E(80)61 COPY NO: 55

27 June 1980

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

The Qualification For Unemployment Benefit for Workers Laid Off In A Trade Dispute.

Memorandum by the Secretaries of State for Employment and Social Services.

The attached report by officials considers the case for extending the scope of the "trade disputes disqualification", which governs the eligibility of workers laid off as a result of a trade dispute to receive unemployment benefit. This was one option in the report on the financial treatment of strikers discussed on 12 February. It was agreed then that this option was different in kind from the rest and should be the subject of a separate report.

2. The report sets out the arguments which have been adduced for extending the present trade disputes disqualification (paras 9 and 10) and discusses 5 options. These are

(i) reinstating the "grade or class" disqualification removed by the Employment Protection Act 1975;

(ii) reinstating the "financing" disqualfication removed by the same Act;

(iii) disqualifying all those laid off who belong to the same union as those taking part in the dispute;

(iv) disqualifying all those laid off as a result of a dispute at their place of work, whether members of the union involved or not;

(v) disqualifying all those with a direct interest in the dispute and employed by the same or an associated employer as those taking part in the dispute (whether or not at the same place of employment).

3. The arguments in paragraph 12 of the Report for taking no action at present seem to us conclusive. In particular:

(a) the changes made to the trade disputes disqualification in the 1975 Act were designed to remove the anomalies and cases of individual hardship and injustice to which the Donovan Report had drawn attention (and which we ourselves recognised in the debates on the 1974 legislation). They were not designed to tilt the balance of bargaining power away from employers and towards unions and there is no evidence that the change has increased the propensity to strike by lessening any pressure on strikers to return to work from workers laid off. A return to the pre-1975 position would be likely to re-create the anomalies without redressing the balance of bargaining power.

(b) Some of our supporters have already criticized Clause 6 of the Social Security (No 2) Bill (which reduces the supplementary benefit entitlement of the families of those disqualified for receiving benefit for their own requirements by £12) because it is not confined to "strikers" but follows the unemployment benefit rules in applying also to those locked out or those laid off but with a direct interest in the dispute. The immediate effect of widening the trade disputes disqualification would be to extend the application of the £12 reduction to a greater number of people who were not actually participating in a strike and who might have no interest at all in its outcome. This would make it easier for the trade unions to point to cases of hardship among the families of non-strikers, so undermining the public support which the £12 reduction undoubtedly commands at present.

(c) only one employers' organisation has argued for this change (the Coventry and District EEF) and there has been no pressure from the CBI or other organisations who have submitted proposals for changes in the Employment Protection Acts 1975 and 1978.

4. We therefore recommend that no legislative action should be taken to extend the disqualification at this stage.

J P

P J

Department of Employment

Department of Health and Social Security

27 June 1980

THE QUALIFICATION FOR UNEMPLOYMENT BENEFIT
FOR WORKERS LAID OFF IN A TRADE DISPUTE

REPORT BY THE OFFICIAL GROUP ON BENEFITS TO STRIKERS (MISC 33)

INTRODUCTION

1. In our main report submitted in February we dealt with the financial treatment of strikers and their families, strikers being defined for this purpose as those participating in a trade dispute, whether actually on strike, laid off, or locked out. Such people are not eligible for unemployment benefit, though their families may be eligible for supplementary benefit (at the level reduced by £12 per week already decided by Ministers).

2. People who are laid off, and can prove that they are not participating or directly interested in the dispute, can receive unemployment benefit. The appropriate boundary of the entitlement to unemployment benefit is arguable, and in considering our earlier report Ministers asked us for a separate report on this subject, which we now submit.

The Problem

3. A trade dispute can throw many people out of work. Some have a community of interest with the strikers, some have not, but may be able to exert moral pressure on the strikers, and some are wholly innocent and impotent bystanders whose livelihood is affected.

4. Until February 1977, three groups were disqualified from receiving unemployment benefit when laid off as a result of a trade dispute, in addition to those participating in the dispute. They were -

i. Those laid off through a dispute at their place of work and having a direct interest in its outcome (eg because their pay was directly linked to that of the strikers).

ii. Those laid off through a dispute at their place of work and "financing" the dispute in question (ie members of a union actually paying strike pay to other members who were strikers).

iii. Those laid off through a dispute at their place of work and belonging to the same "grade or class" of workers (ie doing similar kinds of job) as those who were taking part, directly interested in or financing the strike.

