

27 September 1984

PRIME MINISTER

I attach the paper you asked for on trade unions, written by Peter Warry.

Between us we have experience of negotiating with NALGO, NUT, AUEW, TGWU, APEX, TASS and ASTMS, so it is based on a little more than theory.

Prime Minister (4)

To note. X on page 2 may not be correct. On the basis of existing precedents, the 1984 Trade Union Act would not allow aggrieved union members to seek damages. This is a major gap in the law. The only way they could do so at present is to argue that union organised intimidation had taken away their free will.

We must pursue this point through

JOHN REDWOOD

Tom King

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TRADE UNIONS, MODERATES, AND THE LAW

1. OPERATION OF THE NEW EMPLOYMENT LAWS

a. Need for a breathing space

With the latest laws on balloting in place it should be more difficult for unions to abuse their power or manipulate their membership. These laws give us most of what trade union democracy required.

A breathing space is now needed to let the dust settle, to allow the barrage of new laws to be assimilated by employers, and for them to be seen to be working.

b. Use of the TU Law

Small employers have used the picketing legislation successfully but the NCB, BR, BSC and the Docks have all so far considered that the commercial risks of using it outweigh the benefits: that it could have united differences within their own unions or brought other unions in. The NGA in the Eddie Shah dispute came close to getting real TUC support which without the scenes of violence at Warrington and good handling could have tipped the other way.

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Whilst the non-use of the laws has been unpopular and tarnished their worth, the risks did originally outweigh the benefit. At the same time their successful use by the South Wales Hauliers and Eddie Shah will have helped secure their acceptability and warned wiser union heads of the danger of confrontation. Time is on our side: when the right opportunity arises with a solid union and an unpopular cause a nationalised industry should use it.

c. Balloting

The balloting laws on strikes are likely to encounter a similar slow start. The 1973 rail strike vote has shown that people compelled to vote when there has been no overt manipulation are more likely to vote on the slur against their union than on the issue of the strike. It will again be best if such a vote is tested by small employers and aggrieved union members rather than throwing down the gauntlet in a case that can be seen as Government versus the Unions. (The NUM situation is covered later)

Balloting to elect union officials cannot be perceived in such confrontational terms and the law should be enforced (although only union members are allowed to do this). It is likely to cause a drift towards moderation particularly in some of the worse run unions. Nevertheless, Scargill was once elected on a secret ballot.

The new laws will not prevent management holding ballots on disputes and other issues; indeed some kudos would be gained with union members for doing this in preference to going through the courts (which in any event can only award damages). Such ballots are normally successful if they are called immediately following overt union manipulation: any delay compromises the issue. However, whatever the outcome of the ballot, abhorrence of crossing a picket line is very inbred so a positive vote may often not result in a return to work. Arranging a mass pre-assembly to cross the picket line could be tried to tackle this problem.

2. MINERS' STRIKE

a. Enforcement not Law

The common law graduating through breach of the peace, unlawful assembly, affray, and riot; and the criminal law: Offences Against The Person Act 1861, Criminal Attempts Act 1981, Criminal Damage Act 1971 etc. can cope with all the mob violence. A possible exception is static demonstrations, but if they are static and not obstructing the highway or doing any violence then they can probably be ignored. There is no limitation on the penalty for breaches of the common law and the statute law permits adequate terms of imprisonment.

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Although some of these laws are archaic their use does not offend 'fair play' given that the miners are clearly not playing fair. To introduce a new all embracing law would serve no purpose: present laws are adequate, and without panicking a Bill through Parliament it could not be enacted in much under twelve months, by which time the miners strike should be over. As a consequence the new law would be seen as illiberal and oppressive. Much better to enforce the many laws already there than create yet more laws.

b. Monitoring

To enforce the law we need to make arrests and although there have been 5,000, it appears from the television coverage that rioters can throw bricks with impunity. Couldn't the police monitor the number of offences shown each night on the television and make a record of their action in each case? (The NCB have already started some of their own TV monitoring). If the ratio of action to offences is above say 25%, it would show the police are doing a good job in the circumstances, and we could then monitor the actions through to the courts. If the ratio is a much lower figure then it would act as a performance measure and goad.

