

ccno



CONFIDENTIAL

2 pps

(iii)

P.01166

PRIME MINISTER

Strikes in essential services

Your meeting is to discuss the then Secretary of State for Employment's minute of 7 October which considers how to carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". An earlier minute of Mr Tebbit's circulated to the Cabinet as C(83)16 is also relevant.

2. I understand that the present Secretary of State for Employment has an open mind on this matter. He is conscious of the difficulties and welcomes the opportunity for a free-ranging discussion on his predecessor's minute. He will not seek any operational decisions but would undertake, in the light of the discussion, to go away and think further about the problem.

3. Briefly the analysis in Mr Tebbit's minute is as follows:

i. the more obvious ways of dealing with strikes in essential services are unattractive (ie "no strike" agreements, extension of the criminal law, total removal of civil immunity, or making procedure agreements legally enforceable);

ii. the best approach might therefore be to make immunity for industrial action in designated essential services depend on three tests:

CONFIDENTIAL



CONFIDENTIAL

- a. action should not be taken on any issue already determined by a substantive agreement (eg an annual pay settlement) during its currency;
- b. action should not be taken until all stages of any extant procedure agreement had been exhausted;
- c. there should be a minimum period of notice between deadlock in negotiation and the start of industrial action.

MAIN ISSUES

4. The main issues are:

- i. which is the most promising approach to the problem of strikes in essential services?
- ii. how should the Manifesto commitment to consultation be handled?

Approach outlined in Mr Tebbit's minute

5. The approach in Mr Tebbit's minute starts from the assumption in the Manifesto commitment that the right way to tackle strikes in essential services is to relate loss of immunity to breach of procedure agreements. The problem about that approach is that procedure agreements on pay, the issue most likely to give rise to industrial action, are rare. They are much more common on matters where the incentive for changing the existing situation lies with management (eg working arrangements, disciplinary action) and where, over the years, management has bound itself not to act hastily and to engage in consultation with the unions. Where procedure agreements relate to pay they rarely go beyond defining the



CONFIDENTIAL

forum in which negotiations should take place. In a few cases they provide for arbitration, sometimes with unilateral access, whose disadvantages to the employer are well known. Making immunity depend on observance of existing procedure agreements would therefore have little impact; if it led to a withdrawal by the unions from such procedure agreements as already exist affecting pay, there might even be a slightly adverse impact.

6. This raises the question of whether the Government should seek to prescribe new and additional detailed procedure agreements for pay determination in essential services, whose breach would then lead to loss of immunity. This option is rejected in Mr Tebbit's note on the grounds that procedure agreements, of their nature, must represent a willing bargain between the individual employer and his unions and that the Government cannot intervene to impose such bargains. Hence the approach of the three tests. The first two (no breach of existing substantive or procedure agreements) are reasonable but may not have much effect in the real world (industrial action on pay is rarely taken until an existing pay agreement has expired). The third test - a minimum period of notice before the start of industrial action - is tantamount to a "cooling-off" period before strikes in essential services.

7. It can be argued that the enforced delay in starting industrial action would make it difficult to sustain militancy and would provide an opportunity for moderates to exercise restraint. On the other hand the proposals for strike ballots might seem to be more effectively designed to meet this objective. It could also be argued that delaying the start of industrial action would give more opportunity for the community to prepare for it. Against this it has to be admitted that little could be done in advance to mitigate the most damaging forms of industrial action in the essential services



CONFIDENTIAL

(eg electricity). One disadvantage might be that there would be pressure to use the period of notice for conciliation in circumstances where the employer, and the Government, wished to stand firm.

8. It is easy to see therefore why Mr Tebbit did not advance the approach in his minute of 7 October with much enthusiasm. It would be difficult to attack the approach as unreasonable and it would be unlikely to do much harm. But would it be likely to do much good?

Alternative approaches

9. The main alternative approaches which have been considered for limiting strike action in essential services are:

- a. making it a criminal offence;
- b. "no strike" agreements;
- c. making procedure agreements enforceable at law;
- d. removing immunity from strike action in essential services in all circumstances.

