CONFIDENTIAL

c/L

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

E(80)113
7 OCTOBER 1980

COPY No 55

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

ARBITRATION ARRANGEMENTS IN THE PUBLIC SECTOR

Memorandum by the Secretary of State for Employment

I was invited (E(80) 31st meeting, item 2) to put in hand a review, in consultation with the Lord President and the other Ministers concerned, of arbitration arrangements in the public sector and the scope for amending them. I think it is time to report on the progress made so that we can consider the extent and nature of the problem; and whether further work needs to be put in hand.

2 I have confined the review to the public services. This is the area where most use is made of arbitration; and where the Government is most directly involved either directly as a party, or indirectly as paymaster. We are too distant from negotiations in the public trading sector to wish, or to be able, to change arbitration arrangements there. Moreover arbitration awards are more likely to conflict openly with cash limits than they are with external financing limits. I have included the water supply industry and the United Kingdom Atomic Energy Authority in view of their hybrid nature.

3 Formal arbitration arrangements clearly have a valuable role to play in helping to resolve intractable disputes and to promote good industrial relations in the public services. Arbitration can provide a useful safety valve not just where there is a gulf between the two sides over the global level of a pay increase, but also where there is serious disagreement over more detailed matters such as differentials. Experience shows that formal arrangements are to be preferred to ad hoc arrangements.

114
115
116
117
118
119
120
121
122
123
124

CONFIDENTIAL

4 However unilateral access to arbitration can present problems. There may be occasions where unilateral access to arbitration meets management's needs. More often it is likely to suit the unions. It may enable one party to force the other's hand without first exhausting all the possibilities for a negotiated settlement. It is rarely to be found in the private sector. It needs to be remembered that, whatever its precise status, it is difficult for either side to avoid implementing an arbitration award. This is easier for the two sides to accept if they have both agreed to arbitration in the first place. The balance of the argument, in terms of industrial relations, is generally, in my view, against unilateral access.

5 Moreover our policy of exerting a strong downward pressure on the level of pay settlements in the public services through tight cash limits will clearly be more difficult to apply in areas where formal arrangements provide both for unilateral access to arbitration and for binding awards. The annex to this note lists those groups which officials have identified as having arrangements, even if qualified, with these two characteristics.

6 I consider that we need not concern ourselves, at least in the first instance, with those groups, listed in part 3 of the annex, where the arrangements specifically provide for references for arbitration to go to ACAS. By virtue of Section 3 of the Employment Protection Act ACAS will not put a dispute to arbitration without the consent of both parties even where a formal arbitration agreement provides for unilateral access. The existence of such a provision may put moral pressure on a reluctant party to agree; but he cannot be compelled to agree.

7 I also believe, although this is, of course, primarily a matter for the Home Secretary, that the police are a special case; and that the present arrangements are probably justified by the inability of the police to take strike action. Moreover the index linking of police pay means that in practice arbitration on a major issue is unlikely to be sought. Finally any change would involve altering the recently established constitution of the Police Negotiating Board.

8 I would suggest, however, that, there is a prima facie case for looking at the arrangements for the other groups which are listed in parts 1 and 2 of the annex.

9 As far as I am aware, the only change currently being actively contemplated for any of these groups is a proposal for legislation in the next session to change the arrangements for Scottish teachers to make it simpler for the Government to overturn arbitration awards. Perhaps an opportunity for a similar change in England and Wales might arise from the current discussions with the Local Authorities over the Remuneration of Teachers Act 1965. Perhaps both in Scotland, and in England and Wales, we might also look at the possibility of changing the arrangements for teachers so as to remove the right of unilateral access to arbitration. I understand that this might be achieved through secondary legislation. Similarly, in the light of the Attorney General's recent advice about the legal standing of the arrangements for university teachers, we might consider changes there.

10. Although the Government is not a party to negotiating arrangements for local government, water service, or the Atomic Energy Authority's employees, this need not in my view rule out a further look at these areas also. A substantial element of the local authorities are concerned about their unilateral arbitration arrangements, fear that the unions will use them increasingly, and would like to see them changed. But there is not unanimity, and those that want change recognise that their unions would resist. It is unlikely that the local authorities will seek immediate change, at least until the teachers' arbitration arrangements are changed.

11. There is a particular problem over the important arbitration arrangements for the non-industrial civil service. This is because, although the Civil Service Arbitration Agreement provides for unilateral access to arbitration, the Government has always made clear to the unions that it reserves the right, which it has exercised in practice, to refuse arbitration on grounds of policy.