5. The case for changing these categories of disqualification was examined by the Donovan Commission in 1965-68. The Commission recommended unanimously that the "grade or class" disqualification should be removed and recommended, with one dissentient, that the "financing" disqualification should also be removed. They argued that the disqualifications gave rise to anomalies and that the reasoning underlying them was hard to sustain. The member dissenting from the removal of the "financing" disqualification argued that all members should bear responsibility for their union's actions, especially for strike decisions at their place of work.

6. The Donovan recommendations were put into effect by Section 111 of the Employment Protection Act 1975, which came into force in February 1977.

7. During the debate on the 1975 Act, the Conservative Party accepted that there was a case for changing the disqualification rules. Mr Hayhoe said:

> "I think there is merit in the equity arguments which the Minister (Mr Booth) has put forward about the present provisions, in that there is a certain randomness about the way in which they impact and prevent benefit being given to those who are in no way involved in the dispute."
> (Hansard 17 July 1975. Col.1351)

8. Since February 1977, the groups of workers not participating in a trade dispute who have been treated as if they were participating, and disqualified from receiving unemployment benefit as a result, are those

described in paragraph 4(i) above, ie those who are laid off as a result of a dispute at their place of work and who have a direct interest in its outcome.

Arguments for further change

9. The Director of the Coventry and District Engineering Employers' Federation has argued that the change made in February 1977 has reduced opposition to strikes by those laid off as a result of them. This argument has been advanced by only one other employer and no request for any change to the trade disputes disqualification was included in the extensive list of CBI proposals for changes in employment legislation. But of course silence need not imply satisfaction and a change would be quite compatible with other Government actions.

10. Other arguments which can be advanced for change are:

(i) If levels of strike pay rise and strikes become more expensive for unions (which they could well do as a direct consequence of the Government's decision to reduce supplementary benefit payable to strikers' families by £12 a week) the unions may respond by adopting instead selective action by withdrawing a few key staff which can lead to extensive lay-offs.

(ii) There is an argument of principle that unions should accept a responsibility for supporting all of their members whom they cause to be put out of work, not only those taking part in a dispute, but also those laid off as a result.

Options for Change

11. This part of the report discusses 5 options for widening the present disqualification, and the alternative of no action. The first 2 options, taken together, would take the disqualification back to where it was before February 1977, but it should be noted that this would go much further than "restoring the pre-1977 position" because the Government's

decision to reduce the supplementary benefit payable to strikers' families will now make disqualification from unemployment benefit a more severe penalty than it was in the past. All the options except (5) relate only to disputes at the person's place of work. Options (2) and (3) would discriminate between union members and non-unionists and so could be argued to be contrary to the approach adopted on supplementary benefit and hardship payments to strikers' families.

i. Option 1: reinstate the "grade or class" disqualification for those laid off because of a dispute at their own place of employment. It is doubtful whether this option on its own would have any significant practical effect, though presentationally in "going back on Donovan" it would cause trouble. We understand that the Insurance Officers who decide whether claimants have a "direct interest" in a dispute at their place of work already interpret the term "direct interest" so as to cover most if not all of those who would be caught by the "grade or class" disqualification.

ii. Option 2: reinstate the "financing" disqualification for those laid off as a result of a dispute at their own place of employment. This would disqualify union members whose union was actually paying strike pay. The option would increase the incentive of trade unionists to participate actively in the affairs of their union, especially in strike decisions, at the price, possibly, of encouraging fragmentation of unions. It would of course disqualify groups of workers with no direct interest in the dispute but who were members of a general union representing many different occupations. This would involve the sort of anomalies and problems which were identified in the Donovan report which led to the change in the law. Moreover it might appear that the Government was putting unions into a 'Catch 22' situation whereby if they failed to pay strike pay, those members on strike whose families were receiving supplementary benefit would be £12 a week worse off, while if they paid strike pay their members who were not taking part in the dispute but who were laid off because of it would lose their

eligibility for unemployment benefit - a much larger sum and the only source of public income to single people.

