CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

14 November 1984

PART II OF THE TRADE UNION ACT, 1984

The Prime Minister has seen your Secretary of State's letter to the Attorney General of 12 November. She believes that the issue of multiple questions on strike ballots will need to be looked at carefully and she therefore welcomes your Secretary of State's proposal to review the position in about three months' time. This review can also take in any other issues on the operation of the Act which have arisen in the meantime.

I am copying this letter to Henry Steel (Law Officers' Department).

ANDREW TURNBULL

David Normington, Esq.,
Department of Employment.

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Prime Minister

Policy unit believe that action on multiple issue ballots will be necessary, but agree with Tom King that some time should pass before acting. Tom King suggests a review in 3 months. Agree?

AT 13/11

MR TURNBULL

13 November 1984

PART II OF THE TRADE UNION ACT, 1984

NACODS

Yes MT

We continue to believe that the Attorney General is in principle right. Union members should have the right to vote separately on each issue in a ballot paper. Otherwise, unions will mischievously combine issues to achieve 'strike majorities' for propositions with which most members disagree (as some 'political' unions already do).

Tom King's observation that industrial action could be taken on an issue other than the one attracting a majority is true, but a different point. This is a flaw in the Act as a whole and has nothing to do with multiple-issue ballots. As the Act stands, even if a union gets a strike majority on a single question about a genuinely single issue, it can change track in the middle of a dispute and still use its majority as a cause of immunity.

Austin Rover

The Austin Rover dispute has thrown some doubt on whether unofficial union action is properly catered for under the Acts. Under the 1982 Employment Act any action by an employed official or formal committee of the union is an official act unless it is outside the unions rules, or is immediately repudiated in writing by the President or General Secretary. Thus district officials or district committees of a union cannot give the nod to strike action and still avoid the requirement for a ballot. But wildcat action by lay trade union representatives would escape.

In the case of the AUEW at Austin Rover, it is not clear whether Ken Cure, the national organiser for the Midlands, was present at the meeting that endorsed the strike, or if he was, whether Terry Duffy repudiated his actions in sufficient time. In any event the Court of Appeal have today, with Austin Rover's agreement, accepted that the AUEW are against the strike and need not ballot.

In the case of a more militant union, there might be a conspiracy to inspire legally unofficial action. If this action could be linked to the union itself, then clearly it would be illegal under the 1984 Act; but if not, no realistic modification to that Act could reasonably impose responsibility on such a union. Unauthorised action of this type still has residual legal immunities and these should be removed.

Conclusion

As far as the NACODS dispute is concerned, a one clause amendment to prevent combination issue ballots could be quickly passed through both Houses with little opposition. However, it is clearly too early to start thinking about amending legislation to cover the Austin Rover situation and indeed, on the facts, it is doubtful whether any change is necessary.

On balance, it may be best to defer action a little, provided we do not permit the delay to grow too long.

OLIVER LETWIN

Peter Warry

PETER WARRY

B/R
w/a
PM response

CC NO

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The Rt Hon Sir Michael Havers QC MP
Attorney General
Law Officers Department
Attorney General's Chambers
Royal Courts of Justice
LONDON WC2A 2LL

12 November 1984

Dear Michael

PART II OF THE TRADE UNION ACT 1984

Thank you for your letter of 29 October drawing my attention to the risk that a union might, as in the recent NACODS ballot, list a series of issues on the ballot paper without enabling its members to make it clear which one they were prepared to make the subject of a strike. You suggest that this could be a means of frustrating the purpose of the strike ballot provisions of the 1984 Act.

There was, of course, no question of NACODS itself exploiting any loophole, because their ballot did not pose any direct question about a strike and completely failed to meet the Act's requirement that the union members must be asked specifically whether they are willing to take industrial action in breach of their contracts of employment. Nonetheless, it was manifestly unsatisfactory that NACODS were able to continue to claim a mandate for a strike when the dispute over one of the issues listed on the original ballot paper had been resolved.

