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23 October 1981
Policy Unit

PRIME MINISTER

INDUSTRIAL RELATIONS LEGISLATION

1. We think Norman Tebbit has put forward an extremely well-judged package. It accords closely with our view that, as well as correcting obvious abuses, the opportunity should be taken of a further major step towards a more rational bargaining balance.

2. We comment on each of his specific proposals below:

2.1 Closed shop

We support each of the proposals and agree that it would not be sensible to go further by attempting to abolish the closed shop altogether. Large parts of industry may be opposed to revalidation on the grounds that it will destabilise existing relationships. It may be necessary to make the interval 5 years rather than 3, but this could be conceded in response to the final stage of consultation.

2.2 Union-labour-only requirements in contracts

2.2.1 There is widespread support for declaring such contracts - and the restrictive seeking of tenders - unlawful. But Norman rightly points out that discrimination against non-union labour is widely practised on the ground - regardless of what contracts say. Thus, for example, a group of workers on a building site will refuse to allow a non-TGWU member to make a delivery, or refuse access to a non-union sub-contractor.

2.2.2 Under Norman Tebbit's proposals, any union instructions to behave in this way would render the union liable to injunctions and damages. In the case of, say, deliveries to the docks, this could lead to a head-on confrontation with the TGWU if they refused to issue instructions to their members not to obstruct non-unionists. We should consider whether this is likely and, if so, whether these are the best grounds on which to defend and implement the new changes to Section 14.

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2.2.3 If the union did give general instructions not to behave in this way, injured employers would be left to pursue individual shop stewards, local organisers etc if they persisted in refusing access to building sites, etc. We can see this giving rise to quite a large number of cases with potentially troublesome outcomes:

(a) individual "martyrs" being fined or imprisoned; however, such martyrs would probably not attract much public sympathy, provided their behaviour was properly exposed;

(b) the law appearing ineffective if the action can be demonstrated to be genuinely spontaneous (if no-one induces it, there is no tort);

(c) behind-the-scenes pressures on people to keep quiet about unlawful action. (Of course, the existing pressures are often repugnant, and the new proposals would be intended to stop them. But at first they might be intensified.)

2.2.4 Again, we must satisfy ourselves that this change will not generate so many controversial cases at local level that the label "unworkable" will begin to be attached to the whole of this new package - thus putting at risk other more important changes.

2.2.5 Of course, union-labour-only, whether by contract or not, is indefensible: it must be right, in principle, to tackle this problem, about which many employers (and back-benchers) feel very strongly. It is simply a matter of timing and tactics. It might, for example, be better to start by declaring contracts unlawful and only move beyond that if there is then widespread abuse on the ground (which could be well-publicised and would thus strengthen the Government's moral position for going further). But we would have to expect criticism from some of our own back-benchers.

for not very long.

2.3 Immunity of trade union funds

2.3.1 We think Norman has picked the right priority issue. As he says, it will provoke strong opposition, but we will be able to point out that trade unions will only be at risk if they act in ways which are already not lawful for an individual. (This case might be more convincing if the change on union-labour-only practices was deferred.) This message will need to be sold very hard to defeat the misrepresentation that will be attempted. The first likely cases to arise will be important. If union-labour-only issues

were not pushed to the forefront, what would be likely to take their place? Would these be better or worse as a testing ground? Would the adversary be stronger or weaker?

2.3.2 At first sight, the proposed scale of limits to damage might appear too modest. But the limit on damages could be reached by each of several injured parties, and there is no limit on the fines that a court could impose for contempt. On balance, therefore, we would not challenge Norman's judgment about the scale. Its moderation should help to sell the change in some quarters.

2.4 Definition of a trade dispute

These changes are overdue and widely supported.

2.5 Selective dismissal in a strike

Norman Tebbit has not gone all the way with the EEF proposal that employers should be quite free to discriminate between strikers. Instead, he proposes that the employer should be less restricted, treating all those on strike at the time he acts in the same way, but free to choose when he acts. We would have preferred complete freedom for the employer to discriminate as this would be a potent source of insecurity to strikers, especially selective strikers. However, his proposal is a step forward.

2.6 Ballot

As you know, we favour further action on ballots, but accept that this could be done later. There is a limit to the number of reforms that should feature in this package. Ballots for strikers or elections to union governing bodies might be good Manifesto material.

2.7 Lay-off pay

2.7.1 We agree that the wider EEF proposal - to give employers blanket powers of lay-off when affected by a strike in essential services - went too far. But Norman Tebbit does not advance a convincing case against the much more defensible narrow proposal that an employer should be able to lay off his own employees when there is no work for them due to the action of a group of fellow employees.

It would be possible to build in safeguards. For example, the provision need only apply if there is no collective agreement on lay-off pay (so it would not override an agreement), and where those laid off had an interest in the outcome of the dispute.

2.7.2 We feel that employers' present inability to lay off white-collar workers during a strike by their colleagues amounts to an invitation to selective action - which should be seen to be a growing problem. However, there is the difficulty that Jim Prior did not raise this proposal in the Green Paper and, as a consequence, Norman Tebbit is correct in saying that it has not yet received widespread support. It may well be that this change is of more potential value to Government than to private sector employers (who are not uniformly keen on it). But it could be sold as bringing the position of white-collar workers more closely into line with the existing situation for blue-collar workers.

I am copying this minute to Geoffrey Howe, Patrick Jenkin and Norman Tebbit.

JOHN HOSKYNS