected from the  
Attorney General on legal  
aspects of the coal dispute.

Mr King appears not to  
have copied this to  
colleagues. Agree he  
should do so?

AT  
25/3



10 DOWNING STREET

THE PRIME MINISTER

Andrew - not to be paired on -

but we shall need a more  
intellectually rigorous paper than  
this.

not



CONFIDENTIAL

PRIME MINISTER

THE BALANCE OF POWER IN TRADE UNIONS

1 You asked for a paper on what we are doing to alter the balance of power within trade unions and the further steps we might take in the future.

2 Altering the balance of power in trade unions requires a continuing struggle, although we have already seen some clear successes. The growth of the closed shop has been halted; it is now in decline. From November virtually all closed shop dismissals are likely to be "unfair". Moreover, it has been demonstrated, particularly during the Warrington dispute, that the new powers in the 1982 Act to sue trade unions themselves for acting unlawfully can have a major effect on the outcome of disputes. I believe that the current Trade Union Bill will provide many trade union members with an opportunity for the first time to get fair elections for their leaders and to have a say before they are called out on strike.

3. In addition to the legislative changes there has been a profound shift in the balance of power between employers and trade unions, best reflected in the frequent comment, that "management is now again able to manage". A significant aspect of the previous imbalance was the degree to which employers failed to maintain proper communications with their workforces, and allowed the unions to become the sole channel

CONFIDENTIAL



CONFIDENTIAL

of information. The tough challenges of the recession have forced employers to talk to their people and this has led to a significant reduction in the power of many of the union representatives and helped the position of the moderates.

4 Our agreed policy since coming to office has been to follow a step by step approach to trade union reform. Each step has been of limited application designed to ensure changes that will endure. This approach has been shown to command widespread public support not least because it has worked with the grain of existing practice. Moreover, by giving those affected by abuses of trade union power discretion as to whether they invoke the law (eg to employers in relation to secondary action and to trade union members under the Bill if they judge that their rights have been infringed in an unlawful way) we have avoided "boxing" the Government in, as occurred under the 1971 Act. - but have *skidded*

*with about T.U. members under enormous strain.*

5 There is of course pressure on us at present to go even faster, particularly on the specific question of introducing mandatory postal ballots, not only for union elections, but also before strike action. This is an approach that was canvassed in the Green Paper on Trade Union Democracy but specifically rejected in the proposals for legislation that Norman Tebbit subsequently put to you. I agree entirely with the arguments that he put forward at that time, and I have set out a number of other relevant considerations in the attached paper, all of which point against imposing mandatory postal ballots for any circumstances. Such a step would, I believe, run the real risk of over-reaching what it is practical to achieve at the moment. At the same time I am certain that we

*They have moved on since then*



CONFIDENTIAL

must do more to encourage postal ballots and I therefore propose in the attached paper two changes to the Bill which I intend to make in the House of Lords. The first would give the Courts (in connection with any complaint about a ballot) a reserve power to order a postal ballot in union elections; the second would give every union member the right to a postal vote on request in elections for the union leadership.

but not strikes

*Request to whom?  
an independent  
electoral org. exist?*

6 I know that part of your concern in asking for this paper was to see what more could be done to get a fairer balance between the moderate majority and their subjugation by a militant intimidating minority. What has emerged clearly during the miners dispute is that so much of the intimidation, whether or not it involves grounds for action under the civil law on which our trade union legislation is based, constitutes first and foremost a clear offence under the criminal law. In combatting these offences, the response has to be a robust one from the police in firmly upholding the rights of the citizen, whether it is in being freely able to go to work, in not being picketed at his home, or in seeing that those who commit offences of assault or criminal damage are arrested and properly dealt with by the Courts. The response must also involve the maximum mobilisation of public opinion by the fullest reporting of offences of intimidation which are wholly repugnant to the vast majority of people. It must also ensure that those on the receiving end of intimidation are aware of their rights and of the remedies that may be available to them, and that they feel able freely to exercise such rights. While I know that there are concerns about this aspect, the present indications are that in serious cases, people are prepared to take legal action. Indeed as I write this minute we have the case before the Courts of the 3 Notts

