CONFIDENTIAL

THIS DOCUMENT IS THE PROPERITY OF HER BRITANNIC MAJESTY'S GOVERNMENT

E(80) 131

COPY NO: 55

13 November 1980

CABINET

MINISTRIAL COMMITTEE ON ECONOMIC STRATEGY

ARBITRATION ON PUBLIC SERVICES PAY

Memorandum by the Secretary of State for Employment

We agreed (E(80)37th Meeting) that there was considerable disadvantage in maintaining arrangements in the public services which provide for unilateral access to arbitration. Responsible departments were instructed to review the scope for changing the arrangements case by case; and my officials were asked to co-ordinate this review. The views of departments are summarised below and set out more fully in the annexes. Direct responsibility for the groups concerned rests with sponsor Ministers, but I propose where and how changes in arbitration arrangements should be made or attempted.

2. A number of general points need to be made. First, the case for change has been strengthened by our decision to set tight pay factors in cash limits for the public services. Unions will be looking for ways of escape; and unilateral access to arbitration offers an obvious way out for them.

3. Second, I believe there is no statutory impediment to removing unilateral access to arbitration for any of the groups covered in this paper. For most of them the arrangements result from voluntary agreement between the employers and unions concerned. It is therefore open to the employer, including the Government where the Government is the employer, to seek to change them by negotiation or, if needs be, to give notice of withdrawal from them -

CONFIDENTIAL

although the latter course is evidently more likely to lead to industrial relations difficulties. This course can, in my view, be adopted even where the agreements reached between the two sides have a statutory origin - in the sense that a statute, eg the Water Act 1973, provides for agreements about arbitration to be negotiated. The arrangements for teachers take a somewhat different form in that they are laid down by the Secretaries of State in administrative documents after consultation with the two sides. But they too can be changed without the need for legislation.

4. Third, there is no need to treat all the groups alike. Their circumstances differ. Nor is there any general need to synchronize changes (though one or two specific links need to be borne in mind) and thus allow difficulties in one case to hold up progress in others. The general aim must be to achieve such changes as are possible before the next important negotiations for each group. In some cases time is very short.

5. Last, I see no urgent need to change the present arrangements in order to make it easier to set aside arbitral awards. As a matter of general principle it is obviously undesirable to agree to arbitration and then to seek to set aside the award. It is much better to ensure that arbitration can be avoided in the first place.

6. The groups to be considered are as follows:-

(1) Teachers in England and Wales (Annex 1). The Secretary of State for Education and Science intends to consult the local authorities and teachers' unions with the aim of removing unilateral access to arbitration as part of a wider review of the arrangements governing the determination of teachers' pay. This is a welcome step. In my view, however, there is no need to make all the changes together. I propose that the consultations might be timed and arranged so that unilateral access to arbitration is removed before negotiations start for the April 1981 settlement.

(2) Scottish Teachers (Annex 2). The Scottish Education Department's view is that any changes about access to arbitration should await the passing of the new legislation which will alter the negotiating machinery. But, as for England and Wales, I propose that the aim, at least for the main group of teachers covered by the Scottish Teachers Salaries Committee, should be to remove unilateral access to arbitration before negotiations start for the April 1981 settlements.

(3) University Teachers (Annex 3). The arrangements provide for a dispute to go to arbitration "if the two sides so agree (such agreement not to be unreasonably withheld)". One side can thus effectively insist on arbitration. The Department of Education and Science make no recommendation for change. I propose that the aim should be to negotiate new arrangements which would allow arbitration

to be refused by either side; or, in the last resort, to withdraw from the present arrangements. Action is needed very quickly if we are to affect this year's negotiations.

(4) Non-industrial Civil Servants (Annex 4). The Civil Service Department see no particular need to change the present arbitration arrangements. They recommend that in any event any consideration of change should form part of the general review of pay arrangements. I have already (E(80)113) set out my views on the need to change these arbitration arrangements. But I accept that any permanent change should be made in the context of the wider review. In order to avoid later accusations of bad faith, however I propose that is should soon be made clear to the unions that unilateral access to arbitration will not be available to them in respect of next April's settlement.

(5) Police (Annex 5). The Home Office's view is that the police are a special case; and that the present arrangements should not be changed. The main grounds are that new negotiating machinery was set up only six months ago and that the police cannot take industrial action. I propose that we accept this view.

