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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

ARBITRATION ARRANGEMENTS IN THE PUBLIC SECTOR

Note by the Central Policy Review Staff

1. In E(81)114 the Secretary of State for Employment reviews arbitration arrangements in the public sector. He invites his colleagues to endorse the proposals in paragraph 16 of the note by the Department of Employment and to consider what action they might take.

2. This review follows work which the CPRS did on the general subject of pay. In this we drew attention to the weakness which arbitration arrangements could introduce in a situation where strong efforts were being made to restrain increases in basic pay. Two particular points of concern were the dangers that lay in unilateral access to arbitration, and the tendency of arbitrators to be concerned with 'fairness' and to give insufficient weight to arguments based on what could be afforded.

3. Ministers have already agreed on the undesirability of unilateral access to arbitration (E(81)1st Mtg. Item 4), and the Secretary of State confirms this. Paragraph 16 of the note by the Department of Employment lists the groups for which changes in this respect are needed and suggests various actions aimed at bringing this about. While we do not differ with what is proposed here so far as it goes, we are concerned that it does not convey the sense of urgency needed if the risk of potentially embarrassing unilateral access is in practice to be removed. In several important instances (the fire service, British Rail, buses and British Telecom) it contains no positive ideas on how the present unsatisfactory situation might be improved. The first step must be to persuade the managements concerned that some action is needed. In many cases removal will obviously entail negotiation which could prove to be costly unless undertaken as a carefully

prepared strategy which takes advantage of the current slack state of the labour market. Special efforts will have to be made to prepare the arguments against the wider background of relations in each individual sector and also to judge the timing when the matter can most appropriately be raised. We recommend that for each group listed the Minister concerned should report back to colleagues, after an appropriate interval, on progress made towards removing unilateral access.

4. The note by the Department of Employment suggests that arbitration by mutual agreement is acceptable. Whereas obviously it may be preferable to the alternative of a damaging strike (as the Secretary of State points out in paragraph 3 of his memorandum), we regard it as undesirable because the employer loses control of the outcome. We recommend that in competitive parts of the public sector it should be avoided (as it is in the private sector) and that elsewhere it should be regarded only as a last resort.

5. We remain concerned about the risk that arbitrators will give insufficient weight to arguments about what the employer can afford. We accept that it would not be appropriate to impose any new requirement by legislation. As the note by the Department of Employment says it is open to an employer to make sure that the terms of reference require the arbitrator to take this consideration specifically into account, before he agrees to go to arbitration. But the paper does not discuss whether public sector employers do in fact insist on this, or whether the Government needs to draw their attention to it.

6. 'Affordability' will be directly applicable in public services and in the public trading sector. In such cases, the CPRS believes that it should be referred to specifically in arbitrators' terms of reference. This is all the more important if, as paragraph 3 of the note suggests, once an employer has agreed to arbitration and to terms of reference, he must regard the outcome as 'morally, although not necessarily legally, binding'. We recommend that the Department of Employment should be asked to examine how public sector employers concerned can best be encouraged to insist that the terms of reference take fully into account what the employer can afford to pay.