*This is not enough. The code of practice with the T.U.C.U. is being pursued*

*what rights? what remedies? what cases?*



*This is not  
what dates for  
violence*

**CONFIDENTIAL**

*North miners were successful too.*

miners taking the NUM to Court and Lancashire miners have just obtained an injunction preventing their union area executive from imposing a five year suspension from membership for crossing picket lines.

7 I am sure you would like to discuss the issues raised in the attached paper and I should welcome this.

T K

25 May 1984

**CONFIDENTIAL**

## CONFIDENTIAL

THE BALANCE OF POWER WITHIN TRADE UNIONS

1 The combination of our economic policies, the Employment Acts of 1980 and 1982 and the steps we have taken to reduce the financial resources of strikers has substantially redressed the imbalance of bargaining power between employers and trade unions which we inherited in 1979. This is evident both in the decline in the number of days lost through strikes and the much lower level of pay settlements. At the same time we have taken steps, specifically through legislation, to strengthen the hand of moderate union members against their more militant leaders at local, regional and national level. *- No much*

2 The trade union movement has undergone some profound changes since 1979. After a decade of steady growth which reached a peak of 13,212,000 at the end of 1979, trade union membership has fallen sharply, and by the end of 1982 was down to 11,744,000. The decline in the numbers of TUC affiliated unions has been even sharper: from 12.5m in 1979 to 10.8m in 1982. The TUC are reported to be expecting this figure to fall to 9.6m by the end of 1984. This represents only some 36% of the estimated labour force for mid-1984.

3 Furthermore, it seems unlikely that these trends will be substantially reversed. Trade unionism is strongest in those sectors of employment - primarily the older manufacturing industries in the Midlands and the North - which have experienced the sharpest decline in employment. The growth sectors for employment - the new technology and the service industries - are those where trade unionism is weakest and where, given the inability of trade unions to extend the closed shop and the absence of statutory recognition procedures, employers' resistance to trade unionism is likely to be strongest and most effective. The growth in self employment and the employment of women both full time (from 41% in 1978 to 44% at the end of 1983) and part time (from 40% in 1978 to 42% in 1982), the location of new industries in areas such as the South West where trade union organisation has historically been weak, all these are major obstacles in the way of a general recovery in trade union membership.

*No -  
not in  
reduced in number*

*Because of  
legislation  
reducing*

4 Knowledge of declining membership inevitably affects the thinking of trade union leaders. The same is true of the manifestly greater reluctance of most trade unionists to take industrial action - even when "instructed" to do so by their unions. The lesson that earnings lost through industrial action can take years to recoup is, I believe, getting through to many trade unionists. In particular union leaders may be finding it harder to get their members to stay out on strike when the average level of settlements is well down into single figures and therefore the most that can be extracted by prolonging industrial action is likely to be an additional 1% or 2%. Furthermore, the financial commitments of trade unionists have continued to grow. The proportion of skilled manual workers with mortgages increased from 27% in 1974 to 41% in 1981. The comparable figures for semi skilled and unskilled manual workers show the same pattern: respectively from 12% to 22% and from 6% to 13%. As a result most trade union leaders are now much less confident of their ability to persuade their members to strike. Nor should we discount the psychological effect of the change in voting patterns at the last General Election when for the first time only a minority of trade unionists supported the Labour Party. The review ballots for political funds required under the Trade Union Bill should provide an important step towards the de-politicisation of the trade unions.

5 However, these gains will be of little account if management lacks the skill or confidence to make use of them. In particular, the failure of many employers to communicate directly with their employees has allowed trade unions to fill the vacuum and to become the sole channel of information at the workplace. There are welcome signs that more employers now understand the value of direct communication with their employees and have recognised, from the experience of BL and others, how important it can be in reducing the power of small, but well entrenched, groups of union militants.