(6) Waterworkers (Annex 6). The Department of the Environment recommend that we should invite the employers to consider re-negotiating the arbitration provisions in their agreement. Although I am doubtful whether much progress will be made - at least for this autumn's settlement - I propose that this recommendation should be adopted.

(7) Local Authority Staff and Craftsmen (Annex 7). The local authorities are well aware of the problems. But they are not yet agreed on remedy. In particular they are awaiting the outcome of the current APT&C arbitration. The Department of the Environment recommend that we should defer any further initiative until we know the award (due shortly) and the employer's reaction to it. This seems sensible. But it will then be necessary to act quickly if arbitration is to be denied in this autumn's negotiations for the craftsmen. Given the 6% pay factor, the local authorities should be in the right frame of mind to seek changes once they can be assured that we shall be tackling the teachers. I propose that further urgent discussions should be held with the local authorities, once the APT&C award is known, with the aim of encouraging them to renegotiate their arbitration arrangements so as to remove unilateral access to arbitration before negotiations start for the 1981 settlements for the APT&C group (July) and the craftsmen (November); and possibly in time for this November's settlement for the craftsmen.

(8) United Kingdom Atomic Energy Authority Staff (Annex 8). Mainly on the grounds that the agreement providing unilateral access to arbitration has stood for 26 years without creating difficulty for the Authority, and that this group have an automatic pay link with the civil service, the Department of Energy recommend that the

agreement need not be changed. I agree. We can always reconsider the matter should the agreement cause trouble. I propose that the recommendation be accepted.

7. I invite the Committee to endorse my proposals.

JP

Department of Employment
LONDON SW1

13 November 1980

ANNEX 1

TEACHERS EMPLOYED BY LOCAL EDUCATION AUTHORITIES, ENGLAND AND WALES: ARBITRAL ARRANGEMENTS.

Present Position

1. Access to arbitration is governed by arrangements made by the Secretary of State under the Remuneration of Teachers Act 1965. Access can be at the behest of both sides, management and teachers, or at the request of either, the other dissenting. But in this latter case the independent chairman must first be satisfied that no further progress can be made by negotiation. In either case he informs ACAS, drafts the reference, and requests the appointment of an arbitral body.

2. As to an arbitral award the Act requires that the Secretary of State must give effect to it unless each House of Parliament resolves that "national economic circumstances require that effect should not be given to the recommendations". If both Houses pass such a resolution, the Secretary of State after consultation with the appropriate Burnham Committee determines what changes (if any) should be made to the remuneration of teachers.

Scope for Change

3. The Government might seek to change these provisions (i) by making access to arbitration more difficult and (ii) to get greater power to set arbitral awards aside.

Implications of Change

4. The power to revise arbitral arrangements rests with the Secretary of State but he is required by the Act first to consult the interested parties. He is not required to follow the advice of either or both of the parties. It is likely that the local authority associations would support revision to replace unilateral by bilateral access. The likely position of teachers is not known but they could be expected to be hostile to the intentions. The change would affect the position of the independent chairman who, by well established practice, has offered an important conciliatory role at all stages of Burnham negotiations.

5. To take greater power for the Government to set aside arbitral recommendations would require amendment of the Act. The Act is currently being reviewed in the wider context of establishing machinery for the joint negotiation of pay and other conditions of service. Any change in the statutory provisions on arbitral awards, or change affecting access, would best be made as part of that review. The present position is set out in paper E(EA)(80)56.

Department of Education and Science

TEACHERS IN SCOTLAND: ARBITRAL ARRANGEMENTS.

A. PRESENT POSITION

1. Three separate negotiating committees at present deal with teachers' pay in Scotland:-

(i) The Scottish Teachers Salaries Committee (STSC), for teachers employed by local authorities.

(ii) The Central Insitutions Academic Staff Salaries Committee (CIASSC), for teaching staff employed by Governing bodies of central institutions.

(iii) The National Joint Committee for Salaries of Academic Staff in Colleges of Education (NJC), for teaching staff employed by governing bodies of colleges of education.

(Central institutions and colleges of education are funded by Central Government).