To discover if the arrests are being made but not followed through by prosecution, the Home Secretary should send weekly figures showing the number of people at each stage of

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the prosecution process and the weekly movements between the stages including new arrests and sentences meted out. Stipendiaries should be sent in to dilatory courts.

c. Action against the NUM

Legal action by working miners and small traders (eg South Wales Hauliers) has had a useful financial and publicity effect. The NCB have an injunction against the NUM for secondary picketing from the start of the strike which they could still enforce through contempt proceedings. Better, proceedings could possibly be brought under the new balloting laws, although this will not halt the strike

Such action will bring some TUC rallying to the flag but this is unlikely to be more than financial support which should not make up for amounts sequestered by the courts if the NCB wins. If it loses it will be on a technicality and no lasting damage will be done to the NCB or the new union laws.

3. MODERATES AND MILITANTS

a. Within the Unions

Militants are successful in trade unions despite the overall moderation of their members because of their apathy and herd instincts when forced to an open decision. Secret voting

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will be of major help on strike issues but does not extend for example to the mandating of delegates. Secret elections will also aid moderation but will not overcome apathy or a preference for fire eaters.

Militants are not noticeably fewer in moderately led unions such as the AUEW. Moderate officials within the unions can and do temper the success of the militants but their political capital is limited, and especially so if the Government is perceived to be actively hostile to the unions.

The serious militants, unlike the old style communists, are not interested in compromise and it is folly to negotiate with them. The approach has to be to isolate them or appeal to their members over their heads.

b. Dismissing the Militants

Ideally the militant should not be recruited in the first place, or if he slips through he should be dismissed as soon as possible. (There are organisations that have lists of names that prospective employers can access). This is becoming increasingly important to Government due to militant penetration of white collar unions in the public sector.

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Michael Edwardes in BL, when facing similar problems, mounted an aggressive attack on the militants: many personnel managers probably felt that it was 'fire or be fired'. BL also took the view that they would take action even where their case was not watertight and were prepared to accept losing at the Industrial Tribunal.

In 1980 I myself sacked David Nellist, now a militant tendency MP. It took six months of careful, forceful preparation before he was dismissed for being consistently late for work. At the end he got no support from the workforce or from the union (of which he was branch secretary) and did not even take it to an Industrial Tribunal.

If the tide is to be stemmed in the Government Service then similar forceful action will be required - this means an acceptance of the policy from top to bottom of the organisation, training in employment law and how to mount a case, then effective action without compromise.

c. Divide and let markets rule

The best answer of all to the nationalised industries is splitting them up and ensuring each business competes in a market place where customers can then exert some countervailing power. Alternatively, where moderates wish

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to split off from a larger militant union we should allow them to do so provided they can form an acceptable bargaining unit (eg Police civilians).

4. GOVERNMENT LINE ON UNIONS GENERALLY

Union action can prevent competition in the labour market and so destroy jobs. Union membership and influence is declining. The choice is to leave the militants and economic change to do the job for us, or to support the moderates actively.

Laissez faire has reduced union influence but contains the danger that the Government will be seen as anti-union, antagonistic to the working man and his rights, and uninterested in unemployment.

A more benign approach - Ministers seeing moderate union leaders (as Tom King is doing and David Young wants), using NEDO actively, perhaps the TUC council coming to No 10 to talk about jobs - might contribute to the election of more moderate union leaders and TUC council, and as a consequence to fewer political strikes.

The danger is that it could be the thin end of the wedge to giving away the gains already made in reducing union influence and re-establishing market forces.

Once Scargill is defeated, the militants will be muted: the Government will then be vulnerable to a charge of being aggressively anti-union. Provided it is kept under firm control a more benign approach could be adopted. Such a policy must be reinforced by a campaign to emphasise our commitment to the working man and job creation, to highlight that the new laws give back the real trade union rights that have been hijacked by the anti-democratic militants, and to underline the message that strikes destroy jobs.