6 Another factor underpinning this power can be the excessive number of employees who are allowed by some employers to spend their entire time on union duties. Not infrequently these posts are held by activitists with the motives and the opportunity to cause trouble. British Leyland is a good example of how shop floor militancy can be sharply reduced by drastic



reductions in the number of employees enjoying 100% "facility time" for union business. At the peak there were 118 shop stewards and other employees with 100% facility time at the Longbridge plant alone. The figure is now 2. Despite the recent revision of facility agreements in the Civil Service, I believe that our own arrangements are still too generous.

7 The Government can have some influence on management attitudes and behaviour both by the example it sets as an employer in the public services and by the policies it pursues in relation to the public trading sector. Our policies for the liberalisation of public sector monopolies, for extending privatisation and for increasing competitiveness across the whole economy can also play a direct role in counteracting the monopoly power of trade unions - particularly in the public sector - and this in turn can have an important effect on the balance of power within trade unions.

8 I believe, therefore, that our approach should continue to be governed by two prime considerations

- very vague*
- (i) the need to work with and not against the powerful influences which are already changing the balance of power within trade unions
  - (ii) the need to ensure that legislation is supplemented by the necessary changes in employer attitudes and practice.

#### Trade Union Democracy

9. We have agreed on a step by step approach for the progressive elimination of the abuses that have grown up in trade union practice. The present Trade Union Bill is specifically targetted on two of the worst features of current trade union practice. First, to tackle the use of branch meetings attended by only a tiny minority of the membership as the voting place for leadership elections, with the proceedings taking place at an inconvenient time and place and voting often by show of hands using a block

vote system. Secondly, to tackle the glaring abuse of the strike vote at the car park rally where the views of the moderate majority are all too often drowned-out or simply ignored by an aggressive minority.

*and the*

*introduction*

10. The way in which we have constructed the Trade Union Bill to provide for basic improvements in trade union practice and to protect the democratic rights of union members is not to specify the particular method of balloting to be used - as some of our supporters who favour mandatory postal ballots would like - but to establish the minimal tests of fairness, convenience and secrecy that are unassailable in public argument and which are the essential ingredients of any genuinely democratic process.

*What about ensuring they are effective?*

11. To illustrate this point more clearly I would cite as the obvious example the NUM. The NUM has traditionally used the workplace ballot for both elections and strike ballots. While there have been allegations of intimidation in relation to these ballots the fact remains that Mr Scargill has found it far from easy to get the results that he wants out of workplace ballots, as his avoidance of a national ballot in the current dispute clearly bears out. If we were now to impose a rigid requirement for postal ballots as the only permitted method of voting in all circumstances, I would anticipate that the NUM would simply continue with their workplace ballots, continue to secure average turnouts of around 75 per cent, and then wait to be taken to court to face an action requiring them to hold postal ballots (regardless of whether there had been any allegation of impropriety at a workplace poll). They would then proceed to demonstrate both to the court and to their members that they were being required to set aside a ballot in which turnout compared favourably with Parliamentary elections in favour of a postal system whose average turnout could be demonstrated to be unlikely to exceed 30 per cent. I think that that would serve only to discredit the legislation in the eyes of ordinary union members and the public generally.

*And at least one relevant ballot in which they have been rejected.*

*While the turnout for election of officers may be low, would it be so low for a strike with money at stake?*

12. Having said this I recognise that there is continuing concern that trade union elections may be conducted improperly and votes manipulated in one way or another. But it needs to be borne in mind the postal ballots administered by unions themselves are not necessarily a guarantee against malpractice: ✓

there is still the possibility of falsifying returns or making fraudulent use of unused voting forms. The only way of avoiding the possibility of malpractice would be to take the whole conduct of elections away from trade unions and make it the responsibility of a new statutory agency. This agency would need to maintain lists of all union members, send out voting forms, receive them and count the votes - a task going well beyond what is now done by the Electoral Reform Society who simply count votes sent to them and do not hold a list of members, distribute or collect voting papers or supervise the process of voting in any way. Most importantly, the agency would have to be given the power (backed up with fines) to compel unions to co-operate by (for example) disclosing the names of members.

