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UNION NEGOTIATORS, INDUSTRIAL ACTION AND THE LAW: REPORT OF A SURVEY OF NEGOTIATORS IN TWENTY FIVE UNIONS 1991-92

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ABSTRACT

It has been widely assumed that the labour legislation of the 1980s has been a major catalyst for change in British industrial relations. The nature and extent of the law's impact have usually been assumed and rarely been clearly articulated. This paper reports the results of part of a research project designed to investigate these issues and the processes by which any legal influences took effect. A survey of negotiators in twenty five trade unions was carried out by questionnaire. The responses showed that the law had become a more important factor in the conduct of disutes. Its influence on union negotiators had not, however, been entirely negative. The law on strike ballots stood out as the most important of the changes in the law made by the 1980s legislation and the use of ballots emerged as a feature of union strategy in negotiations. More often than not this produced positive results from a union perspective. Nevertheless overall a majority of negotiators saw the law as an important factor favouring employers in the bargaining process.

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INTRODUCTION

The second stage of our research project looking at the impact of changes in the law in the 1980s on industrial relations practices, with particular reference to disputes, focused on surveys of management and union negotiators. The first stage of the research involved interviews with employers' associations and trade unions at head office level (see Elgar and Simpson, 1992). The second stage was in two parts. One of these consisted of structured interviews with some 70 managers in both the public and private sectors. The results of this aspect of our work are being written up in the form of sectoral reports (see Elgar and Simpson, 1993). This report presents the overall results of the other part of this stage of the research, a questionnaire survey of negotiators in 25 trade unions.

The survey was carried out by postal questionnaire in late 1991 and early 1992. The 25 unions who took part had over six million members. They included 15 of the 23 unions which were reported as having more than 100,000 members in 1991 (see Certification Officer, 1992: Appendix 4). The unions covered by the survey covered a broad range of both public and private sector, and manual and non-manual workers. The information on experience of negotiations, industrial action and the law is based on replies from:

727 Full Time Officers

82 Lay Officials

37 National Executive (NEC) members

846

For the most part, responses in the larger unions were from district, regional and area officers and reflected their own local experience. In the smaller unions they were mostly from national officers. Responses from lay officials came from three unions; the 37 NEC respondents were predominantly in one union, although there were a small number in three others. In addition there were ten responses from non-negotiating officers. These are included in the last point of the next section of this paper, point 15 entitled Picture of the 1980s on p.10, making the total number of useable responses 856. The overall response rate was 58 per cent. The responses to the questionnaire therefore represent the experience of negotiators representing a broad cross section of the unionised part of the workplace.

The rest of this paper is organised as follows. First, the results of our analysis of the responses to the questionnaire are presented in the form of 15 points to which some explanatory notes have been added. Second, we make some observations on the three central issues which emerge from this analysis concerning the role of the law in negotiations and disputes: the general influence of the law, strike ballots, and the law and the individual worker. Finally we make some concluding comments.

I. MAIN POINTS FROM THE SURVEY

Industrial action

1. 87% of negotiators said that industrial action had been seriously considered on at least one occasion in disputes in the years 1989-91.

(i) 67% of these said that industrial action had been seriously considered on up to five occasions.

(ii) 14% of these said that industrial action had been seriously considered on more than 10 occasions.

(iii) There was some, albeit a relatively small, difference between the number of occasions on which the action under consideration was a strike and the number of occasions on which it was action short of a strike. As a proportion of the total number of times that industrial action was considered, action short of a strike was greater.

Notes

(i) It is clear from the responses that on some occasions both action short of a strike and strike action were seriously considered in the same dispute.

(ii) We cannot break down these figures and apportion them over the three years

1989, 1990 and 1991.

(iii) Our information would suggest that in about two thirds of cases the industrial action under consideration was limited to a single workplace. On occasions, though, more than one workplace was involved; 14 respondents, for example, reported that industrial action had been considered in 1,000 or more workplaces. These variations probably reflect both the distribution of the union's membership and the nature of bargaining units.

2. 73% of those who seriously considered industrial action replied that pay had been an issue in the dispute(s) concerned. The other issue most frequently mentioned was changes in working practices by 44%. Job losses and redundancies, and terms and conditions other than pay were both reported as issues in dispute by 35% of respondents.

Note

There was little significant difference between the incidence of issues mentioned in relation to possible strike action and those mentioned in relation to action short of a strike. Notable although still small divergences were that pay was a more likely to give rise to consideration of strike action and changes in working practices to action short of a strike.

3. 65% of all respondents said that some of their members had taken industrial action over the last three years. For 37% of these this had only occurred once, and for a further 46% between two and five times.

