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**THE IMPACT OF THE LAW ON INDUSTRIAL DISPUTES
IN THE 1980s: REPORT OF A SURVEY OF EDUCATION
AUTHORITIES**

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ABSTRACT

This paper reports the results of one part of a research project designed to investigate the nature and extent of the impact of the labour legislation enacted between 1980 and 1990 on the conduct of industrial relations and the processes by which this has come about. Interviews were carried out with officers in the education departments of ten Local Education Authorities. All had felt the impact of major national disputes from the mid-1980s to early 1990s. The most important legacy of this experience so far as the law was concerned was that it had now become generally the case that any significant industrial action would lead to Authorities considering whether to make deductions from the pay of workers concerned. Modification to the structure for the provision of public sector education under the Education Acts of the late 1980s and early 1990s was a far more important legal influence. This required significant change in established industrial relations and employment practices and could be a cause of disputes to which the labour legislation of the 1980s was of limited relevance.

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THE IMPACT OF THE LAW ON INDUSTRIAL DISPUTES IN THE 1980s: REPORT OF A SURVEY OF EDUCATION AUTHORITIES

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The second part of our research project on the impact of the law on industrial disputes in the 1980s focused on surveys of management and union negotiators. On the union side the survey was carried out by questionnaire. Managers were the subject of structured interviews. The aim of this part of the research was to provide a picture of the range of experience of those with responsibility for overseeing industrial relations in a selection of companies and public authorities. While the surveys of management do not claim to be representative of any industry or area of the public sector as a whole, they have highlighted a number of important issues relating to the role of the law in industrial relations in general and industrial disputes in particular.

This report presents the results of interviews with officers in the education departments of eight Local Education Authorities (LEAs). In two of these LEAs, two officers were interviewed so that the total number of respondents was ten. The interviews were carried out between July 1992 and April 1993. The LEAs covered a range of different areas: inner and outer London, metropolitan borough and counties from various parts of England and Wales. The information was supplemented by an earlier interview with a representative of the Local Government Management Board (LGMB) who had special responsibility for education.

1. Background information about the authorities

The total numbers employed by the LEAs in the survey ranged from approximately 3,000 to 23,000. With one exception, where there had been no change, all reported a decline over the period of the 1980s and early 1990s. Among teachers employment levels had been relatively stable. Declining school rolls and the closure of small schools had caused some reduction, but this had been on a small scale.¹ The number of schools ranged from about 60 in two authorities to around 500 in two others.

The main reductions were among support staff. The introduction of Compulsory Competitive Tendering (CCT) for a range of local authority services was an important factor here, though in a number of different ways. A technical change which was viewed by education departments as a decline in numbers had occurred in three LEAs where catering and cleaning services for schools had been retained in house, but transferred to a separate organisation and were no longer the education department's responsibility. Real declines occurred where either services were retained in house but the tender had only been won at the cost of fewer jobs, or in one authority the services had been contracted out.

A reduction in the size of the workforce employed by LEAs was also a consequence of the major changes in the structure of provision of educational services which, by 1993, had transformed the relatively stable environment which existed for some time up to the mid-1980s. Under the Education Reform Act 1988, after a favourable ballot of parents, schools were allowed to apply for grant maintained status (GMS) with direct funding from central government and thereby opt out of

LEA control. Only a small number of schools had taken this step by April 1993.² Overall the experience of our respondents was in line with this general trend. In one LEA, however, 14 schools had opted out and other schools had applied for GMS or were likely to do so: in another a number of applications were made after the April 1992 general election. But for the most part, respondents reported only one or two cases of GMS within their LEA and in three authorities there were no opted out schools at the time of our interviews. In one of these three a committee had been established to look at giving schools full delegated powers, equivalent to GMS, as a way of persuading schools not to opt out of the LEA. Even where schools had achieved GMS, they were normally offered the opportunity to buy in services from the LEA, although one respondent authority refused to offer services to GMS schools as a matter of policy. Another had recently reversed a similar policy. While these offers were generally taken up, it was a matter of concern how long they would continue to do so; there were already some cases of opted out schools deciding not to buy back services from the LEA.

The introduction of Local Management of Schools (LMS) under the Education Reform Act 1988 had already had a more general impact on all respondents. LMS required LEAs to delegate the management of at least 85% of the budget to schools by April 1993.³ Although they adopted different methods and timescales for phasing in this process, all but one of the LEAs in our survey retained 15% of the budget in April 1993; the remaining authority retained only 8% and was looking to 98% delegation. A general consequence of this development, which was reinforced by the threat of schools seeking GMS status, was that service provision by authorities was increasingly broken down into discrete units, leaving schools free to decide whether to take up each unit or look elsewhere for the service.