It would of course be possible, as you suggest, to require a union to pose the question about industrial action separately in relation to each issue dealt with in the ballot and to require a 'yes' or 'no' answer to each question. However, it would be necessary to go further than this in order to deal with the potential problem raised by the NACODS ballot. Immunity would have to be made additionally dependant in some way on any subsequent industrial action being undertaken in furtherance (or mainly in furtherance) of the issue or issues which had attracted a 'yes' majority. In many (although not all) cases judgements about the issues uppermost in the minds of the strikers may be difficult (as, for example, when the miners started their overtime ban in November of last year, and both closures and the 5.2% pay offer were at issue). Even if a majority 'yes' vote was required in relation to all the issues mentioned on the ballot paper for immunity to apply to a strike about any of those issues, the union might in fact

call a strike about some further issue which had not been mentioned. The court and, more importantly, the potential plaintiffs would be left in the position of having to show that the strike was not about one of the issues on the ballot paper. I am sure you will agree that we should if possible not put the courts in the position of having to decide what was the "main" motive of the strikers at the time the strike was initiated.

Part II of the Trade Union Act has been in force for only a few weeks and I think it would be wrong to draw any firm conclusion about the need for amending legislation until we have had more experience of its operation. I do not, in any case, have a Bill for this session to provide a vehicle for an amendment.

If, however, the NACODS problem recurs in the context of other strike ballots, and makes the operation of Part II of the Act uncertain, we shall clearly need to tackle the issues you have raised head on. It is therefore essential that we monitor further ballots closely, with a view to closing any loopholes in the legislation that become apparent, and I have asked my officials to ensure that this is done. I propose to review the position in 3 months' time.

I am sending a copy of this reply to the Prime Minister.

Ind Pol Pt 11

legislation

10 DOWNING STREET

From the Private Secretary

1 November, 1984

PART II OF THE TRADE UNION ACT 1984

The Prime Minister has seen the Attorney General's letter to your Secretary of State of 29 October. She will be very interested to hear your Secretary of State's views on whether an amendment to the Act ought to be made at an early date.

I am sending a copy of this letter to Henry Steel (Attorney General's Office).

(Andrew Turnbull)

D. Normington, Esq.,
Department of Employment

E. R.

CONFIDENTIAL

MR TURNBULL 30 October 1984

PART II OF THE 1984 TRADE UNION ACT

We agree with the Attorney General that the 1984 Trade Union Act should be amended in the light of the NACODS fiasco.

Department of Employment officials argue that:

1. The NACODS ballot was unlawful anyway.

2. Other unions probably will not follow the precedent.

3. It would be embarrassing to admit an error.

These are not strong arguments: the fact that NACODS committed other sins does not diminish the general problem; and it is surely worth suffering the slight embarrassment of admitting a mistake if there is even a small chance of nipping a malpractice in the bud. We believe that manoeuvres of the sort used by NACODS are by no means unusual.

We recommend that Tom King should consider either the change recommended by the Attorney General or a requirement to have a new ballot where there is a material shift in the management offer or the union claim .

OLIVER LETWIN

CONFIDENTIAL

Prime Minister

To note and await Mr King's response

AT 30/10

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

29 October 1984

The Rt. Hon. Tom King, MP,
Secretary of State for Employment,
Department of Employment,
Caxton House,
Tothill Street,
LONDON, SW1H 9NF

Dear Tom

PART II OF THE TRADE UNION ACT 1984

The NACODS' ballot has revealed a defect in Part II of the Trade Union Act 1984. The Act stipulates that the voting paper must contain a question which requires the voter to answer whether he is prepared to take part in industrial action. There is nothing in the Act that prevents the vote relating the call for strike action to more than one issue. In the present case, three different issues were dealt with and it is very likely that while a member would be prepared to strike in support of rejection of the Board's guidelines of 15th August, he would not be prepared to strike in opposition to the Board's cutback plans.

In my view the Act should be amended to require a separate "Yes" or "No" to each issue where more than one issue is dealt with in the same ballot.

I am copying this letter to the Prime Minister.

Yours ever,

Michael