13. The decisive argument against this course is not the cost and complexity of the task the agency would have to perform - although both would be considerable. I believe it would be a mistake because the agency would provide the militants with the same focus for resistance that the Registrar and the Industrial Relations Court provided under the 1971 Act. Instead of unions having to defend their undemocratic practices against their members who are seeking to enforce their rights in the ordinary courts, unions would become locked in conflict with a Government sponsored institution which could be portrayed as usurping the unions' basic functions. In short, it would run counter to the principle - which has underlain all our legislation since 1979 - of creating rights which are for union members and employers to use as and when they choose. It was interesting that when I discussed the need for such an agency with Frank Chapple he himself felt that this would represent an unacceptable intrusion of the State into the conduct of trade union affairs.

14. Nevertheless, I accept that in general terms there is less chance of rigging and intimidation in postal ballots and I believe we should work towards getting them more widely established. As the first step towards this objective, I am proposing to introduce two amendments to the Bill in the House of Lords. The first will allow the High Court, if it finds a union to be in breach of the Bill's basic balloting requirements, at its discretion to order the holding of a postal ballot. This will mean that the Courts can require a postal ballot where a workplace ballot has been found wanting. I have

*He denies  
this*

*5/15?*

discussed this with the Lord Chancellor who is content that an amendment on these lines should be introduced. It will make postal ballots a real possibility where unions have been shown to be incapable of conducting a properly run workplace ballot but at the same time it will not give union leaders the argument that we are imposing postal ballots on them irrespective of whether existing workplace ballots produce democratic results.

15. The second amendment which I am proposing to introduce would give every union member the right to a postal vote on request in any election to his union's executive. This will go a long way towards meeting the concern of those of our supporters who are worried about intimidation at workplace ballots. It will provide an alternative means of voting for any union members who fear that they will not be able to vote freely at their workplace.

#### The Closed Shop

16 It is a basic principle of our approach to industrial relations that trade unions should have to win their members' support voluntarily by the quality of the service they offer, not by making a union card the price of obtaining a job. The rapid expansion of the closed shop in the 1970s, encouraged by the legislation of 1974 and 1976 was an important factor in extending union membership into white collar employment, particularly in the public sector. That expansion has now been halted and put into reverse. Since the 1980 Act came into force there has been a sharp decline in the total closed shop population. The fall has been from a highpoint of some 5.2m in 1978 to 4.5m in 1982. Since then it is likely that a further fall has taken place. Moreover, there is no evidence that the closed shop is gaining a foothold in any of the new growth areas of the economy. No major new closed shop agreements in any sector have been reported since 1980. At the same time some existing agreements have been unilaterally terminated by employers. The refusal of British Rail to sack any employee who lost their union card for disobeying their union's call to strike in 1982 may well prove to have been a watershed in the decline of the closed shop. NCB may extend this

Precedent.

AT

17 Furthermore, from 1 November this year, no closed shop will have any protection in law unless it has the genuine support - demonstrated by a substantial majority voting in a secret ballot - of the people working in it. After that date the dismissal of any employee for non-membership of a trade union in a closed shop will be automatically unfair - thus entitling him to substantial compensation or reinstatement where practicable - if the closed shop has not been overwhelmingly approved in a secret ballot of the employees concerned.