Another development which followed from both GMS and LMS was that authorities were forced to review the provision of specialist services. In one respondent authority the possibility of schools opting out was seen as a threat to future provision of nursery and special needs teaching because it could undermine the administrative basis on which these services were founded. In another the music service had been withdrawn while in a third it was under monthly review. Where a service like this was withdrawn schools were left to decide whether or not to provide it themselves. All schools were, however, required to make provision for covering teachers who were absent.⁴ After LMS, most of our respondents had delegated the supply budget to schools. Some no longer provided schools with any assistance on this matter; one simply provided a register of available teachers, another provided a service which schools could buy back, while a third at the time of the interview still retained a large number of supply teachers in its employment with the position after 'full' delegation in April 1993 then unclear.

An equally important result of LMS was that Head Teachers and School Governors were given new management powers, which according to our respondents, they generally welcomed, although in two authorities we were told that unhappiness with their new role was responsible for a record level of applications from older heads for early retirement. The role of LEA officers accordingly shifted away from implementing the policies of the LEA to more of a balancing act between providing guidance for schools on policies which the schools wished to pursue and promoting LEA policies.

While local management of colleges, a parallel exercise to LMS, was also set in train by the Education Reform Act 1988, it was overtaken by the decision to take further education (FE) colleges completely out of local authority control under the Further and Higher Education Act 1992 in April 1993. This followed a similar development for Higher Education (HE) Colleges which became centrally funded independent corporations in 1989. A number of our respondents commented that FE and HE colleges had always been more independent of LEA control than schools. Nevertheless four authorities were offering packages of services to FEs with the expectation that certainly in some areas - eg payroll and administration of contracts -they would be taken up at least in the short term.

2. Arrangements for determining terms and conditions of employment

For most of the 1980s long established collective bargaining arrangements continued to determine the pay and other conditions of employment for both teaching and non-teaching staff. For school teachers and college lecturers these were the Burnham Committees for negotiations on pay and separate negotiations in national joint councils over other conditions of employment. For other staff the relevant procedures were those of the Whitley committees for local government. As far as pay was concerned, the predominance of national negotiations meant that the main role of LEAs was to interpret national agreements. There was however an extensive agenda for local negotiations and consultation over the application of agreements.

After the abolition of the Burnham committee for school teachers, the Teachers Pay and Conditions Act 1987 empowered the Secretary of State, after receiving advice from an Interim Advisory Committee to issue documents which laid down the pay and conditions of teachers. The School Teachers Pay and Conditions Act 1991 established a Review Body which took over the functions of the Interim Advisory Committee. Although the content of these documents was highly prescriptive in relation to many of the contractual obligations of teachers, and therefore necessarily restricted the role of local negotiations and consultation on these issues, the documents still left considerable scope for agreements at local level. This discretion was, however, vested in school governors rather than the LEA, whose role was for the most part restricted to acting in an advisory capacity. But on occasion it was still possible for authorities to take the initiative. One respondent, for example, said that flexible interpretation of the terms laid down on covering for absent colleagues had been used to improve on this aspect of teachers' conditions.

The delegation of most of the budget to schools under LMS also influenced the shape of collective relations at local level. In general the existing machinery at LEA level remained in place for all our respondents, but the nature of these contacts - one Authority reported arguments over whether they were negotiations or consultation - and the issues under consideration changed. Among the current issues identified by our respondents were appraisal, redundancy criteria and procedures, redeployment arrangements, a code of competence for newly qualified teachers, disciplinary procedures, a new pay structure for Heads and Deputies, job descriptions and a grading structure for general assistants, and paternity leave. Under the division of responsibilities between LEAs and schools provided for under LMS, while some of these issues could be agreed and applied across the Authority, others could only be recommended to schools. At the time of our interviews, however, LEA advice to

schools was generally accepted and indeed training and other guidance was often provided for Heads and governing bodies. We were informed of just one school which was determined to 'go its own way' on all issues. But on the vital issue of pay and gradings for new posts, another respondent informed us that some governing bodies had proceeded with new gradings against the advice of the LEA.

While LMS had placed the onus on unions to develop separate negotiating arrangements with individual schools, consultation with unions at LEA level had proved to be helpful in winning the agreement of governing bodies to adopt LEA guidance on, for example, disciplinary issues or the adoption of a personnel management handbook. But unions were having to come to terms with the limited control which LEAs still had over many issues.

