

CABINET OFFICE
E 059
12 SEP 1979
FILING INSTRUCTIONS
FILE No.

SIR JOHN HUNT

Personal.
M. Lancaster
14/9
You may like to see
in view of the C.S.D. in
this morning: but he
needs to trouble the Prime
Minister for the time being.

cc Mr Le Cheminant
Mr Miles.

INDUSTRIAL ACTION IN THE CIVIL SERVICE

14/9

This note follows your discussion at the Permanent Secretaries meeting this morning. We have since established that Mr Prior does not intend to raise these matters with the Prime Minister this evening, but that he is likely to minute his colleagues about them shortly. I have now discussed with Mr Duke (CSD). The position seems to be as follows.

Civil Servants have no individual contracts of employment. Strictly, they are employed 'at pleasure'. But, for the purposes of the Employment Protection Act, the collective agreements with the trade unions concerned are deemed to amount to contracts of employment.

In the case of the industrial civil service, there is an explicit provision in the agreements which permits the employer to send home men who are prepared to work normally, but for whom there is no work as a result of industrial action undertaken by others. This is the case referred to in para 5 of Lord Soames letter of 7 September to the Defence Secretary. The whole of this paragraph (apart from the first sentence) refers explicitly to the industrial civil service.

In the case of non-industrials, there is no such explicit provision. It follows (so CSD have been advised by their lawyers, and by the Attorney General of the last Administration) that there is no power to send home non-industrials in this situation.

The matter has not yet been put to the test. If it were, the CSD believe that the unions would arrange for a test case, in which one

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of the staff sent home would sue for his wages. They are advised that the Courts would find in his favour.

The views of the present Law Officers have not been obtained so far. But this, and a number of related matters, have been put to the Treasury Counsel for his advice, and the Law Officers will no doubt be considering that advice shortly.

CSD believes that there are only two ways of dealing with this situation, as it affects the non-industrial civil service. The first is to alter the agreements with the unions. They believe this will have to be done by agreement, because the courts would strike down any unilateral change in the conditions of service. The second option is to legislate. CSD do not believe that it is worth risking court action by laying men off and waiting to see what happens. They are sure they would lose, in circumstances of maximum embarrassment for the Government.

Mr Duke said that there had been considerable discussion among Departments about all this. He was surprised that Sir Frank Cooper and others did not know the present position.

I said that there was considerable Ministerial interest in all this. It seemed likely that we would be asked to arrange for all this to be properly considered and put to Ministers. In that case, there seemed to me to be no appropriate Ministerial Committee. I said that in my view we would need a small group for the purposes. The minimum composition seems to be the Lord President, the Secretary of State for Employment, the Attorney General, possibly the Lord Advocate, and two or three of the biggest employing Ministers: Defence, DHSS, and Treasury/Revenue.

If you agree, you might like to advise the Prime Minister along these lines when the expected minute from Mr Prior arrives.

RM

P MOUNTFIELD

12 September 1979