iii. Option 3: disqualify all those laid off as a result of a dispute at their place of work and belonging to the same union as those taking part in the dispute, whether or not the union was paying strike pay. The argument for this option is that unions should pay their fair share of the cost of supporting their members who are laid off as a result of a strike, particularly where selective action has been taken with the specific intention of halting a larger area of work than that done by the strikers alone. It avoids the problem in Option 2 of the Government's seeming to have an ambivalent attitude towards the payment of strike pay, but it could still catch workers with no interest in the dispute. Like Option 2, it would apply to union members only and it would penalise members of large general unions, who might in fact have little opportunity to influence the course of a dispute. Both these options might encourage resignations from the union to obtain unemployment benefit.

iv. Option 4: disqualify all those laid off as a result of a dispute at their place of work, whether members of the union involved or not. The justification for this option would be that all workers at the same place of employment have a community of interest with those in dispute. This argument can fairly readily be applied to some pay disputes since a settlement for one group of workers may well indirectly influence the settlements for others, through the established pattern of differentials between groups. Where disputes arise over non-pay matters, it may seem less fair. But in reality strike action by one group affects the organisation as a whole. It could be argued that present arrangements tend to insulate one group from the consequences of their action for others. Where unions are not already well-organised to resolve their differences at plant level, this option would tend

to encourage a more rational bargaining structure - in line with the Government's objectives. Greater pressure could then be exerted within this forum for strikes to be used only as weapons of last resort.

v. Option 5: disqualify all those with a direct interest in the dispute and employed by the same employer or an associated employer, whether or not at the same place of employment. This is the only option which disqualifies people not employed at the workplace where the dispute occurs, and for that reason it would be more complicated than the others to operate. There is a strong logical case for disqualifying all workers with a direct interest in the outcome of the dispute, irrespective of their workplace. However, when a strike decision is taken at local level, workers elsewhere may have no real influence on it, even if they have a direct interest in the outcome. And employers would not necessarily welcome the application of a penalty to workers at some distance from the place of the dispute.

The alternative: no action at present

12. The arguments against taking action at present are as follows:

i. Any legislation on this subject would be highly controversial, and unlike the legislation on supplementary benefits to strikers' families it would not be fulfilling a Manifesto commitment or responding to widespread public concern. It would also affect entitlement to unemployment benefit, which as a contributory benefit might be seen as the striker's own money rather than that of the taxpayer.

ii. There is no objective evidence either for or against the argument that the 1977 changes have increased the number of duration of strikes by lessening the pressure on the strikers from workers laid off as a result. The existing

rules provide a considerable discretion to the Insurance Officer, under the "direct interest" provision, and the onus of proof is on the claimant. Thus in the face of greater selective action, the existing rules would allow workers at the place of the dispute who are not called out on strike but stand to gain from any pay increase, to be disqualified under the "direct interest" provision. A switch from general to selective action would therefore not in itself increase the numbers eligible to receive unemployment benefit.

iii. The provision in the Social Security (No 2) Bill to reduce supplementary benefit payable to strikers' families by £12 per week should have some effect on union behaviour. There is a case for waiting to see whether this effect is satisfactory before deciding whether to take further action. The No 2 Bill also cuts unemployment benefit in three different ways, and further measures will therefore be that much harder to sustain.

iv. There is already pressure on the legislative timetable. It is too late to include further provisions in this session's Social Security No 2 Bill. The necessary provisions could be added to a forthcoming Bill, eg the Social Security Bill dealing with employers' sick pay obligations, but it would widen the scope of the Bill, and cause controversy whereas the Government has been anxious to seek all-Party agreement on the desirability of the sick-pay change.

Conclusions

13. Ministers will wish to consider whether they wish to legislate in the next Parliamentary session to change the existing qualification for unemployment benefit for those laid off as a result of a trade dispute.

14. If Ministers wish to legislate next session -

i. They will wish to decide how far the existing qualification should be changed, eg by adopting one or more of the options set out in paragraph 10 above.

ii. We strongly recommend that, if Ministers are minded to legislate, there should be a period of public consultation before the legislation is introduced, and preferably before the Government becomes formally committed to it. This is not an issue which has so far attracted any great public attention. Consultations would provide an opportunity to gauge support for the change among employers who have not, up to now, given the matter high priority, or probably much consideration. If they did support it a public climate for change might be created - if they did not Ministers could consider again whether to proceed.

Cabinet Office
22 May 1980