5. EDUCATING WORKERS AND MANAGERS

a. Workers

Most people leave school without any idea of how their PAYE will be paid, how companies work, how the rates system works or indeed anything that is of relevance to their existence as a citizen. This is a major problem to reaching a sensible working accord in industry. Priority should be given to in-service training of teachers (perhaps during their four months holidays) to improve their knowledge of the subject. It could include periods of secondment to industry or government departments.

b. Managers

There is an equal need to educate managers about what they can do within the law. Most managers believe that it is not

possible to dismiss employees easily or to regulate their working affairs sensibly. This is untrue, and this myth needs to be attacked right down the management ladder.

6. PAY AND NEGOTIATIONS

a. Level of Rises

The new pay round is about to commence. Over the last round settlements have averaged 5.25% and earnings risen by 7.50% against a background of 5% inflation. Settlements have been similar in both private and public sectors whilst the gap between their wage drifts has narrowed to under 1%.

Proselytising the 3% public sector pay factor for this coming year will be essential if a low climate of expectations is to be generated both in industry and Government. We also need to persuade the CBI and other employers' organisations to join the propaganda battle, and in particular to cease setting national rates and conditions which act as a base camp upon which further wage hikes are built locally. Unfortunately there is considerable support for such minimum rates amongst smaller employers as it is a convenient substitute for their own indecision.

b. Arbitration and Review Boards

Public sector pay negotiations are bedevilled with pay review boards and arbitration rights which by their very nature are uncontrollable and inflationary. Worse, they give the unions a second bite at the cherry. We should aim to limit the recourse to such external bodies only to those essential services, eg nurses, who have given up the right to strike. As a minimum we should end unilateral rights to arbitration.

In general the review boards decline to give weight to what we can afford. We should write affordability into all review board terms of reference. Full account of market forces should also be included otherwise we will have to pay up when we need to recruit and still pay up when we do not.

Pendulum (flip-flop) arbitration is an attractive mechanism for forcing moderation in pay claims. It is not without risk for Government but the unions are likely to consider it even more risky. We should offer it to escape from an existing obligation to arbitration procedure and be prepared to experiment if the offer is accepted.

Proposals are in hand to introduce merit pay to some parts of the civil service, which is a step in the right

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direction. The objective must be that all civil servants are paid according to the market price for the contribution they personally make. This means abolishing incremental steps and introducing regional and skill variations.

CONCLUSIONS

a. Action

The NCB should seek a suitable case to test the new Trade Union law. Small employers and union members are gradually establishing the worth of the new laws and should continue to do so. We should delay testing them in any other 'Government versus Unions' clash until the case is right.

The existing laws on picketing and mob violence are adequate, the problem is enforcement. New law is not required. - New & expedited procedures?

Militant penetration of public sector white collar unions is a growing problem and must be countered by strong and concerted management action.

b. Policy

Smaller industrial and bargaining units are needed if we are to divide and let market forces rule.

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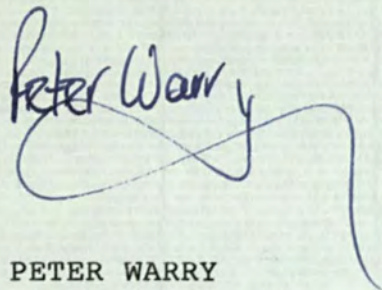
On the pay front review boards and arbitration should be resisted. Where arbitration is compulsory pendulum could be proposed.

Our children need educating for the real world, syllabuses must include 'civics'.

c. Propaganda

In conjunction with a more conciliatory attitude to unions we need to declare our commitment to the working man and jobs and explain how the new employment laws give him back the union rights that Scargill and others have hijacked.

We also need to emphasise how real wage rises are financed out of lost jobs and in this context to proselytise the 3% public sector pay factor.

A handwritten signature in blue ink that reads "Peter Warry". The signature is stylized with a large loop at the end of the word "Warry".

PETER WARRY

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