2. The relevant features of arbitration arrangements are:-

(a) Access to Arbitration: In all three committees there is unilateral access to arbitration, ie one negotiating party may propose arbitration and, if the other party disagrees, it is for the Chairman of the Committee to decide whether the negotiating process has been exhausted. In the STSC the arrangements are laid down by the Secretary of State under section 93(1) of the Education (Scotland) Act 1980 (but in an administrative document, not "secondary legislation" as suggested in paragraph 9 of E(80) 113). In CIASSC and NJC, the arrangements are contained in the constitutions, which are the outcome of agreement in the committees.

(b) Setting aside Arbitral Awards: In all three committees, arbitral awards are binding unless they are set aside by the Secretary of State. In the STSC the arrangement is statutory, under section 94 of the Education (Scotland) Act 1980, and an arbiter's award can be set aside only by affirmative resolution of both Houses of Parliament (the "two resolutions procedure"). In CIASSC and the NJC the arrangements are administrative and involve no Parliamentary procedure.

B. PROPOSED LEGISLATION

3. Under new legislation proposed to be introduced early in the 1980/81 Session, the STSC, CIASSC and the NJC would cease to exist and would be replaced by two negotiating committees covering:-

(i) teachers employed by local authorities in schools;

(ii) teaching staff employed in further education colleges (by local authorities) and in central institutions and colleges of education (by governing bodies).

/ 4. The relevant

4. The relevant features of arbitration arrangements would be:

(a) Access to Arbitration: The Secretary of State would, for both Committees, exercise the powers he now has in relation to the STSC, ie to prescribe the arrangements for obtaining access to arbitration.

(b) Setting aside Arbitral Awards: Arbitral awards in both Committees would be statutorily binding unless set aside by the Secretary of State. This would involve Parliamentary procedure, but the "two resolutions" procedure would be replaced by negative resolution procedure and the Secretary of State would not be bound by stated criteria (eg the national economic interest) in proposing to overturn an arbitral award.

C. SCOPE FOR ALTERING EXISTING ARRANGEMENTS

5. Access to Arbitration:

The Secretary of State could, by administrative action, amend the arrangements (eg to provide for access to arbitration only by agreement) in the case of the STSC. In CIASSC or the NJC a change in the constitution would have to be negotiated and this would be difficult and time-consuming.

It is preferable that any changes, if such are required, should await the passing of new legislation. In that context the Secretary of State would have two options:

(i) the Bill as it now stands would enable him, by administrative action, to prescribe such arrangements as he wished for access to arbitration, including a requirement that arbitration should take place only by agreement;

(ii) new requirements could bewritten directly into the new legislation (eg arbitration by agreement would involve attracting the provisions of sections 2 and 3 of the Employment Protection Act 1975). There is not now time to do this before the Bill is introduced, but it could be amended later.

The case for arbitration only by agreement - which would be controversial - is not entirely clear-cut. During the April 1980 pay negotiations in the STSC there was a reference to arbitration on the motion of the Management Side, against the opposition of the teachers. This averted serious industrial action and the arbitral award was the same as the last offer by Management.

Setting Aside Arbitral Awards

The proposed legislation seems to go as far as is desirable. The arrangements for overturning arbitral awards for the STSC cannot be amended without legislation. Those for CIASSC and the NJC could not readily be altered by negotiation.

Scottish Education Department

UNIVERSITY TEACHERS:ARBITRAL ARRANGEMENTS.

Present Position

1. The pay of university non-clinical teachers is negotiated in two stages. In Committee A the University Authorities' Panel and the Association of University Teachers meet under an independent chairman to agree on a joint proposal to be submitted to the DES. If there is disagreement the independent chairman decides what pay claim shall be submitted. Final negotiations take place in Committee B, between Committee A - representing a consensus view of the university side - and DES officials representing the Government. Its chairman is from DES.

2. The written, non-statutory arrangements for these negotiations provide for reference of a dispute in Committee B to arbitration "if the two sides so agree (such agreement not to be unreasonably withheld)".

3. On the implementation of arbitral recommendations, the existing arrangements provide that "an arbitral award will be binding subject to the overriding authority of Parliament".

Scope for Change

4. Access is already bilateral; the only scope for tightening this would be deletion of the constraint "such agreement not to be unreasonably withheld".

