



P.0597

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PRIME MINISTER

Arbitration Arrangements in the Public Sector  
(E(81)114 and 120)

## BACKGROUND

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This report by the Department of Employment arises out of your meeting on 21 September to discuss the CPRS report on pay. The arbitration arrangements in the public services sector (but not the public trading sector) were the subject of a number of discussions in E Committee towards the end of last year and early this year (E(80)31st Meeting, Item 2, 37th Meeting, Item 2 and 43rd Meeting, Item 1; and E(81)1st Meeting, Item 4). The position reached at the end of those discussions was as follows:

- a. The Government's opposition in principle to unilateral access to arbitration was made clear in a Parliamentary Question answered by the then Secretary of State for Employment on 16 January.
- b. Unilateral access to arbitration was withdrawn from schoolteachers in England and Wales (and similar action has now been taken in Scotland).
- c. The Secretaries of State for the Environment and for Education and Science were invited to encourage the employers in local government, the water industry and universities to withdraw the right of unilateral access to arbitration for their employees; (for a variety of reasons no effective progress proved possible on any of these fronts (E(PSP)(81) 3rd Meeting, Item 2)).
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## MAIN ISSUES

- Below
2. The Department of Employment's report and the CPRS's paper raise three general issues:





- a. how far should arbitration be generally discouraged in the public sector?
- b. what should be done to get rid of unilateral access to arbitration?
- c. what should be done to ensure that employers take more account of 'affordability'?

In the light of their attitude to these general issues, Ministers will then want to review the position of some specific groups of employees.

Should arbitration be generally discouraged?

3. The report by the Department of Employment, while opposed in principle to unilateral access, suggests that arbitration by mutual consent is acceptable; the CPRS argue that even this should be avoided, especially in the public trading sector. The Secretary of State for Employment's own view, in paragraph 3 of his covering paper, is that arbitration should be avoided except where it may be a better risk than a damaging strike.

4. If this is the general view, the question remains of whether there is anything which the Government can usefully do. The large majority of arbitration arrangements are the results of voluntary agreements between the parties, and are not based on statute. It seems unlikely that the Government would succeed in persuading those concerned to end their voluntary arrangements and there is little or nothing it can do to bring pressure to bear on them. However, in the case of some nationalised industries it is a statutory requirement to have arbitration machinery. Sponsor Ministers might therefore be invited to take the opportunity of any further major legislative changes in the framework of their nationalised industries (for example the re-organisation of the water industry) to abolish such provisions.

How to get rid of unilateral access

5. The scope for getting rid of unilateral access to arbitration is discussed in paragraphs 11 and 12 of the report by officials attached to E(81)114. There is likely to be general support for the conclusion, endorsed in para 5 of the Secretary of State's covering paper, that rights to unilateral access should be



renegotiated or withdrawn. But there are two constraints: first the employer is usually someone other than the Government and he has to be persuaded to act; secondly renegotiation takes time. The CPRS do not dissent from this assessment although they argue that the problem should be tackled with greater urgency and that sponsor Ministers should be required to report back to E Committee on progress within a specified timescale (Easter might be a possible deadline). The Committee may be prepared to endorse this general approach, subject to considerations affecting particular groups of employees, discussed later in the brief.

### 'Affordability'

6. The Secretary of State for Employment has accepted the recommendation in the report by officials that it would be undesirable and impracticable to place a statutory duty on arbitrators to take account of what an employer can afford to pay, and that the right approach is for the employer to agree suitable terms of reference and to submit persuasive evidence. The CPRS does not dissent but points out that action is needed to ensure that public sector employers do in fact follow this course. They suggest that the Department of Employment should be asked to consider how this might best be done but an alternative approach would be simply to give sponsor departments the task of taking this up with their public sector employers.