12. I accept that there is a case to made out for these arrangements. The present pay research system imposes real constraints on an arbitrator. The system effectively confines him to the interpretation of facts. Against this background, and given the especially sensitive relationship between Ministers and their own employees, it is clearly desirable that neither side should unreasonably refuse to go to arbitration. The threat of compelling the unions to go to arbitration, although never carried out, has apparently led them on occasion to adopt a more responsible attitude in negotiations. Moreover I can see that there may be some risks in trying to renegotiate the arrangements.

13. However, it remains the case that one side (the managerial side) is in a position to refuse arbitration whilst the other is not. It seems in principle unsatisfactory that practice, even if sanctified by long standing convention, does not accord with the written terms of the agreement.

14. The problem is made more pointed by the mechanism whereby the Government is ultimately in a position to block arbitration. Under the Agreement disputes are referred to the arbitration tribunal by the Secretary of State for Employment. In the last resort therefore the Government's ability to block arbitration depends on the Secretary of State refusing to make the reference. This is unsatisfactory because his position as a party is not compatible with the mechanical and neutral role apparently envisaged for him by the terms of the Agreement. The functions formerly exercised by Ministers of Labour in relation to arbitration have now been generally transferred to ACAS and the Civil Service arrangements are clearly an anachronism. No other arbitration arrangements of which I am aware depend on a "blocking" mechanism of this kind to prevent claims to which one side objects being referred to arbitration

15. Over the years this inherent problem has not often caused difficulties as the Government has needed to use its right to refuse arbitration on grounds of policy sparingly. But recently the right has been exercised more frequently - on four occasions since 1978. These refusals have inevitably caused difficulties with the unions. The most recent case has led to litigation which has yet to run its course. The case is unusual

that the decision was taken mainly on management grounds. The
stitution of Professional Civil Servants refused to go before the
sent Chairman of the Arbitration Tribunal until after we had
roduced a settlement by administrative action. Nevertheless it
s further pointed up the inherent problem. It may also do wider
mage to the Government's credibility. It is obviously more
fficult for us to convince the two sides of industry to honour
dustrial agreements when we are accused of not honouring our own.

The present position cannot therefore be regarded as satisfactory.
given the problem of trying to reconcile cash limits with the
il Service Pay Agreement, is it likely to improve. I consider that
anges in the arbitration arrangements are clearly necessary even
a formal pay research system were to continue to be the main
terminant of the pay of the non-industrial civil service. The
ther we move away from such a system the stronger the case will
come.

The matter is primarily for the Lord President and a decision
out the future of the arbitration arrangements cannot sensibly
taken in advance of decisions about the future of the pay
reement. My own preference however would be to try and negotiate
new arbitration agreement which, whatever other changes might be
cessary, would provide for arbitration only when both sides wanted

This paper covers existing arbitration arrangements. Some groups
be seeking arbitration arrangements in future. They include some
groups, London Traffic wardens and the staff of magistrates
rts, and clinical university teachers. The disadvantages of
ilateral arbitration arrangements are worth bearing in mind so that
y may perhaps be avoided.

nclusions

I ask the Committee to consider whether the problems for the
oups discussed in paragraphs 8-10 of this note are sufficiently
rious, and the prospects for change sufficiently real, to make it
rthwhile to put in hand a further detailed examination of them.
so, I propose that sponsor Ministers should each consider the
oups for which they are responsible and submit their conclusions
parately to the Committee.

I also propose that we should take a decision about the future
the arbitration arrangements for the non-industrial civil
rvice in the context of our decisions about the future of the
y agreement. My own preference being for an arbitration agreement
ich provided for arbitration only when both sides wanted it.

