

PRIME MINISTER

11 July 1986

TEACHERS' PAY

The DES tactics at the meeting on Monday will be to argue:

- a. That a decision on the replacement of Burnham needs to be taken urgently - ACAS reports in September, and the Secretary of State would like to announce something in a speech next week (18 July).
- b. That Burnham should be replaced by a Standing Advisory Committee (SAC) - which is effectively a Pay Review Body - rather than free collective bargaining or a reconstituted Burnham - Teachers Negotiating Group (TNG).
- c. That the Secretary of State sees grave difficulties with either free collective bargaining or the TNG.
- d. That the only explicit decision which should be taken now is to reject free collective bargaining: the choice between SAC and TNG can be deferred, even though the DES express a strong preference for SAC.

How urgent is a decision?

The answer is not at all. There are two important facts to bear in mind.

- i. There is no requirement for any Government decision until after the ACAS talks end.
- ii. Because of the time required for new (controversial) legislation, any new statutory system will not avoid the need to make a large pay settlement following the ACAS talks; nor will it be ready for the 1987 pay

round. If a new Pay Review Body were established, it is unlikely it could report before April 1988 at the earliest.

The new system is therefore unlikely to be operational until after the next General Election.

The reason the DES are insisting on an immediate decision to reject free collective bargaining is that ACAS could well recommend this option: it is the one to which they are totally opposed, and therefore they wish to pre-empt ACAS making such a recommendation.

#### Criteria for a new body

Any new body will need to satisfy some of the following criteria.

1. Pay and conditions must be linked: The TNG does do this; the SAC gives rather less weight to conditions (the Secretary of State will only have a power over conditions, whereas he has a duty over pay).
2. Affordability must be taken into account: The TNG firmly gets the Treasury vote on the table, but the SAC relies on an unresponsible independent committee. Moreover, if the DES wish to overturn an SAC recommendation, it requires Parliamentary procedure, which is not the case with the TNG.
3. Contracts must be enforceable: The TNG suggests that these would be promulgated by Statutory Instrument in a manner that would deliberately allow auditors or interested parents to open proceedings against delinquent councils.

The SAC proposes more permissive regulation, supported by specific grants. Rather than withholding grant against specific projects which councils wish to undertake, the new version is effectively a fine for not adhering to a policy. Withholding grants has proved to be not without its political difficulties; but fines, which can only hurt the pupils of delinquent authorities, would seem to be a political own goal.

4. The new body must command some degree of public support: In the case of the SAC, this would be achieved by membership of the committee being "balanced", but this would also virtually rule out the Government attempting to overturn (through negative Parliamentary resolution) any of its recommendations, however profligate.

The TNG might be widely perceived as being unfair, as it makes the Government a party to the negotiation and gives the Secretary of State the power "to substitute his own determinations for any or all of the Group's conclusions" (paragraph 5c). It is questionable whether this would be approved by the Lords.

5. Establishment of new machinery should be acceptable to the teachers and their employers: The SAC is unlikely to be popular, and the TNG even less so, especially with union leaders: their members, however, may have very different ideas, especially as part of a package involving a pay settlement.
6. Any new machinery should have minimum knock-on effects for other pay negotiations: Establishing a Pay Review Body for a group that has not declined the strike weapon and was not employed directly by the Government must lead to similar requests from other groups. Moreover, even the existing Review Body groups will

seek parity with the teachers' right to have Parliamentary approval before the recommendations are varied in any way. The TNG, on the other hand, establishes no undesirable precedents.

Probable DES arguments against free collective bargaining and the TNG

- a. "I do not wish to be involved in an annual confrontation with teacher unions" (Secretary of State)

Insisting on affordability in any negotiation inevitably produces confrontation. It is irresponsible of the Secretary of State for Education to be passive in this matter, by simply producing a paper for the SAC and then leaving it to the Treasury to oppose over-generous pay recommendations.

It is also wrong to extrapolate from the experience of the past year: if some element of catching-up is provided for, there is no reason to expect widespread industrial action in future years.

- b. "Parliament may well balk at the powers the TNG gives the Secretary of State"

This is a fair argument. It leads on, however, to one very important conclusion. If you attempt to set up a negotiating body which includes central government as an active participant, you run the risk of giving government either too little or too much power, with the result that you inevitably drift towards a Pay Review Body - independent of government.

But if the body is to be independent of government, why not allow free collective bargaining with government having a veto over the outcome? This is certain to

give government more power over pay determination than it would have through a Pay Review Body.

- c. "Free collective bargaining is possible for manual workers, but not for teachers' pay"

DES are strongly opposed to free collective bargaining, as they claim it would reduce their influence over pay structure and conditions of service. As this might well be the preferred option of both teachers and the LEAs, it would be as well to listen to the ACAS proposals when they are produced, rather than rule them out of court now.