5. On implementation of an arbitral award change might be sought to give Parliament, or the Secretary of State, power to set aside an award, with or without specified criteria (such as national economic circumstances requiring it).

Implications of Change

(i) Access

6. The Attorney General has advised that the arrangements must be construed as meaning that refusal by either side to concede access to arbitration would be unreasonable once it is clear that an impasse has been reached, scope for further negotiation having been exhausted. This might imply that if the Government refused access to arbitration on the plain ground that it did not wish a particular pay claim to be met, it could be open to challenge in the Courts.

/ 7. To obviate

7. To obviate that possibility the Department would have to negotiate with the university parties the deletion of the qualifying condition from the arrangements. Such a negotiation would generate strong and vociferous opposition from both sections of the university side. The Government would be virtually certain to be subjected to a Parliamentary campaign alleging that it wished to secure for itself the power to act unreasonably. If, as seems inevitable, the change were not agreed by all the parties to the negotiating machinery the Secretary of State would have no power to impose it.

(ii) Arbitral Recommendations

8. The Attorney General has advised that the arrangements are to be interpreted to mean that an award would be binding upon both sides of Committee B unless overturned by an Act of Parliament. Some modest change might be negotiable for example to come into line with the present statutory arrangements for Burnham teachers. More radical change, to give the Government greater power to set an arbitral award aside, would be certain to meet with strong resistance from the teachers' side (the AUT) and probably from the University Authorities. It would almost certainly require legislation. Parliament could well regard such double allocation of roles to the Secretary of State as excessive.

Department of Education and Science

ANNEX 4

NON-INDUSTRIAL CIVIL SERVICE: ARBITRAL ARRANGEMENTS.

The arbitration arrangements for the non-industrial Civil Service have existed in substantially their present form for over 50 years. They provide for the reference of disputes on pay and similar matters to the independently chaired Civil Service Arbitration Tribunal (CSAT) at the request of either party (though for grades with pay above that of Principal the agreement of both parties is required and has very rarely been given by management). The Government's right to deny arbitration for any grade on grounds of policy has, however, always been publicly asserted and occasionally exercised.

2. The CSAT has built up over a time considerable expertise on Civil Service pay matters. It has functioned in a judicial manner in support of an agreed pay system and not as an agent for compromise settlements. It is most important that no projected changes should detract from this approach. In the context of a rigorous and factually based pay system there is great advantage for management in retaining a unilateral right to arbitration: it has an important effect in making the unions negotiate realistically in the light of the evidence which will be available to the Tribunal if a reference is made to it.

/ 3.The Civil Service

3. The Civil Service unions would not willingly surrender the right of unilateral reference at any rate without a substantial quid pro quo. Its permanent withdrawal, especially in the present climate, would be construed as a further attack on Civil Service pay arrangements and increase the danger of serious industrial action in the Civil Service this winter. Since the Government already has de facto the right to deny arbitration on grounds of policy it is difficult to see that an attempt at renegotiation or a unilateral change in the present arrangements would be advantageous to management.

4. The Civil Service unions have for some time been pressing for extensions in the scope and coverage of the present Civil Service Arbitration Agreement in ways which would be unacceptable from a management point of view. They have also recently proposed that in future custody of the Agreement should rest with ACAS though without any suggestion that this should affect the present right of unilateral access. Entering on a renegotiation of the Agreement in the hope of achieving a restatement of management objectives has therefore obvious risks attached to it. At present, with the notable exception of the IPCS, who have recently failed in two significant claims because of the rigorous nature of the CSAT's proceedings, the unions accept the

/ operation if the

operation of the present arrangements.

5. A requirement for references to the CSAT to need the consent of both sides would certainly avoid the present necessity for the Secretary of State for Employment on occasion to deny access to the CSAT when exercising the Government's de facto policy veto. But the change would almost certainly entail the more frequent imposition of settlements by administrative action since the unions could be expected to refuse to go to arbitration in cases where the facts were against them.

Summary and Conclusion

6. The present arbitration arrangements in the non-industrial Civil Service have so far worked to management's advantage. At the same time the neutrality and impartial nature of the Tribunal has commanded general acceptance by the unions of its role. There is therefore a strong case for leaving the present arrangements undisturbed. A re-examination of the arbitration position may be needed as part of the wider discussions with the unions on Civil Service pay arrangements for the longer term. But it would be preferable to handle the matter in that context rather than as a separate issue since the procedures for determining pay, and the appropriate arbitration arrangements that accompany these, need to be viewed as a whole.