partment of Employment
October 1980

JP

PART 1 : BINDING ARBITRATION ARRANGEMENTS UNDER STATUTE

Group	Act	Access	Award	Comment
Home Departments Police *Nos: 134,300* *ASD : 1 September*	*Police Negotiating Board Act 1980*	If there is a failure to agree in negotiations, either side can go to arbitration unilaterally under the PNB constitution, which derives in turn from the PNB Act (S1(1)).	Arbitration awards are binding on the two sides and have the same status as the recommendations of the PNB, that is they are subject to the approval of the Secretary of State who has a statutory duty to make regulations. As the Home Departments said in evidence to Edmund-Davies the Secretary of State would in practice refuse to implement them only for reasons of "grave national importance".	Because police pay is currently index-linked, arbitration on the annual pay settlement is unlikely.
School and Further Education Teachers (England and Wales) Nos : 558,000 ASD : 1 April	Remuneration of Teachers Act 1965	In the exercise of powers under S3 of the Act, arbitration arrangements have been made which provide for unilateral access if the independent Chairman is satisfied that no further progress can be made in negotiation. These arrangements are open to modification by the Secretary of State for Education and Science but	Recommendations of the arbitrators have the same status as recommendations of the negotiating committees, that is the Secretary of State for Education and Science is required to made an appropriate order under S.2(2) giving effect to them. Unless each House of Parliament resolves that national economic circumstances require that effect should not be given to the recommendations.	Teachers availed themselves of arbitration on their 1980 pay claim.

CONFIDENTIAL

CONFIDENTIAL

		normally he would be expected to consult the interested parties.		
Scottish and Further Education Teachers (Scotland) Nos : 63,200 ASD : 1 April	Education (Scotland) Act 1980	In the exercise of powers under S93(1) of the Act, arbitration arrangements have been made which provide for unilateral access if the independent Chairman is satified that no further progress can be made in negotiations.	Recommendations of the arbiters have the same status as recommendations of the negotiating committee, that is the Secretary of State for Scotland is required to make an appropriate order under S94 giving effect to them. Unless each House of Parliament resolves that national economic circumstances require that effect should not be given to the recommendations.	It is intended that a new Education (Scotland) Bill should enable the Government to overturn an arbitration award in Scotland by order subject to negative resolution in Parliament. Scottish teachers availed themselves of arbitration on their 1980 pay claim.
Water Service workers Nos : 70,000 ASD : 7 December (manuals) 1 July (non-manuals)	Water Act 1973	Provision for a reference to arbitration is statutory but the detailed arrangements for unilateral arbitration are contained in written agreements.	Written agreements state that the award shall be accepted by both sides and treated as though it were an agreement between them. S26(3) of the Act requires water authorities to comply with such agreements. Awards are therefore legally binding.	

PART 2 : ARBITRATION UNDER WRITTEN AGREEMENT – UNILATERAL ACCESS AND BINDING AWARDS

Group	Access	Award	Comment
Civil Service Non-industrials (pay researched and linked grades) *Nos: 545,100* *ASD: 1 April*	Agreement enables either side to go to arbitration without the consent of the other. However the Government has always reserved to itself the right to refuse arbitration either because a particular issue is seen to be outside the scope of the agreement or "on grounds of policy".	Formal CSD authority is required for giving effect to any arbitration award. But the Treasury Circular of 1925 contained the pledge "subject to the overriding authority of Parliament the Government will give effect to the awards of the Court". The qualification is inserted to preserve the constitutional supremacy of Parliament; the pledge means that the Government will not itself propose to Parliament the rejection of an award, once made.	Unilateral arbitration was intended by the official side in the case of the Plant Health and Seed Inspectorate if their final offer had been refused by the IPCS. Arbitration was refused for the 1980 Civil Service pay settlemen the unions were informed that th operative date would not be arbitrable. In 1980 the Professional and Technology group scales were introduced by administrative action when the IPCS said they were prepared to go to arbitrati only if an alternative Chairman was appointed. A previous agreement to allow Ass. Secretaries and Senior Principals access to arbitration was withdrawn.
Local Authority craftsmen Nos: 95,200 ASD: 4 November.	Unilateral, either party refer the matter in dispute to the Department of Employment for submission to any appropriate form of arbitration (likely to be ACAS).	Acceptance by custom and practice.	The national agreements are not in themselves binding on individual employing authorities but considerable problems might be created if they sought not to implement an award.

227

120 119 118 117 116 115 114

124 123 122 121

Local Authority white collar staff Nos: 595,000 ASD: 1 July	Unilateral arbitration references go to the Secretary of State for Employment requesting that the matter be referred for settlement by arbitration. According to the agreement the form of the arbitration shall be the Industrial Court (CAC) unless the two parties agree upon some other form provided under the Industrial Courts Act 1919 or the Conciliation Act 1896.	Arbitration arrangements are incorporated in the written collective agreements and state that the award shall be accepted by both sides and treated as though it were an agreement between them.	Both sides have agreed that the July 1980 negotiations should be resolved by arbitration. The request was put direct to ACAS (via the Secretary of State for Employment) for reference to the CAC.
University teachers Nos: 38,000 ASD: 1 October	In the event of failure to agree in Committee A on joint proposals, the independent Chairman personally formulates proposals for submission to the Department, which are binding on Committee A. Where agreement cannot be reached in Committee B, access to arbitration is by agreement of both sides ie. Committee A and DES. The terms of reference of Committee B provide that such agreement is not to be unreasonably withheld. The Attorney General recently advised that withholding of access to	The arbitral arrangements are incorporated in terms of reference for the negotiating Committees, which were agreed by the three parties. They are not statutory but state that "an arbitral award will be binding, subject to the overriding authority of Parliament". The Attorney General has recently advised that "binding" means binding upon the two sides of Committee B to treat the award as a settlement. But 'unless there is a term in the contract of service of university teachers	This group were close to arbitration in recent negotiation following the withdrawal of the reference to the Comparability Commission. Following the Attorney General's advice a settlement was negotiated in Committee B.