### Specific groups

7. Paragraph 16 of the report by officials lists eleven groups of employees where unilateral access to arbitration needs to be renegotiated or withdrawn. In only one case, the Post Office, has action been put in hand. You should be aware of the following:

#### a. University teachers

The Secretary of State for Education and Science apparently takes the view that to raise the question of arbitration arrangements at this stage would seriously prejudice the main objective of achieving redundancies and ending academic tenure. Moreover, it might mean that the employers and university staffs decided to terminate the present voluntary pay negotiation arrangements, to which the Government is a party, and to devise new machinery from which the Government would be excluded. The balance of advantage may need careful examination.



*Norman's review*

*- Unilateral access*

*Norman*

b. Gas Supply and British Steel Corporation

The question arises whether, given the limited role of arbitration in the past and, in the case of the gas industry, the reasonable attitude adopted by the trade unions, the gains achieved by tampering with the arrangements would outweigh the losses in terms of industrial relations.

c. Water

*Legis*

The present legislation requires agreement to be reached on arbitration machinery, although not necessarily on the basis of unilateral access. Legislation to restructure the industry (when this provision might be deleted) will not now be introduced before the 1982-83 Session. But the employers like the present arrangements, since they have used them in the past to their advantage, and may well seek similar arrangements even when the industry has been restructured.

d. British Rail

*Rami*

The Department of Transport thinks that the British Railways Board are unlikely to be prepared to seek changes in the present arbitration arrangements. These provide for unilateral access but not for the result to be binding on both parties (although the Board might find it difficult to refuse to accept the outcome). One possibility, however, might be for Lord McCarthy to be replaced as chairman of the arbitration tribunal by someone less obviously well-disposed to the trade union side.

e. Buses

*N.B.C.*

*- 2nd Transport Bill 1981*

This is an area where progress seems possible and highly desirable. But primary legislation would be required. This might be achieved in the 1981 Transport Bill, or, just possibly (as the Secretary of State for Transport might suggest) in the Department of Employment's forthcoming legislation on trades unions, which would avoid two separate rows with the unions.

*5 months*

f. Local Authorities and London Transport

There seems little scope for early progress. The Government has no means of pressing the local authorities to agree, and in the present climate to try to do so might be counter-productive.

*No power at this stage*





→ BT

g. British Telecom

There seems no reason in principle why BT should not follow the Post Office.

8. In each case Ministers will want to weigh the longer-term advantages against any short-term disadvantages for industrial relations and the current pay round. The groups on which progress seems most likely to be possible (although in some cases there may be good arguments against opening up this issue at this stage) are: university teachers, gas supply, buses, British Steel Corporation, British Telecom and possibly British Rail. It seems unlikely that progress will be possible in the case of the various local authority and London Transport groups.

HANDLING

*Should arbitration be generally discouraged  
Unilateral access, Awardability*

9. You will want to invite the Secretary of State for Employment to introduce his paper and Mr Ibbs to speak to the CPRS paper. The Chancellor of the Exchequer and the Secretaries of State for the Environment, Education and Science, Transport, Energy and Industry are the other Ministers primarily concerned.

10. After inviting comments on the three general issues discussed in paras 3 to 6 above you might then focus the discussion on paragraph 16 of the note by the Department of Employment, taking each group of employees in turn. In each case the main questions seem to be: is progress practicable (either by direct Government action, or because the employers concern would be sympathetic)? What would the likely penalty be, in terms of industrial relations trouble? Where does the balance lie?

CONCLUSIONS

11. You will want to record conclusions on the following matters:

i. whether there is any action which the Government ought to take to discourage arbitration generally in the public sector (eg by removing statutory arbitration requirements in particular nationalised industries as opportunity arises);

ii. whether sponsoring Ministers should report back to the Committee by, say, Easter, on progress in getting rid of unilateral access to arbitration;



iii. whether these reports should also cover progress in ensuring that public sector employers take proper account of 'affordability' in drawing up terms of reference for arbitration and submitting evidence;

iv. which of the groups of employees listed in para 16 of the officials report should be priority candidates for action to withdraw unilateral access to arbitration.

*PLG*

P L GREGSON

27 November 1981

CONQUEROR  
LONDON