It was evident that the changes in FE and HE, which culminated in fully independent status for all colleges by 1993, had less significant implications for the role of authorities in determining terms and conditions of employment because of the greater autonomy that individual colleges had to some extent always had and had progressively developed since the mid-1980s. By the time of our interviews all real negotiations were between unions and individual colleges. Although some LEAs continued to provide industrial relations services to colleges, they were no longer promoting LEA policies. Three respondents reported continuing contacts at LEA level in relation to FE issues through a joint liaison committee, liaison post or meetings with unions.

Trade union membership

The Burnham and Whitley negotiating arrangements were associated with high levels of trade union membership. All our respondents reported that levels of membership remained high; while one said that it was low among manual workers because of the incidence of part time employment, others identified manuals as an area of particular union strength. Among schoolteachers, the relative strength of the National Union of Teachers and National Association of Schoolmasters/Union of Women Teachers varied between authorities, while two LEAs reported a drift of membership towards the Association of Teachers and Lectures (formerly the Assistant Masters and Mistresses Association) and even the Professional Association of Teachers, which was, however, recognised by only one of our respondents. The National Association of Teachers in Further and Higher Education (NATFHE) was generally reported to have had a strong presence among FE and HE lecturers.

3. Disputes in the 1980s

There were major national disputes over pay for school teachers in 1984-86 and local authority Administrative, Professional, Technical and Clerical (APT and C) staff in 1989, and over the negotiations on new terms and conditions to be applied in HE in 1989 and FE from 1993. Resolution of these disputes was not a matter for LEAs but some respondents referred to being affected by strike action taken by teachers in 1984-86 and APT & C staff in 1989. The NATFHE action in 1989 was said to have been well supported. More generally, respondents in five authorities reported that there had been more disputes in FE than schools, reflecting the 'local militancy' of NATFHE members.

Respondents identified an increased potential for collective disputes at local level as one of the consequences of devolving authority to schools, which led to

changes in terms and conditions and in working practices. The scope of teachers' duties had been increased by the Orders issued under the 1987 and 1991 Acts. Cost pressures had led to larger classes in four of the eight Authorities, and one said that this was now the main issue in dispute with teachers' unions. It was said that there was also closer monitoring of teachers' performance, which was seen to be responsible for a large increase in disciplinary cases in half of the Authorities. The increased management responsibility of Heads - and in larger schools members of the senior management team - had distanced them from the rest of the teaching staff.

Parallel changes had occurred in the role of support staff.⁵ While not necessarily unwelcome - for example an extended role for school caretakers - these changes could give rise to disputes in their implementation. Different views were taken over whether this particular change should be accompanied by transferring the caretakers to APT & C conditions: two had done so, another resisted this, a fourth saw it as an issue for the future. Similarly, clerical staff in schools were in some cases being required to develop new financial and administrative skills. For support staff in catering and cleaning, CCT led to job losses and reduced terms and conditions. Redundancies were an issue that had by the time of our interviews come to affect all workers, teaching as well as support staff. LEA 'no compulsory redundancies' policies had no application to individual schools⁶ and while LEAs generally took all possible steps to avoid any compulsory redundancies, unions were now finding that in some circumstances they had to talk about them and, although they were highly contentious, some had occurred.

Redundancies among teaching staff had been the cause of significant local industrial action in one of the respondent authorities since the mid-1980s and three others said that the teachers' unions would always threaten action if compulsory redundancies were being considered and on occasions it was stated that they had come very close to actually taking industrial action. Overall our respondents had limited experience of local action by teachers in recent years, but four authorities reported that one result of the more detailed prescription of teachers' contractual conditions since 1987 had been a withdrawal of goodwill reflected in an unwillingness to take on duties other than those specifically required by them. Although respondents had seen little industrial action by support staff, three said that relations with the manual unions were more confrontational than with the other groups. A particular example experienced by one respondent was some local action in the early 1990s as part of technicians' resistance to harmonisation of conditions of service.

4. Disputes and the law

Industrial action ballots

While all the national industrial action referred to above had been preceded by ballots held by the unions concerned, there were only two instances of ballots in local disputes in which these authorities had been involved. One authority said that the threat of balloting was used by one of the teaching unions as part of its way of dealing with issues. The two most significant cases of local action were both unballoted. In general, balloting did not appear to be a central issue for our respondents half of whom said that they would not monitor union ballots. The other half said that whether they monitored ballots would depend on the issue and how

serious the threat of industrial action was. Good relations with unions and a concern not to disturb these by being seen to be aggressive or hardline was a key factor behind this approach to industrial action ballots. While unions might make threats to hold ballots, in the main they were not quick to actually ballot members.