#### Enforceability

← Enforceability remains a difficult problem under all of the alternatives for determining teachers' pay. Already DES have dropped the "Appraisal of Performance of Teachers" - Clause 37 - from the Education Bill (attached). This gives one no confidence in a DES-inspired and supported SAC being able to deliver anything it recommends on conditions of service.

The alternative would be to ensure that teachers are given a definite contract, which is legally enforceable: in this respect, the ILEA plans (see attached) - following the High Court decision of 22 May to dock the pay of teachers who refuse to cover for absent colleagues - look very encouraging, and the way we should go.

#### Conclusions

1. There is no need to take a decision on the replacement of Burnham at this stage. You are being forced into making a decision, because the DES wish to pre-empt

ACAS advocating disbanding Burnham in favour of free collective bargaining.

2. The DES are prepared to relinquish power to a Pay Review Body in return for avoiding an annual confrontation: this is simply unacceptable, and therefore the SAC option should be rejected.
3. If the objective of the DES is to have maximum influence over pay, then, as a new body, the TNG is very much better than the SAC: the only problem is how to present it publicly as being fair, in view of the powers it gives to government.
4. Free collective bargaining could well be the best alternative: it should result in lower pay settlements and need not lead to industrial action.

BH.

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PART IV

MISCELLANEOUS

Appraisal of performance of teachers.

37.—(1) The Secretary of State may by regulations make provision requiring local education authorities, or such other persons as may be prescribed, to secure that the performance of teachers to whom the regulations apply—

- (a) in discharging their duties ; and
- (b) in engaging in other activities connected with the establishments at which they are employed ;

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is regularly appraised in accordance with such requirements as may be prescribed.

5 (2) The regulations may, in particular, make provision—

(a) requiring the governing bodies of such categories of schools or other establishments as may be prescribed—

10 (i) to secure, so far as it is reasonably practicable for them to do so, that any arrangements made in accordance with the regulations are complied with in relation to their establishments ; and

15 (ii) to provide such assistance to the local education authority as the authority may reasonably require in connection with their obligations under the regulations ;

(b) with respect to the disclosure to teachers of the results of appraisals and the provision of opportunities for them to make representations with respect to those results ; and

20 (c) requiring local education authorities to have regard to the results of appraisals in the exercise of such of their functions as may be prescribed.

(3) The regulations may be expressed to apply to any of the following categories of teacher, that is to say teachers employed—

(a) at any school maintained by a local education authority ;

(b) at any special school (whether or not so maintained) ;

30 (c) at any further education establishment provided by a local education authority ;

(d) at any further education establishment designated by regulations made under section 27 of the 1980 Act as an establishment substantially dependent for its maintenance—

35 (i) on assistance from local education authorities ; or

(ii) on grants under section 100(1)(b) of the 1944 Act ;

40 (e) at any school or other establishment which falls within any prescribed class of school, or other establishment, of a kind mentioned in any of paragraphs (a) to (d) above ; or

(f) by a local education authority otherwise than at a school or further education establishment.

## UK NEWS-

### Ilea plans to dock pay of protest teachers

By David Brindle,  
Labour Correspondent

**THE CONTROLLING** Labour group on the Inner London Education Authority, has decided in principle to begin docking the pay of teachers who refuse to cover for absent colleagues.

The decision, taken in the light of a High Court ruling in May that such pay deductions were justified, has sharpened the atmosphere surrounding negotiations starting today at national level on a new teacher contract.

Unless agreement is reached in the negotiations, Ilea is expected to start making pay deductions in the autumn term. This could provide the spark for resumed disruption of schools in London and throughout England and Wales.

Ilea's move is in response to the policy of the National Union of Teachers in inner London—though not nationally—that there should be no cover for absence other than provision of "supply" or relief teachers.

As a result, Ilea officials say large numbers of pupils have been missing lessons: in the week beginning May 19, 20,000 children lost classes; in the week beginning June 9, the latest for which there are complete figures, 10,000 were sent home because no teachers were available.

Counsel's opinion sought by Ilea is believed to have stated firmly that the authority was both breaching its statutory duty to provide education and breaching its fiduciary duty to penalise teachers who flout contractual commitments.

In the High Court case, Mr Justice Scott ruled that covering for absence was part of a teacher's professional obligation.

The issue is at the heart of today's negotiations, with the NUT offering an explicit contractual commitment to cover on the first day only of an unforeseen absence — the union's national policy—in return for specified limits on class size and guaranteed "non-contact" or non-teaching time.

The talks, at the conciliation service Acas, are expected to adjourn with little progress today.

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