/7. It is therefore

7. It is therefore recommended that any consideration of provision for arbitration should form part of the general review of pay arrangements for the non-industrial Civil Service.

Civil Service Department

POLICE:ARBITRAL ARRANGEMENTS

The existing arrangements

1. Police pay is negotiated by the Police Negotiating Board, which was recently established on a statutory basis under the Police Negotiating Board Act 1980. The Official Side comprises representatives of the Home Departments and the police authorities; the Staff Side comprises representatives of the police staff associations The Board itself is a purely formal body and its business is conducted by five autonomous standing committees.

2. The 1980 Act requires the constitution of the Board to include provision for arbitration in cases where the two sides fail to reach agreement. The constitution accordingly provides for disputes to be referred, on the initiative of either side, to a panel of three arbitrators appointed by the Prime Minister, known as the Police Arbitration Tribunal. Decisions of the Tribunal are binding on the two sides.

3. The Police Arbitration Tribunal is a standing body. The Chairman and members are appointed initially for a term of 3 years, but they may subsequently be reappointed for further terms. All disputes over matters arising from the work of the Board are arbitrable. Once one of the sides has announced that it wishes a dispute to go to arbitration, the Board's independent secretariat makes arrangements, through the machinery of the Central Arbitration Committee, for a meeting of the Police Arbitration Tribunal to be convened.

4. The responsibility for determining police pay rests with the Secretary of State, who gives effect to agreements of the Police Negotiating Board by amendments to Police Regulations. An agreement of the Board constitutes a recommendation to the Secretary of State, which he has a statutory duty to consider before making Regulations. In practice, the Secretary of State would refuse to implement an agreement only for reasons of grave national importance. Similar considerations apply to decisions of the Police Arbitration Tribunal, which have the same status as agreements of the Police Negotiating Board.

The scope for change

5. Section 1(3) of the Police Negotiating Board Act 1980 provided for the establishment of the Board "in accordance with such arrangements made after consultations between the Secretary of State and organisations representing the interests of police authorities and of members of police forces as appear to him to be satisfactory". The constitution of the Board, which was approved by the Secretary of State on 20 May 1980 - the date on which the Act came into operation - provides for such amendments to the constitution as may be agreed in accordance with the consultation procedures required under section 1(3) of the Act.

6. It would therefore be feasible for the constitution to be amended so as to require the agreement of both sides before a dispute was referred to arbitration. There is, however, no prospect of securing the general agreement of the Police Negotiating Board to such an amendment. It would be firmly opposed by all the police staff associations on the Staff Side and it would be unlikely to receive support from the local authority associations represented on the Official Side, who have never shown any desire to change the arbitration arrangements, which have been in existence for nearly 30 years.

The implications of change

7. Proposals for change would be difficult to justify. The police arbitration arrangements were examined in 1978 by the Edmund-Davies Committee, who made no recommendation for change, and the present constitution of the Police Negotiating

/ Board was

Board was approved by the Secretary of State, after consultation with all the parties concerned, less than 6 months ago. Unlike other groups of workers, the police are precluded by law from taking industrial action and they accordingly lack the means which are open to other negotiating groups to influence the course of pay negotiations. In practice, the arbitration arrangements have been very rarely used and arbitration has never been necessary on a major pay settlement. The existing arrangements do, however, provide a useful safety valve in the event of disputes over allowances, leave or other conditions of service.

8. Any change in the existing arbitration arrangements would have serious implications for the credibility of the Police Negotiating Board as an independent negotiating body. It would also affect the morale of the police service. The purpose of setting up the new Board was to give the police service new negotiating machinery in which they could have confidence, thus repairing the damage which had been caused by the break-up of its predecessor, the Police Council.

Recommendation

9. No change should be made in the arbitration for the police: the final decision on implementing an arbitration award already rests with the Secretary of State.

Home Office

WATER INDUSTRY: ARBITRAL ARRANGEMENTS.