10. In considering the "criminal offence" approach, it should be noted that until 1971 it was a criminal offence under the Conspiracy and Protection of Property Act 1875 for electricity, gas and water employees wilfully and maliciously to breach their contracts of service so as to deprive consumers of supplies. It is still an offence under the 1875 Act for an employee in any industry to break his contract, knowing or having reasonable cause to believe that the consequences will be danger to human life, bodily injury or damage to valuable property. Those powers have not been used, partly because of the tight terms

CONFIDENTIAL



CONFIDENTIAL

in which they were drawn and partly because no breach of contract would arise if an employee chose to give notice and the period of notice (often not more than a week) was worked out. Dealing with this latter loophole would be tantamount to civil conscription. There is also the practical problem of applying criminal sanctions against large numbers of workers.

11. On the "no strike" agreements approach, there is the well known argument that such agreements could be negotiated only in return for specially generous pay determination arrangements, a price which has not so far been though worthwhile. There is also the risk that the unions would resile from such agreements when it suited them to do so.

12. On the approach which would involve making procedure agreements enforceable at law the main argument is that employers are strongly opposed to this. It is argued, inter alia, that the unions might invoke such powers to the disadvantage of employers where it suited them but would refuse to enter into, and might even withdraw from, procedure agreements on major matters such as pay.

13. This leaves the approach of removing immunity altogether from industrial action in essential services. Such an approach would in many ways be the cleanest solution. It would avoid the problems over the criminal law, and the complications of establishing whether there are agreed procedures and how far procedures have been fulfilled. It rests on the assumption that employees in certain occupations designated as essential should have their bargaining power reduced compared with that of other employees. It is often argued that the monopoly power which workers in such services have provides of itself a justification for removing their immunity. It can however be argued on the other side that if such workers are to be deprived of the ability to bargain effectively, they are entitled to some trade-off, such as

CONFIDENTIAL


CONFIDENTIAL

unilateral access to arbitration, or special pay arrangements. If that were to be conceded, the price, as in the case of "no strike" agreements, might not be worth paying.

Definition of "essential services"

14. Any approach must necessarily entail defining the essential services. To avoid casting the net too wide Mr Tebbit suggests consulting initially on the basis of only four services: electricity, gas, water and the National Health Service. Is this however too narrow? The nearest we have to an accepted definition of the essential services is the formula in the Emergency Powers Act 1920 which refers to "interfering with the supply of distribution of food, water, fuel or light, or with the means of locomotion, to deprive the community or a substantial portion of the community, of the essentials of life". It may therefore be argued that the definition should be drawn more widely, to include, for example, the fire service and the miners. It is suggested that there might be a power to designate services by order, though not while a dispute was taking place. The Government would nevertheless have to explain the rationale for treating particular services in this way, and leaving out others.

Approaches not involving changing the law

15. Although this discussion is about the contribution which changes in the law might make to the problem of strikes in essential services, it should not be forgotten that union power can be reduced in other ways in some of the essential services (for example by bulding up stocks, as in the case of the miners, and by using new technology to make systems more resilient and by breaking down monopoly as in the case of telecommunications). May this not be a more effective remedy in practice? Moreover in those industries where small groups of workers have a "sudden death" power (eg power station engineers) they have tended to

CONFIDENTIAL


CONFIDENTIAL

find it difficult to use their industrial muscle without turning public opinion strongly against them.

Next steps

16. In his minute of 7 October Mr Tebbit was inclined against early consultations on the basis of his preferred approach because it would be seen to be not very effective. The next steps will obviously depend on how far Ministers can identify and agree on a promising approach. Even if consultations were deferred, it would be awkward for the Government to say and do nothing about its Manifesto commitment in this area for a long period. Would it be a feasible strategy to put the onus on the unions to come forward with ideas rather than put forward specific Government proposals? Should there be a Green Paper rehearsing all the different approaches which have come up in public debate?

HANDLING

17. You will wish to invite the Secretary of State for Employment to open the discussion. It may then be useful to seek comments from the Secretary of State for Trade and Industry who wrote the minute of 7 October in his previous capacity. The Home Secretary, the Chancellor of the Exchequer and the Minister of State, Department of Employment (Mr Gummer) may have general observations. The Secretaries of State for Energy, the Environment and Social Services may have comments about the implications for their essential services.

CONCLUSIONS

18. The Secretary of State for Employment is not seeking conclusions at this stage but you will wish to steer the discussion so that he has guidance on:

CONFIDENTIAL



CONFIDENTIAL

- i. the approach to strikes in essential services which the meeting regards as the most promising;
- ii. the timing and handling of consultations.

PLG

P L GREGSON

11 November 1983

CONFIDENTIAL

IND POL: Legislati: Pe 10