Note

This is not a measure of the number of members in these unions involved in industrial action, but it can be said that in the experience of approximately two thirds of negotiators in the survey, industrial action was taken by some of their members in 1989-1991.

Employers' threats to use the law

4. Where industrial action had been seriously considered, 28% of negotiators (203 in total) had received some form of threat by employers to use the law over actual or potential industrial action. In only two unions did all respondents report no threats of legal action. In more than half of the instances where the grounds for the employer's threat were known, it concerned the law on strike ballots, sometimes together with other grounds.

Steps to start legal proceedings were experienced by negotiators in 18 unions, but in small numbers. Writs and/or solicitors' letters were reported by 50 negotiators, which was 25% of those who had received threats or less than 7% of those who had seriously considered industrial action.

Notes

(i) The questionnaire attempted to distinguish threats made by employers before industrial action occurred from threats made once industrial action had begun. It is clear from the responses that this distinction was not observed in many of them and that meaningful conclusions can only be drawn on the overall incidence of threats of use of the law.

(ii) Where respondents said that employers' threats of legal action did not relate to balloting, but some other law, this covered a wide range of issues, not all of which were the actual grounds on which legal proceedings could be based: eg. damage to business and customer relations, or breach of procedure agreements. There were also a number of references to breach of individual contracts of employment, which would not be strictly threats against the union or its officials, but rather threats against individual workers - see points 5&6 below.

(iii) Further information on threats of action relating to balloting identified a range of alleged failures to comply with the law, concerning, amongst other things, the content of the ballot paper, accompanying information and failure to hold a ballot.

5. Where industrial action had been seriously considered, 255 respondents (35%) had experience of threats by employers to dismiss workers who took industrial action, made either before any action began or while it was taking place. In only 27% of cases where a threat was made was it actually carried out.

6. 157 out of 442 negotiators who responded to the question said that deductions had been made from the pay of workers taking action short of a strike. 52 out of 337 respondents said that other disciplinary action had been taken.

Note

The number of respondents to this question was only around half of all respondents.

7. There was a range of responses to questions on the impact of threats by employers to use the law. Respondents who had experienced employers threatening legal proceedings were fairly evenly divided on whether they had been influenced by this or whether this had affected either the industrial action or the bargaining outcome. This was equally true where a writ or solicitors' letter was received.

Where legal action had been threatened by employers, 21% of respondents said that they had been influenced a lot; 25% to some degree; 19% a little; and 35% not at all.

Ballots

8. 691 negotiators across all unions (82% of respondents) had experience of strike ballots. More than half reported between two and five ballots held over the last three years. Some reported significantly larger numbers. 74% said that they had won more ballots than they had lost.

Notes

(i) Just 34 respondents reported more than 25 ballots held. The average number of ballots for the remaining 657 officials was just over five.

(ii) The percentage of yes and no votes in ballots was not significantly affected by whether in the experience of the full time officer a greater or smaller number of ballots had been held.

(iii) It is clear that overall, greater numbers of ballots produced yes votes than produced no votes. We did not ask whether any ballots were held where negotiators were expecting a no vote, for example to vindicate their negotiating position, but there were no comments to this effect from respondents.

9. The main reason for holding strike ballots was the law - mentioned by 63% of respondents; 48% referred to union policy and 46% to members' expectations that they would be balloted. Strengthening the hand of negotiators was seen to be an important reason for holding strike ballots by 32% of respondents.

10. Where industrial action had been seriously considered, 599 respondents (81%) reported occasions on which industrial action had been threatened but did not take place. 82% of these (492) had experience of occasions when a strike ballot had been held but no industrial action took place.

(i) 522 respondents, 87% of those who reported that although it had been seriously considered no industrial action had occurred, said that this was because the dispute was settled in negotiations. In most of these cases this followed a ballot on industrial action.

(ii) 28% reported occasions when no industrial action had taken place for reasons other than settlement of the dispute through negotiations. This was normally because a ballot had either been lost or not won sufficiently convincingly (e.g. narrow majority or low turnout). In some unions respondents also mentioned the impact of employers' threats to discipline individuals who took part in industrial action.

11. 30% of all respondents were aware of unballoted industrial action that had taken place within the last three years.

12. 96% of negotiators reported that they consulted members over accepting or rejecting pay offers. 58% of these reported using workplace ballots, 52% a show of hands at a members' meeting and 32% postal ballots. Balloting as a means of consulting the members had become increasingly common.

Changes in methods of consultation were reported by more than a third of negotiators.

13. Consultation on industrial action similarly took a number of forms, but invariably included a ballot, predominantly workplace. 71% of respondents referred to a workplace ballot and 45% to a postal or semi-postal ballot. Just 23 respondents, less than 3%, referred only to a show of hands at a members' meeting.