Background

1. The existence, but not the precise nature, of arbitration arrangements in the water industry has a statutory basis: s.26 of the Water Act 1973 requires the conclusion of agreements constituting negotiation machinery 'with provision for reference to arbitration'. (Annex 6A)

2. The existing agreements allow recourse to arbitration at the request of either side and require both sides to accept the result. (Annex 6B)

3. Only one reference to arbitration has been made under these arrangements. This was for Chief Officers in 1979, when the award was identical with the employers' offer.

Scope for change

4. In theory there are two ways in which these arrangements might be modified: legislation and re-negotiation. In either case, even if unilateral access were abolished, the difficulty would still remain that the employer would need very good reason to refuse to agree to go to arbitration, since a refusal might itself provoke industrial action to which arbitration was the only alternative.

5. Legislation would involve amendment either of s.26(2) of the Water Act, to specify that recourse to arbitration requires the consent of both parties, or possibly of s.3 of the Employment Protection Act 1975, to strengthen the present reference to the consent of all parties. (Annex 6C) An alternative approach in the latter context might be to enact that any arbitration agreement which did not require the consent of both parties should have effect as though it did so require. Amendment of the Water Act on these lines would be open to the objection that it imported into a fairly general provision a single detailed point which was proper to the agreement itself rather than the statute. Amendmen of the Employment Protection Act raises questions running much

/wider than the

wider than the water industry and may well be of doubtful practicability.

6. Re-negotiation on this point has not, so far as is known, been contemplated by the water employers. It would be open to Ministers to invite them to consider doing so; but the sensitivity of the issue is such that, even if the employers were willing to embark on it, timing and presentation would need very careful handling. In any case, there is no prospect of progress in this direction in advance of this year's manuals' settlement.

Recommendation

7. That Ministers should invite the water employers to consider whether they should seek to re-negotiate the arbitration provisions in their existing agreements.

Department of the Environment

SECTION 26 OF THE WATER ACT 1973

Duties of statutory water undertakers and Council to their staff.

26.—(1) Each water authority and all other statutory water undertakers shall make provision for advancing the skill of persons employed by them and in doing so shall comply with any scheme for training and education in force under section 4 above.

(2) Except so far as the Council are satisfied that adequate machinery exists for the purpose it shall be the duty of the Council to seek consultation with any organisation appearing to them to be appropriate with a view to the conclusion between the Council and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for the settlement by negotiation of terms and conditions of employment of persons employed by the Council, the water authorities and other statutory water undertakers with provision for reference to arbitration in default of such settlement in such cases as may be determined by or under the agreements.

(3) It shall be the duty of every water authority and all other statutory water undertakers to comply with any such agreement.

(4) The Council shall send copies of any such agreement, and of any instrument varying the terms of any such agreement, to the Secretary of State.

B 4

ARBITRATION ARRANGEMENTS - WATER SERVICE

MANUALS

In case the Joint Council are unable to determine any matter falling within the scope of their functions they shall, at the request of a majority either of the Employers' Side or the Trade Unions' Side, refer the difference to the Conciliation and Arbitration Service or to any other agreed tribunal for arbitration, and any award made in relation to the difference shall be accepted by the two Sides and shall be treated as though it were an agreement between the two Sides.

STAFF

In case the Joint Council are unable to determine any matter falling within the scope of their functions they shall at the request of a majority either of the Employers' Side or the Staffs' Side refer the difference to the Advisory, Conciliation and Arbitration Service, or to any other agreed tribunal for arbitration and any award made in relation to the difference shall be accepted by the two Sides and shall be treated as though it were an agreement between the two Sides.

SENIOR STAFF

In case the Joint Council are unable to determine any matter falling within the scope of their functions they shall at the request of a majority either of the Employers' Side or the Officers' Side refer the difference to the Industrial Arbitration Board or to any other agreed tribunal for arbitration and any award made in relation to the difference shall be accepted by the two Sides and shall be treated as though it were an agreement between the two Sides.

SECTION 3 OF THE EMPLOYMENT PROTECTION ACT 1975

Arbitration.

3.—(1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—

(*a*) one or more persons appointed by the Service for that purpose (not being an officer or servant of the Service); or

(*b*) the Central Arbitration Committee constituted under section 10 below. PART I

(2) In exercising its functions under subsection (1) above, the Service shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that subsection unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Service, there is a special reason which justifies arbitration under that subsection as an alternative to those procedures.