University teachers (cont'd)	*arbitration would be unreasonable if there is no prospect of making further progress by negotiation.*	that their pay will be as determined by the negotiating procedures, their employers (ie. individual Universities) will not be legally bound to pay the recommended rates". In practice there can be no doubt that universities would honour their commitment. The Attorney General has also said that "HM Government cannot interfere with the payment in full of the new rates (ie. of an arbitration award) unless Parliament legislates for this in the exercise of its sovereignity... ordinary resolutions with statutory force would not be sufficient".	
United Kingdom Atomic Energy Authority : Non-industrial staff Nos : 8,700 ASD : 1 April	Although the Atomic Energy Act 1954 requires the authority to have agreed machinery for negotiating pay and conditions "with provisions for reference to arbitration in default of such settlement of such cases as may be determined by or under the agreements", the detailed agreement on arbitration, negotiated in 1967, provides for unilateral access.	The 1967 agreement provides for the awards to be binding on the parties.	Only two cases have ariser because this group have a contractual link with Civi Service non-industrials.

PART 3 : GROUPS WHERE WRITTEN AGREEMENTS SPECIFICALLY PROVIDE FOR REFERENCE TO ACAS

Group	Access	Award	Comment
Fire Service *Nos: 36,500* *ASD: 7 November*	*Unilateral, either side refer to ACAS (under Section 3 of the Employment Protection Act, ACAS cannot put an issue to arbitration without the consent of all parties, even if there is unilateral access under a written agreement).*	Arrangements are not legally binding but are incorporated into a written collective agreement and provide that a decision of the arbitral body will be treated as final.	
Greater London Council/Inner London Education Authority : Staff Nos: 23,100 ASD: Various	Unilateral, either side refer to ACAS (see fire service).	Arrangements are not legally binding but are incorporated into written collective agreements and by custom and practice both sides accept and are bound by resulting awards.	
Local Authority chief executives Nos: 453 ASD: 1 July	Either side can make a unilateral reference to arbitration. References go to ACAS (see fire service).	The arrangements are not legally binding but are incorporated in a written collective agreement which states that the award shall be accepted by both sides and treated as though it were an agreement between them.	

Group	Access	Award	Comment
Magistrates' Courts staff (outside Inner London) *Nos: 6,900* *ASD: 1 July*	*The constitution of the JNC provides that "In the event of the Committee failing to reach agreement on any matter, either side may refer the matter in dispute to ACAS (see fire service) for submission to any appropriate form of arbitration".*	No information regarding the status of any award.	No experience of recent arbitration (post 1960). Home Secretary is responsible for provision of 80% of cost of the service and could if arbitratic result was excessive impose conditions.
Probation and aftercare service Nos: 5,300 ASD: 1 July	The JNC constitution allows either side unilaterally to refer an issue to ACAS (see fire service) for arbitration. Firm expectation that a request for arbitration would not be refused.	Decisions of the Joint Negotiating Committee and awards of arbitrators are subject to the approval of the Home Secretary who has statutory power (under the Powers of Criminal Courts Act 1973) to determine the salaries of probation officers. There has not yet been any experience of an arbitration award unacceptable to the Home Secretary.	
Teachers in Scottish Central Institutions and Colleges of Education Nos: 2,300 ASD: 1 April	Unilateral in the sense that one side may declare that negotiations have come to an end without agreement. If the Chairman agrees a reference is made to ACAS (see fire service).	Any recommendations by an arbiter can be set aside by the Secretary of State for Scotland if he considers this necessary "in the national interest". No Parliamentary procedure is necessary but the reasons for setting aside any	

Group	Access	Award	Comment
Teachers (cont'd)		arbitration award would have to be communicated to the negotiating parties and the Press.	