Deductions from pay and other sanctions against individual workers

Litigation over deductions from the pay of teachers and lecturers taking action short of an all out strike was an important part of legal developments in the 1980s which broadly endorsed a fairly wide management prerogative over this issue. Among our respondents there was a range of views on when deductions would be appropriate and if so the amount of the deduction to be made. In one authority we were told that in most circumstances withdrawal of goodwill would not lead to any loss of pay. Another authority said that deductions would not normally be made when employees were taking part in demonstrations. A third, however, said that deductions would be made if teachers refused to carry out their full duties. Three said that they would only deduct 1/365th for each day of action; but a fourth had deducted 1/195th for recent sympathetic action which involved taking a day off work. Although seven of the authorities identified the LGMB as a source of advice on industrial relations issues, LGMB advice on this matter was not prescriptive, advising rather on a range of possible responses. It was not seen, therefore, to be clear cut. It was clear, however, was that national advice was to the effect that some deduction should normally be made in the case of action short of a strike. A complicating factor since the introduction of LMS was that it was uncertain whether it was for the LEA as the employer to decide whether, and if so what, deductions should be made, or whether pay deductions should be treated as part of school governors' disciplinary powers.⁷

No other sanctions had been invoked against individuals who took part in industrial action; one Authority had advised Heads against taking disciplinary action against teachers who took part in sympathetic action. On the other hand, one of our respondents had been successfully challenged by workers over pay deductions made in respect of a Day of Action when schools were closed and teachers who were willing to work were therefore unable to do so.

Other areas of law

There was no other aspect of the general law on industrial disputes that was identified as relevant in the experience of our respondents. Sympathetic action in support of the miners' protest over pit closures in 1992 had occurred in one Authority but the absence of any immunity from legal restraint for those who organised it was not identified as a relevant factor in the management response.

5. Legal issues arising from the changing environment in schools and colleges

One of the effects of LMS which was widely seen to be a potential source of difficulty was the division of employment responsibilities between school governing bodies and the LEA. While the latter remained the employer, governors were given the right to make many of the relevant managerial decisions, but unless they acted unreasonably the LEA remained legally responsible for their actions.⁸ LEA officers therefore assumed three potentially conflicting roles at governors' meetings: as representatives of the Chief Education Officer ensuring that statutory duties, particularly in relation to the curriculum were met, as advisors to the governors on how to achieve their objectives, and as officers of the actual employer of staff. Six of the eight Authorities identified difficulties that had arisen because of the division of responsibilities. Four of them referred to redundancy problems including the absence of adequate consultation by governors and the restricted ability of LEAs to make

offers of suitable employment to redundant employees. Equal pay and equal opportunities were issues where the absence of sufficient expertise in governing bodies had caused problems for two Authorities. There was also the issue of how far the provisions of collective agreements made by the LEA had become contractual entitlements of individual workers which governors could only alter with their agreement.⁹ All respondents were uncertain of when governors would be deemed to have acted unreasonably and so be liable to meet the costs of any legal proceedings where individual employment rights were found to have been infringed.

The provision of training and personnel manuals and advice at governors' meetings were avenues through which LEAs could seek to influence governors' decisions. Authorities' potential liability for the consequences of decisions which they would not themselves have taken was clearly a matter of some concern.

6. Perceptions of the 1980s

Nine of the ten respondents agreed with the suggestion that management had become more hardline in dealings with unions. A majority did not agree that personnel specialists had become less important. Whilst it was acknowledged that some personnel decisions had been delegated to line management, this could increase the importance of specialist advice.

Two agreed while eight disagreed that the law had been the most important factor affecting industrial action. Four identified the changes in the law relating to education as the more important legal developments. Respondents expressed a range of opinions on the importance of the law in their own experience. Three said that it had been of no importance, three fairly important, three important and one very important. Comments in response to this question made it clear that 'the law' in this context included the legal framework for education.

Seven respondents agreed that industrial action ballots had been a good thing for trade unions. The reasons for this included enabling members to feel that they had a say and the public image of trade unions. One of those who disagreed felt that ballots had led to a decline in union strength. Six agreed and four disagreed with the suggestion that union officials were now more accountable to their members.

7. Conclusions

For all our respondents it is clear that one issue dominated the latter part of the period of our survey. This was the modification to the structures for the provision of public sector education which was brought about by the Education Acts of the late 1980s and early 1990s. The main focus of this process was LMS. Only one authority had been significantly affected by schools opting out of LEA control for GMS status, although this was seen as something which potentially posed a threat to the extent of service provision by authorities in the future. LMS by contrast, had already brought about a radical change in the role of LEAs in general and in particular with respect to industrial relations. The legal division of management powers and responsibilities between school heads and governors on the one hand and LEAs on the other had placed education officers in the difficult position of balancing different - and potentially conflicting - roles as representatives of the legal employer, advisers on good practice and guardians entrusted with the duty of ensuring that schools fulfilled their statutory obligations.