18 The indications are that few ballots will have taken place before November. Those that do take place are likely to be confined to smaller companies with a high proportion of employees in traditional craft occupations. The vast majority of trade union members in closed shops - for example those in the Nationalised Industries - are unlikely to be balloted at all. TUC policy, is of course, to refuse to co-operate with any closed shop ballots. This does not disturb me because the effect in law of not holding a ballot is exactly the same as the effect of holding a ballot and failing to secure the necessary majority. If an employee has not been balloted by November it will be open to him to leave his union whenever he wishes in the knowledge that he cannot be fairly dismissed as a result. Given the substantial compensation for which both employers and trade unions will be liable in the event of a dismissal, the effect should be a gradual but nonetheless real and steady undermining of the closed shop.

#### Protecting the right to go to work

19 The current NUM action has demonstrated very clearly how militants within trade unions try to use <sup>intimidation</sup> picketing to spread the effects of industrial action to those - even a majority - of their fellow members who want to work. There are two aspects to such picketing

- (1) physically preventing access to the place of work by obstruction or intimidation (ie "mass picketing")

- (ii) exploiting the traditional reluctance of trade union members to cross picket lines - however peaceful - which are seen as manifestations of "solidarity".

Recent events suggest that the second factor may have become less potent but it would be wrong to underestimate its residual force in industries with a strong trade union tradition.

20 Picketing which physically prevents access to a place of work is a matter for the criminal law and hence for the Home Secretary. Clearly we shall need to evaluate the lessons of the current NUM dispute but from an industrial relations point of view there is no reason to think that the existing powers of the police are less than adequate to deal with even the most serious instances of mass picketing.

21 The civil remedies available under the 1980 Act for use against any picketing away from the pickets own place of work (ie so called "secondary picketing") apply whether or not there are breaches of the criminal law. In fact, secondary picketing often involves violence or obstruction: employees are likely to resent the efforts of strangers to prevent them from working normally and hence secondary picketing tends to be mass picketing. But it is essential that there should be a remedy against secondary picketing even when it is peaceful because of the traditional reluctance to cross any picket lines. That is what the 1980 Act was designed to provide. The 1982 Act has now provided a remedy against the trade union itself and hence removed the danger of creating martyrs and the difficulty of identifying individual picket organisers. The Stockport Messenger dispute showed very clearly how effective the civil remedies against secondary picketing can be. Again, we shall need to consider the lessons of the NUM dispute, but there is no evidence so far that the existing civil remedies against secondary picketing are inadequate.

22 The same is true of the remedies against other forms of secondary action (primarily blacking and "sympathetic strikes"). In all the cases (such as that recently brought by Dimpleby Newspapers against the NUJ) under the 1980 Act secondary action has been found to be unlawful and it is clear that trade

There is an area of industrial relations not dealt with in this document. It is necessary to check the records people from jobs anywhere near the place of work.

7-145 6 and 10.

No 5

dispute

unions have so far found it impossible to organise secondary action within the very narrow limits which still have immunity. However, we should be ready to act if any serious loopholes in the law appear.

23 Finally, the law now gives considerable protection to union members in closed shops against the threat of having their union card taken away from them - and hence having their jobs put at risk - for refusing to take industrial action, including disobeying instructions not to cross picket lines. If the industrial action is unlawful or taken without a ballot, any union member in a closed shop who loses his union card will be held, on complaint to an industrial tribunal, to have been "unreasonably expelled" from his union. If he loses his job as a result of his expulsion he will be held to have been unfairly dismissed and will be eligible for the enhanced "closed shop" levels of compensation.

24 But better, of course, than compensation for a job lost, is not to lose the job at all. And here again there are real signs that employers are becoming much less willing to respond to union demands for a dismissal of a non-union employee. The lead taken by Peter Parker at British Rail, in guaranteeing the jobs of any who came to work in spite of the union, was an important breakthrough, and it is vital that the National Coal Board keep repeating, and more loudly, the assurances that have been made that no miner's job will be at risk for coming to work in the present dispute. This reinforcement of the British Rail precedent will be most valuable for all other employers in the future.

# Ino Pol : Uqulatu

Pt 113

... of the ... to ... the ...

... of the ... to ... the ...

... of the ... to ... the ...