14. 88% of respondents said that they were responsible for organising industrial action ballots. For half of these other full time officers were their main source of advice; 42% referred to the union's legal officer.

64% of those responding to the question said that they often or always made use of this advice.

Picture of the 1980s

15. A summary of responses from all respondents provides the following information:

(i) 93% thought that employers had become more hardline in dealings with unions.

(ii) 84% thought that members were now more reluctant to take industrial action.

(iii) Only 18% agreed with the suggestion that more industrial action was now unofficial.

(iv) 63% thought that the law had been the most important factor affecting industrial action and 52% thought that the law had been an important weapon favouring employers in their negotiations.

(v) 68% thought that strike ballots were a good thing for trade unions.

(vi) 37% agreed with the statement that officials were now more accountable to members.

II. OBSERVATIONS

1. General influence of the law

A majority of negotiators perceived the law to be important at a general level; 63% thought that the law was the most important factor affecting industrial action. This response, however, needs to be seen in the context of their comments which frequently emphasised the importance of the economic climate, especially in relation to the willingness of individuals to take industrial action, and, more particularly in public sector unions, organisational changes that had taken place in the 1980s. In attributing influence to the law in the context of a broader picture of the 1980s, respondents could have had in mind the high profile disputes in which the law was used against unions, in some cases against their own union.

In their own experience, the influence of the law was also apparent. There was significant, if in the experience of most unions numerically small, use of the law by employers at the level of threats: overall 203 cases were reported affecting all but two unions. But it was rare for this to get near to legal proceedings. These threats related mainly to ballots. Apart from this there was no coherent pattern to the grounds for employers' threats. It must be doubtful whether many of them had any clear legal basis, although if employers involved solicitors this would no doubt be a different matter. The fact that some employers apparantly made threats for which there was no legal basis is indicative of the importance which the parties' perceptions of their legal rights and obligations may have, even where these are some way removed from the reality of the law.

Whilst respondents who had experienced threats of legal action expressed a range of opinions about the extent to which they had been influenced by them, in the 50 cases in which a solicitor's letter or writ had been received this was often said to have had no impact on the industrial action or bargaining outcome. In some cases, far from undermining the industrial action, the employer's resort to the law was seen to have strengthened the members' resolve. The responses, therefore, demonstrate the limitations of trying to assess the influence of the law solely by reference to the number of occasions on which legal proceedings were actually started and the legal outcome of those proceedings.

The law may have had a particular impact on some unions because of the way in which they had adapted their practices and procedure to the new legal requirements. A number of unions had taken extensive steps to impress upon their officials the need to stay on the right side of the law in all circumstances. Negotiators in these unions would therefore be likely to report that the law had had a considerable impact regardless of whether employers with whom they dealt had shown any propensity to make use of the law. It should be noted in this context that the picture emerging from responses to the questionnaire was of unions and their officials who sought by and large to conduct industrial action lawfully.

Threats of dismissal against members were more widespread than threats against the union or its officials. Where industrial action had been seriously considered, they were reported by 35% of respondents. When these threats against individual workers are taken together with employers' `use' of the law against the union or its officials

referred to above, this would seem to suggest that, whether or not it was expressly invoked, the law was generally a relevant factor in disputes. 52% of respondents said that the law had been an important weapon for employers in the negotiations they conducted.

2. **Ballots**

Most if not all unions which took part in the survey had clearly sought to adapt their practices to comply with the requirements of the law on industrial action balloting. The information suggested that, under the law as it was up to 1993, conducting a lawful ballot was not seen as a particular problem in most unions, although a small minority had not found it so easy to accommodate the balloting requirement. A majority of ballots held in all unions produced votes in favour of industrial action; 74% of respondents reported more ballots won than lost and 50% said that all ballots had produced votes in favour of industrial action. In their response to the general questions, 68% of respondents said that they thought industrial action ballots had been a good thing for unions. Their comments were consistent with this view. Many respondents said that balloting was popular among members - and not unpopular among officers. The legal detail and delays in action taking place had, however, created difficulties so that ballots were seen by some respondents as a device to prevent industrial action taking place.

Whilst only 32% of respondents said that one of the most important reasons for industrial action balloting was to strengthen the hand of negotiators, the use of

ballots emerged as a feature of union strategy in negotiations. Of those who said that industrial action had been seriously considered but did not take place, an overwhelming majority said that in their experience disputes had been settled in negotiations and more than three quarters of these that, at least on occasions, this had followed a ballot. Respondents' comments confirmed that a convincing `yes' vote in a ballot could often lead to an improved offer or withdrawal of proposals in dispute without industrial action going ahead. In some unions a number of respondents also referred to ballots as a way of galvanising support for industrial action. The survey therefore provides strong evidence that ballots have assisted negotiators in bargaining and that while a majority of ballots are won, this does not necessarily lead to industrial action.