(3) Where in any case more than one arbitrator is appointed under subsection (1)(*a*) above the Service shall appoint one of the arbitrators to act as chairman.

(4) An award by an arbitrator appointed under subsection (1)(*a*) above may be published if the Service so decides and all the parties consent.

(5) Part I of the Arbitration Act 1950 shall not apply to an arbitration under this section. 1950 c. 27.

(6) In the application of this section to Scotland, references to an arbitrator shall be construed as references to an arbiter.

LOCAL GOVRENMENT NON-MANUALS AND CRAFTSMEN: ARBITRAL ARRANGEMENTS.

Background

1. The Local Government Act 1972 makes local authorities wholly responsible for the pay and conditions of service of their employees. The existing arrangements thus have no specific statutory basis.

2. The arbitration provisions in the national agreements for the APT&C, Chief Officer, Chief Executive and Craftsmen groups are reproduced at Annex 7A.

3. There have for many years been no references under these arrangements until this year (Chief Officers and, currently, APT&C). But it has been assumed that the present arrangements were intended to permit unilateral access, and that the requirement in s.3 of the Employment Protection Act 1975 for 'the consent of all the parties' is met by the obligation on the NJC to forward the reference. Hence the employers' conclusion, in the APT&C case, that they had no alternative but to agree to arbitration.

The employers' attitude

4. The employers, at their meeting with Ministers on 25 September stressed their anxiety about the potential effects of arbitration, but had no unanimous view about a remedy. They have subsequently embarked on a discussion of the problems involved and may in due course approach Ministers again, in particular on the need for arbitrators to take into account ability to pay. They have also made it clear that, if the APT&C award is such as to create problems for them they will invite the unions to discuss these with them so that the full consequences of its application are understood.

5. The employers' eventual action will depend very much on the APT&C outcome. If it is consistent with the employers' view of their ability to pay it may well then be arguable that any early attempt to change the existing arrangements would be counter-

/ productive.

productive. If it is not, they may be ready - in addition to the discussions mentioned in the previous paragraph - to contemplate a re-negotiation of the present arrangements, though this would itself be fraught with difficulties. And even if unilateral access were abolished, the employers would still need very good reason to refuse to agree to go to arbitration, since a refusal might itself provoke industrial action to which arbitration was the only alternative.

6. The employers' awareness of the present problems is such that no intervention by Ministers is necessary or desirable at this stage. The position should, however, be reviewed when the result of the APT&C arbitration is known (probably in late November). There would be time for further consideration at that stage because the manuals (whose settlement date is in November) are not affected and the craftsmen (with the same settlement date) are unlikely to go to arbitration provided they keep in line with the manuals; the other groups' settlement date is in July.

Recommendation

7. Ministers should defer any further initiative with the local government employers until they can assess the effects of the outcome of the current APT&C arbitration and the employers' reaction to it.

Department of the Environment

LOCAL GOVERNMENT (DOE GROUPS)

ARBITRATION PROVISIONS IN NATIONAL AGREEMENTS

APTAC and Chief Officers

In the event of a dispute over terms and conditions of employment arising between the two sides of the National Council on any matter of general application to staff or of application to particular classes of staff, the dispute shall, at the request of either side, be reported to the Secretary of State, Department of Employment, by the Joint Secretaries with a request that the matter be referred for settlement by arbitration. The form of arbitration requested shall be the Industrial Court unless the two sides of the Council agree upon some other form of arbitration provided under the Industrial Courts Act, 1919, or the Conciliation Act, 1896. The arbitration award shall be accepted by the two sides and shall be treated as though it were an agreement between the two sides.

Chief Executives

In the event of a dispute over terms and conditions of employment arising between the two sides of the Committee on any matter of general application to staff or of application to particular classes of staff, the dispute shall, at the request of either side, be reported to the Advisory Conciliation and Arbitration Service by the Joint Secretaries with a request that the matter by referred for settlement by arbitration. The arbitration award shall be accepted by the two sides, and shall be treated as though it were an agreement between the two sides.

Craftsmen

In the event of the Committee failing to reach agreement on any matter, it will be competent to either Side to refer the matter in dispute to the Department of Employment for submission to any appropriate form of arbitration.