A dominant issue of the late 1980s and early 1990s was therefore the development of new industrial relations structures to replace those which had evolved in the context of national bargaining arrangements and in which the place of local negotiations and consultation was well established and fairly clear. All our respondents had maintained existing institutions for joint regulation, but the nature of their agendas had changed primarily because on many issues LEAs were now in a position only to advise schools whereas before they could require schools to implement what had been agreed. But while the agenda had changed it appeared that for most of our respondents it was still extensive. In one sense rather greater change had been brought about by the granting of independent status to first polytechnics and other HE colleges and then FE colleges. It was, however, apparent that the greater independence which these colleges had traditionally enjoyed, particularly in HE, made this development easier for both colleges and authorities to accommodate. Although it was generally the case that services continued to be offered to FE colleges as they became independent of LEA control, the impression given was that it was very uncertain whether this would continue, even in the medium term.

The impact of the wider structural change in the nature of the provision of local authority services through the introduction of CCT was also evident. For most of our respondents this had meant some reorganisation of the way in which catering and cleaning services were provided within their authorities, with some redundancies and modification of conditions of employment rather than the loss of service provision to outside contractors. More broadly there had been important changes in the role of some support staff. This was one issue among many on which our respondents indicated that they were fulfilling an important advisory role for school heads and governors as they developed their new management functions. Unions remained an important part of this process of change. While union membership generally remained high among all workgroups, it is probably true to say that LMS - and to the limited extent that it had occurred GMS - tended to operate to reduce unions' bargaining strength by reducing the extent to which members shared common interests.

While all our respondents had felt the impact of national disputes in the mid and late 1980s and early 1990s which affected teaching and white collar support staff, none had been involved in any distinctive local initiative by way of a management response. Their experience of industrial action ballots in local disputes was limited and, in marked contrast to the other employers in our survey, balloting had not been and was not seen as a major issue for them. An important legacy of initiatives taken by other LEAs in the national disputes with schoolteachers was that it was now generally the case that any significant industrial action would lead to authorities considering whether to make deductions from pay of the workers concerned, although there was evidently no agreement on either when this could be done or the appropriate amount of a deduction in particular circumstances. This was clearly the most prominent feature of the law relating to industrial disputes for our respondents and it was not an issue on which the legislation of 1980-1990 took any initiatives in changing the law.

It is unsurprising that while their assessments of the importance of the law in their own experience varied the most significant aspects of the law for our respondents were those parts of the legislation on education which required change

in established industrial relations and employment practices. While not wholly irrelevant, wider developments in the general body of labour law were of a far more limited significance and concern.

ENDNOTES

- * Jane Elgar was a Research Officer in the Centre for Economic Performance 1990-93 and Bob Simpson is Senior Lecturer in Law and a member of the Centre for Economic Performance at the London School of Economics and Political Science.
1. In England and Wales there was an overall decline in the number of school pupils of 300,000 between 1986 and 1991; see School Teachers Review Body Third Report Cm 2466 HMSO, London February 1994, Table 33.
 2. In answer to a Parliamentary question in April 1993, Baroness Blatch, Minister of State, Department of Education, said that out of 18,296 primary and 3,847 secondary schools, 116 primary and 406 secondary schools had been granted GMS status. Applications from a further 71 primary and 97 secondary schools were under consideration: HL Deb vol 545 col 139, 27 April 1993. By January 1994 a total of 827 schools had transferred to GMS status.
 3. This will be increased to 90% with effect from April 1995.
 4. Since 1987 the express contractual obligations of teachers have required them to cover for absent colleagues, but only for up to three days. It is therefore necessary for some alternative provision for cover to be made in cases of longer absence.
 5. In England and Wales there was an overall increase in white collar support staff of 8,000 between 1986 and 1991, 2,000 in secondary schools and 6,000 in primary schools. For more recent statistics see School Teachers Pay Review Body Third Report, Cm 2466 HMSO, London February 1994, Table 21.
 6. Under section 221 of the Education Reform Act 1988 it became unlawful for authorities to operate general 'no redundancies' policies.
 7. LGMB advice was to the effect that LEAs not only still had the power to make pay deductions but that failure to do so in a case of a clear breach of contract might well be regarded as a failure by the authority to discharge its statutory duties.
 8. See Freedland 'The Education (Modification of Enactments relating to Employment) Order 1989 (1989) 18 Industrial Law Journal 231-234 (December).
 9. On this issue see Kenny v South Manchester College [1993] ICR 934.