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PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

18

30 November 1984

① Please copy to David Willetts  
② Please p.a.

Dear Steve,

THE NEWCASTLE SHIFT DISPUTE

Subs  
30/11

I attach minutes of last evening's meeting under the chairmanship of the Lord President. I have been in touch separately with those concerned in order to set up a resumed discussion at 9.15. am on Tuesday 4 December, in the Privy Council Office.

I am sending copies of this letter and the minutes to the Private Secretaries to the Ministers who attended the meeting, to Andrew Turnbull in the Prime Minister's Office and to Richard Hatfield in Sir Robert Armstrong's office.

Yours sincerely,  
Janet Lewis-Jones.

J A LEWIS-JONES

S Godber Esq  
Private Secretary to  
the Secretary of State for  
Social Services

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MINUTES of a Meeting of Ministers  
held in the Leader's Room, House of  
Lords, on Thursday 29  
November 1984 at 5.00 pm

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PRESENT

The Rt Hon Viscount Whitelaw  
Lord President of the Council  
(In the Chair)

The Rt Hon Norman Fowler MP  
Secretary of State for Social Services

The Rt Hon Tom King MP  
Secretary of State for Employment

Sir Patrick Mayhew QC MP  
Solicitor General

Mr Barney Hayhoe MP  
Minister of State, Treasury

Mr Antony Newton MP  
Minister of State, Department of  
Health and Social Security  
(Minister for Social Security)

SECRETARIAT

Mr J F Stoker

SUBJECT

THE NEWCASTLE SHIFT DISPUTE

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NEWCASTLE SHIFT DISPUTE

The Meeting discussed the strike of Department of Health and Social Security employees over proposals to alter shift working arrangements for computer operations at the Department's Newcastle central office.

THE SECRETARY OF STATE FOR SOCIAL SERVICES said that the strike was now in its 28th week. The strikers, who received strike pay equal to about 50 per cent of normal net pay, were led by a small number of Militant Tendency supporters. They showed no signs of agreeing to resolve the dispute despite an offer by the Government on the basis of which members of the Civil Service Union (CSU) and Society of Civil and Public Servants (SCPS) who had taken part in the strike had agreed to return to work, and which was recommended by the national officers of the Civil and Public Servants Association (CPSA), the strikers' union.

Despite the strike action, Department of Health and Social Security (DHSS) management had successfully completed the annual uprating of benefits. However, the cost of the dispute was £5 million per week. Those working at the centre were under considerable pressure and sickness rates were increasing. For these reasons, it was desirable to bring the issue to a head. Three options had been identified, in addition to sitting out the strike:

- i. dismissing the strikers with an offer of re-engagement;
- ii. recruiting casual labour; or
- iii. unilateral variation of strikers' contracts.

The preference of DHSS management at Newcastle, and initially of the colleagues whom he had consulted, had been option iii. A decision rested largely, however, on legal advice, which was that there was a significant risk of successful challenge to unilateral variation of contracts either in an Industrial Tribunal or in the Courts.

THE SOLICITOR GENERAL said that any appeal by strikers to an Industrial Tribunal against unilateral variation of contract would be on the grounds that it

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constituted constructive dismissal. This course was perhaps unlikely, because it would require the employee concerned to resign first. It would be for the Tribunal to decide, first, whether the variations did constitute constructive dismissal; and, if so, whether the employer had nevertheless acted reasonably. An action in the Courts seeking a declaration that the purported variations were unlawful as being in breach of contract, perhaps coupled with a claim for damages, would not require the employees to resign first. His advice, which was consistent with legal advice to the Secretary of State for Social Services from other sources, was that the chances that the Government would be able successfully to contest an action in either an Industrial Tribunal or the Courts were no better than 50-50. Losing a case would probably lay the Government open to a liability to pay either redundancy compensation (following a case in an Industrial Tribunal) or damages plus a payment reflecting contractual entitlement to notice (following a Court action). Ultimately, however, it was not possible for the Government to be compelled to continue to employ the strikers.

In discussion the following were the main points made.

- a. Losing an action in the Courts or in an Industrial Tribunal would be severely damaging for the Government and would be seen as a victory for the Militant Tendency. The strikers, however dubious the justification, would almost certainly claim that the substantial costs of resisting the strike had been incurred by the Government in pursuit of unlawful ends.
- b. The option of dismissing the strikers might have been too lightly dismissed in earlier discussion. The Government would be within their legal rights at present in taking this course because the strikers had withdrawn their labour without good cause. The strikers might, however, be able successfully to argue that any steps which might be taken by the Government with a view to the unilateral variation of contracts constituted good cause for continuing with their action. For this reason, dismissals would be open to a more substantial risk of successful legal challenge if they were associated with an offer of re-employment on revised terms.

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- c. The option of dismissal, however, was contrary to the advice of DHSS management at Newcastle. It was likely to carry severe risks of damage to industrial relations in the Civil Service and perhaps more widely, though it could be argued that a broad spectrum of opinion - perhaps including employees at the centre who had not struck or who had returned to work - would accept such action as necessary and justified.
  
- d. As an additional option to those already identified, it would be possible for the Government to consult on the substance and timing of possible variations in the terms of strikers' contracts prior to giving notice of an intention to introduce such variations. This would be consistent with the emphasis placed on the need to consult in the judgements of the Courts on the Government Communications Headquarters (GCHQ) affair. It would also strengthen the ability of the Government to argue that they had acted reasonably should a case alleging constructive dismissal subsequently be brought by strikers in an Industrial Tribunal.

THE LORD PRESIDENT OF THE COUNCIL, summing up the discussion, said that the handling of the handling of the dispute posed a clear dilemma. On the one hand, it was obviously undesirable for the Government to be seen to take no action while substantial costs continued to be incurred and DHSS working staff continued to be under pressure. On the other hand, any major risk of successful challenge to the legality of action taken by the Government in the field of industrial relations was deeply undesirable following the controversy over GCHQ. The Solicitor General, consulting the Secretary of State for Social Services, should urgently consider both the implications of the option of unilateral variation of contract preceded by consultation and the precise nature of the variations involved; and provide further advice. He would arrange for those present to resume their discussion early on the morning of Tuesday 4 December to decide how to proceed in the dispute. He would himself arrange to report their decision to Cabinet on 6 December.

#### The Meeting

1. Took note, with approval, of the Lord President of the Council's summing-up of their discussion and invited the Solicitor General and Secretary of State for Social Services to be guided accordingly.



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2. Took note that the Lord President of the Council would arrange for them to resume their discussion early on the morning of Tuesday 4 December.

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