ANNEX 8

UNITED KINGDOM ATOMIC ENERGY AUTHORITY(UKAEA) NON-INDUSTRIAL STAFF:ARBITRAL ARRANGEMENTS

Existing pay and arbitration arrangements

1. Under Section 7(1)(a) of the Atomic Energy Authority Act 1954 the UKAEA are required to have agreed machinery for negotiating pay and conditions, "with provision for reference to arbitration in default of such cases as may be determined by or under the agreements,".

2. With regard to non-industrial staff the Authority fulfilled this statutory requirement by adopting the "Whitley Council" system with a Central Council supported by local sub-committees. The Central Council consists formally of the UKAEA's Chairman, Members and Personnel Officer and, for the Staff Side, a chairman, members of recognised staff associations and a secretary. The staff associations involved are those which also represent Civil Servants.

3. It was agreed in principle in 1954 that if the Council cannot agree on any matter, it may, at the request of the majority of either side refer the difference to arbitration. Subsequently an Agreement, made in 1967, provided for the difference to be referred to the Minister for Labour and National Service for reference to a Board of Arbitration constituted under section 2(2)(c) of the Industrial Courts Act. Following the introduction of the Employment Protection Act a difference would be referred to ACAS who would in turn refer it to the Central Arbitration Committee. Any award would be binding on both sides. In theory with minor exceptions, all matters concerning the pay and conditions of staff are negotiable in the Council and therefore potentially subject to these arbitration arrangements.

4. The practical position is different because the Council also agreed in 1954 that "the pay and conditions of UKAEA staff shall be no less favourable than those for analogous grades in the Civil Service". Consequently the pay and conditions of UKAEA non-industrial staff automatically follow those of their Civil Service counterparts. Since UKAEA and Civil Service grades are the same, substantive negotiation in the Council, with

/the theoretical

the theoretical possibility of arbitration would only arise in the very remote event of disagreement over the way a new Civil Service pay agreement was to be applied to UKAEA staff.

5. Such a situation has never arisen in respect to a major group of staff or a major pay agreement. However, there have been two references to arbitration – in 1955 and 1962 – in respect to small groups, arising from the absence at the time of direct Civil Service analogues. The resulting awards were implemented and had no significant financial or management implications. Such circumstances are unlikely to occur again because, over the years, the contractual link with the Civil Service has led to the identification of agreed analogues for all UKAEA groups.

6. Thus, the existence of arrangements for unilateral access to arbitration has not created problems for the UKAEA, nor seems likely to while the Civil Service pay and conditions link exists.

The implications of seeking a change

7. Officials have not discussed this matter with the UKAEA. However, the Authority have a statutory obligation to have agreed negotiating and arbitration machinery. The statute does not define the form of such machinery which could be changed without amendment of the statutue. The UKAEA could therefore seek to negotiate a change in the existing arbitration arrangements if they were so inclined. The negotiations would have to be conducted in the Council with the aim of identifying an alternative arrangement acceptable to both sides.

8. The Staff Side would probably look with suspicion on such an initiative and would be likely to take a stand on the principle involved. They could argue, that the UKAEA were seeking to remove for no good reason a long-established right and that the fact that arbitration had only been resorted to over two minor cases in twenty-six years proved that the Staff Side had always acted responsibly. If the UKAEA persisted, the Staff Side might seek to extract a high price for agreeing to change and insist on re-negotiation of other aspects of pay and conditions arrangements. If, as seems likely, an agreed solution could not be found, the UKAEA could themselves take the issue, unilaterally, to arbitration. It seems most unlikely that they would do this. They would then have either to back down or leave the initiative on the table until such time as an opportunity arose to pursue it. Either way, the result would be a souring of industrial

/ relations with

relations with no real benefit gained by the UKAEA.

Conclusions

9. The UKAEA's agreement providing unilateral access to arbitration has stood for 26 years without creating difficulty for the Authority. Pay and conditions automatically follow those of the Civil Service and there is little reason to suppose that the Staff Side will resort to arbitration over a significant issue. Any alternative arrangement sought by the UKAEA would require the Staff Side's agreement in the Authority's Council. Such an initiative would probably receive a hostile reception, turning a non-issue into one of principle with consequent damage to industrial relations out of all proportion to the benefit theoretically accruing to the UKAEA from the removal of the right of unilateral access.

Department of Energy