Ballots had, however, had negative effects as well as positive ones. Low turnouts and narrow majorities as well as the minority of lost ballots were factors mentioned where, although it was seriously considered, no industrial action occurred but the dispute was not resolved by a negotiated agreement. Another negative effect that was seen to be a problem by negotiators in some unions was that they could find themselves exposed in negotiations if a ballot majority was not reflected in support among members for actually taking industrial action. This was a risk in the element of bluff which negotiators claimed to have built into the bargaining process by using ballots.

3. **The law and the individual worker**

The survey provides evidence that some employers recognised the effectiveness of

targeting their strategy in response to actual or threatened industrial action at the level of the individual. There are two factors that may have been responsible for this. The first, which was emphasised in the comments of a number of respondents, was fears for job security in an adverse economic climate. The second was the individual worker's weak legal position when taking industrial action. Information from our interviews with employers confirmed a high degree of awareness of their legal rights in relation to individual workers who take industrial action (see Elgar and Simpson, 1993:9). This awareness may be part of the explanation for members' increasing reluctance to take industrial action, which was reported by 84% of negotiators.

III. CONCLUDING COMMENTS

The results of the survey suggest that the law was a relevant factor in collective labour relations at the end of the 1980s and beginning of the 1990s. Overall the law was, unsurprisingly, seen to favour employers. It is notable that of the two legal issues which were of greatest concern to respondents, one, the threat of dismissal against individual workers, did not depend on the legislative changes of the 1980s, although amendments to the law on unfair dismissal in relation to industrial action may have helped to heighten employers' awareness of the full extent of their rights. While threats to dismiss workers who take industrial action, and even actual dismissals, are not new, in an adverse economic climate they have evidently become a more valuable tactic for employers to use.

The other central legal issue for respondents did arise from the 1980s legislation. This was balloting. On this issue negotiators saw positive as well as

negative results. An important feature of the responses from all unions was the way in which they had been able to adapt to - and even in effect to adopt - the need to hold a ballot before industrial action. This was true despite the persistent modification of the law (at least before 1993) and in a sense the law seemed to provide only a background to the organisation of ballots which had become very much part of internal union procedures. This was especially so in unions with a tradition of balloting; where unions lacked this tradition but there was more evidence that they had not accommodated the balloting requirement so easily.

While the survey showed the law to be a relevant issue for union negotiators which generally could not be ignored, it is necessary to bear in mind three particular features of the responses in order to maintain a proper perspective on the information which they provide about the role of the law in disputes. First, there is a danger that the number of reports of threats by employers to use the law may overstate the extent to which employers actually invoked the law. It is apparent from information which we have from union legal officers that what might appear to negotiators as threats by employers to use the law were, on occasion, more appropriately seen as employers seeking clarification of the union's position, especially in relation to balloting. The dividing line between an employer seeking clarification and threatening legal action is clearly not always easy to draw and if negotiators thought that employers were threatening to invoke the law that may have affected their subsequent actions, even if in reality the employer was making a less aggressive response. On this issue, it is evident from respondents' comments that where they said that employer's threats of legal action had influenced the outcome of the dispute, this by no means always meant that the threat served to undermine industrial action;

in some cases quite the contrary.

Second, respondents with members in those areas of the public services which started to undergo radical organisational changes in the 1980s frequently emphasised the overwhelming impact of these changes on industrial relations in the late 1980s and early 1990s. In their view the impact of these developments, which included devolving some management decisions and the introduction of competition in the provision of services, far outweighed the impact of changes in the law on industrial disputes.

Third, contrary to what might have been expected, it is apparent that at least in the 1989-1991 period, consideration of industrial action was a live issue, on occasion, for a large majority of negotiators in most of these unions. The actual incidence of industrial action was dependent on a number of factors, not least the occurrence of national disputes in some areas in this three year period. Moreover, in some parts of the public sector, especially where members worked in the caring professions, the appropriateness of any form of industrial action continued to be debated. Nevertheless, in these areas as in others, negotiators' experience of industrial action having taken place in the period 1989 - 1991 was quite widespread.

With these three features in mind, it seems fair to conclude that while the law could be an influence on negotiators, it was clearly not generally determinative of whether or not industrial action occurred. The information supplied by respondents provided rich insights into their experience of disputes and the law. Assessing the nature and extent of the influence of the law is a complex issue which has to balance the relative strengths of the pluses and minuses which these respondents identified. These insights have greatly increased our understanding of the real impact of the law.

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