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P.01309

PRIME MINISTER

The Trade Union Bill:

E(A)(84)34

BACKGROUND

FLAG A At its meeting on 28 April 1983 (E(83)4th Meeting) the Ministerial Committee on Economic Strategy considered proposals for legislation following consultations on the Green Paper 'Democracy in Trade Unions'. It took the following decisions among others.

(i) Official industrial action should not enjoy legal immunity unless it was preceded by a ballot of those members who had been or were to be called on to take the action. Although details of ballotting would not be prescribed by law, the ballot must be secret, and every member must have a fair and reasonable opportunity to vote. There would be no requirement for a particular size of majority: it would be up to the membership to enforce the results of ballots; and it would be difficult for a union to proceed with a strike which did not command majority support (Annex 2 to E(83)9).

FLAG B

(ii) All trade union governing bodies should be required to be directly elected through the marking of a ballot paper in secret voting, allowing all members an equal and unrestricted opportunity to vote. Unions would not be required to conduct their elections by postal ballot: some union records were badly out of date; and for some unions, for



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example those with a high proportion of itinerant workers, properly conducted work-place ballots were an effective method (paragraphs 3 and 4 of E(83)9).

2. These decisions are embodied in the Trade Union Bill now before Parliament. The Secretary of State for Employment proposes (E(A)(84)34) to modify them in the following ways.

FLAG C

(i) It would be made a condition of legal immunity that a majority of those voting in a strike ballot (but not of those entitled to vote) should be in favour of the proposed industrial action.

(ii) In certain circumstances postal voting in union elections would be required: individual members would be given the right to a postal vote on demand; and the courts would have discretion to order a postal ballot if an election had been improperly conducted. These changes would not extend to voting in strike ballots.

In addition, Mr King proposes that it should be unlawful for an employer to refuse a request from an employee not to have the political levy deducted from his pay by 'check-off'.

MAIN ISSUES

3. The main issues before the Sub-Committee are as follows.

(i) Do they agree that it should be a requirement of legal immunity for official industrial action



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that a simple majority of those voting in a strike ballot should be in favour?

(ii) Do they agree with the other proposals regarding -

(a) postal votes in trade union elections;
and

(b) the 'check-off'?

Requirement for majority in strike ballot

4. Despite what is said in paragraph 2 of E(A)(84)34, previous collective Ministerial discussion has given little explicit consideration to the arguments for and against requiring a majority, or a majority of a particular description, in strike ballots.

Presumably most Ministers have accepted the general argument that it would be tactically unwise to impose too many new statutory requirements on trade unions, and assumed, as E(83)9 did, that no trade union executive would proceed with a strike in defiance of the wishes of a majority of its members. As Mr King suggests, the current coal-miners' dispute makes that assumption open to question.

5. In reaching their conclusions, Ministers will wish to consider the following.

(a) It could be argued that, in fact, the behaviour of the NUM National Executive does not rebut the earlier assumption: Mr Scargill is presumably anxious to avoid a national ballot precisely because he fears that it will not produce a majority for strike



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action. Under the new legislation he will not be able to avoid a ballot, unless the NUM is willing to forgo legal immunity.

(b) On the other hand, it could well seem odd to make conducting a ballot a legal condition of immunity, but to treat its result as a matter of (legal) indifference. It would be even harder to defend this oddity if there are grounds for believing that some trade union executives will try to find ways of frustrating the wishes of a majority of their members.

(c) Some Ministers may argue for the imposition of a more stringent requirement than a bare majority of those voting. But this would be open to attack as 'anti-democratic'. Moreover, the fact that a bare majority of those voting was the condition for legal immunity would not prevent the membership of a union from laying down a higher requirement as a matter of the unions' own internal management.

(d) It may be argued that the legal requirement should be based on whatever is the unions' own requirement (provided, of course, that it is for at least a bare majority). But that would give unions a strong incentive to reduce their own requirements to the legal minimum.

Postal voting

6. Mr King says that he does not believe that it would be practicable to move immediately to compulsory postal ballots for all trade union elections, but that two changes should be made to meet some of the concerns which have been expressed:



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i. any union member should have the right to demand a postal vote for himself (without any need to show cause on grounds of personal inconvenience etc);

ii. the courts would have the power to order a postal ballot if an election had been improperly conducted.

7. The issues likely to arise over the proposal at i. are:

Postal ballot

a. if it is not practicable to move immediately to compulsory postal ballots for all trade union elections (eg because of poor membership records and unions with a high proportion of itinerant workers), why not legislate to go as far as we can and as fast as we can (eg by giving time for adequate membership records to be established and by allowing an exception to be granted by the courts where there is a problem about itinerant workers)?

b. if postal ballots are desirable for trade union elections (whether on the individual option basis proposed by Mr King or on a wider basis), why are they not equally desirable for strike ballots, where the possibility of intimidation may be even greater?

8. On ii., the issue may be raised of whether the remedy for an improperly conducted election should be available only ex post facto. Should a union member be able to apply to the court ex ante, for example on the grounds that in previous elections there had been widespread intimidation, and ask the court either to require a postal ballot or to insist that the union should give assurances regarding the conduct of the forthcoming election? It is not obvious from E(A)(84)34 why this should be excluded.

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'Check off'

9. The proposal that an employee who has decided to contract out of the political levy should not be made to pay it through the 'check off' is likely to be accepted without demur by the Sub-Committee.

HANDLING

10. It will probably be convenient to divide the discussion into two main parts.

- i. Majority requirements for strike ballots; and
- ii. other proposals.

You will wish to invite the Secretary of State for Employment to introduce each part. The Lord Chancellor will be able to deal with any legal points. Any of your colleagues may have general and political points to raise.

CONCLUSIONS

11. You will wish the Sub-Committee to reach conclusions on the following.

- i. Should it be a condition of illegal immunity for official industrial action that a bare majority of those voting in a strike ballot should be in favour?
- ii. Should postal voting in trade union elections be mandatory -
 - a. for any individual member at his request;
 - b. at the discretion of the court if there has been a breach in the requirements for a particular election?
- (ii) *Should whatever is decided for postal ballots for elections be extended to strikes?*
- iii. Should it be made unlawful for an employer to refuse a request from an employee not to have the political levy deducted from his pay through the 'check off'?

Mr Jenkin has written registering his opposition - letter enclosed.
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PLG

11 June 1984

P L GREGSON

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