

Maria Exall and Paul Moore are officers of Thames Central CWU.

"Since the early 1980's the Tories have introduced 8 major pieces of employment legislation and contrary to government propaganda this has had absolutely nothing to do with increasing the democratic powers of trade unionists but everything to do with undermining effective trade unionism....."

This is how we open our argument for the total repeal of the anti-union laws and their replacement with a charter of worker's rights.

In this pamphlet we look at the "hard issues" of ballots, union democracy and solidarity and attempt to refute some commonly held misconceptions and misinformation about these things.

We also cover the effect of the anti-union laws on postal workers and try to see how we can progress the claim for.....

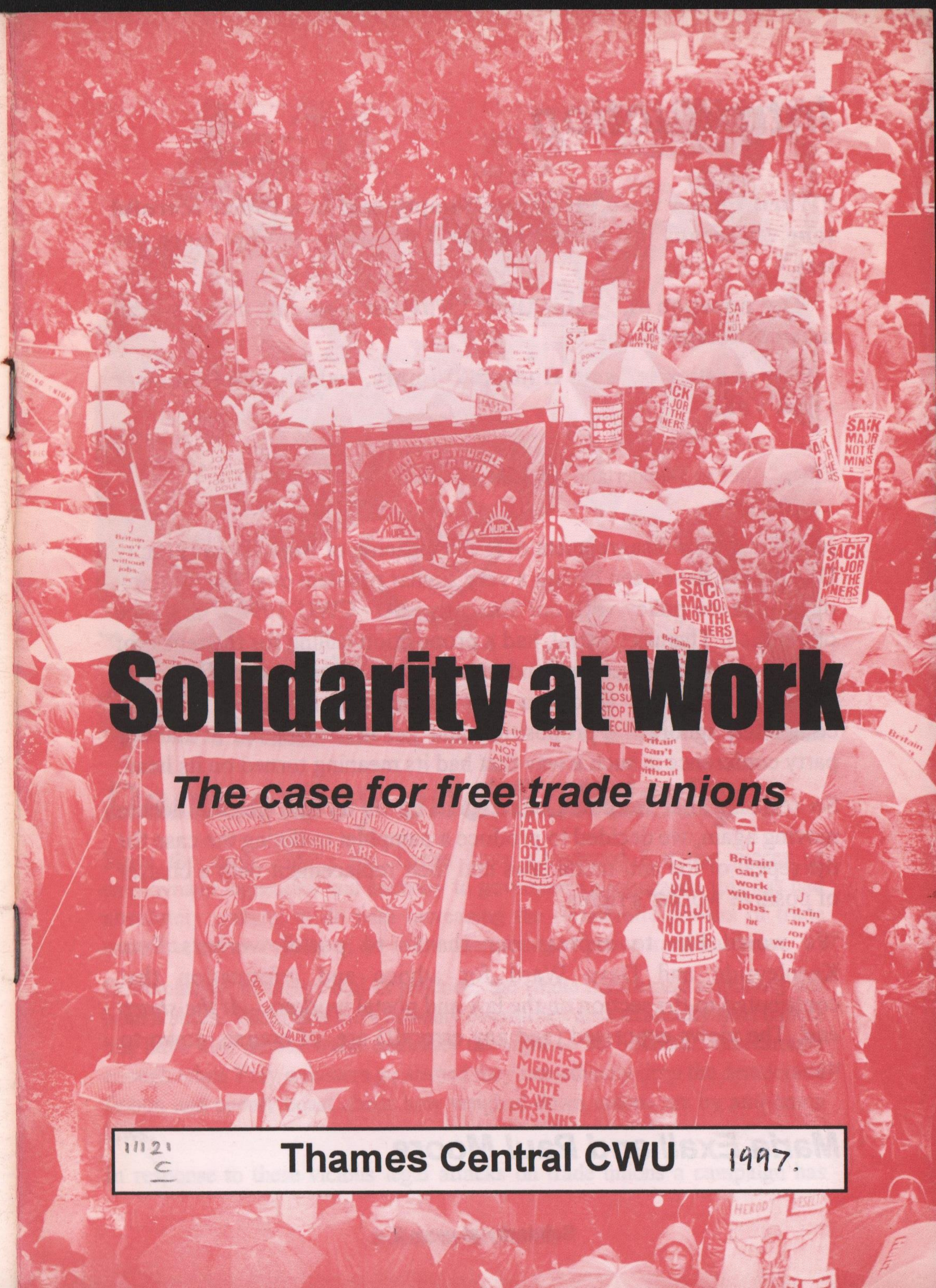
"Solidarity at Work - The case for free trade unions".



Communication Workers Union
Thames Central
Room 157, Edinburgh House, 154-182 Kennington Lane, London SE11 4EZ

Tel: 0171 633 0080

Fax: 0171 820 6569



Solidarity at Work

The case for free trade unions

Thames Central CWU

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Introduction

"When I use a word" Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you *can* make words mean different things."

"The question is," said Humpty Dumpty, "which is to be master - that's all."

From "Alice in Wonderland" by Lewis Carroll.

Just like Alice's disagreement over the meaning of words with Humpty Dumpty we have been having a very similar problem over the meaning of conference policy with our Executive. At CWU 1995 conference our branch, Thames Central, had a proposition calling for the repeal of all anti-union laws debated and carried. In a classic case of Alice in Wonderland trade unionism our Executive managed to both completely ignore the proposition and get it composited at Labour party conference in such a way that had its meaning turned on its head.

So realising that we could either give up or try and get the debate moving again, we decided to produce a pamphlet outlining the case for the repeal of the anti-union laws and their replacement with a charter of positive worker's rights.

We would like to express our thanks to postal workers Pete Keenleyside and Dave Ward for advice and information that contributed to the section on the law and postal workers - *At the sharp end*. The views expressed (and any errors!!) are, of course, down to us.

Maria Exall and Paul Moore



Democracy and Solidarity

Since the early 1980's the Tories have introduced 8 major pieces of employment legislation and contrary to government propaganda this has had absolutely nothing to do with increasing the democratic powers of trade unionists but everything to do with undermining effective trade unionism.

Quite clearly, in theory and in practice, the whole democratic argument has been a sham. The courts have not only overturned democratically held ballots but have also denied trade unionists the right to be balloted. Interestingly enough when Tory ministers go abroad they immediately drop the democratic fiction and openly boast about how weighed down unions are by anti-union laws.

In response to these vicious legal attacks on trade unions a campaign has

been started calling for the repeal of all the Tory anti-union laws and their replacement with a charter of positive worker's rights. At the 1995 CWU conference our branch moved a proposition in support of this campaign which was carried after a comprehensive debate!!

The case for workers rights advanced in our proposition included the right to to be unionised, the right to strike and the right to solidarity action. These are the most basic rights that underpin trade unionism. The existence of the Tory anti-trade union laws does not just limit trade union action, they fundamentally undermine trade unionism. Without the total repeal of the laws we will remain shackled even when a Labour government is elected.

Democracy and the Tory laws.

The Tory laws on balloting are not about trade union democracy. They stop the fundamental democracy of trade unions - the right of the union to determine its own rules and structure. The Tories have imposed their own model in order to destroy the democracy of membership control of their own organisation. The blatant doublethink of the arguments for the retention of the laws on balloting in the name of democracy and accountability cannot be emphasised enough.

Most discussion of the laws on balloting is focused on whether ballots are good or bad. But the real issue is whether the *Tory laws* on balloting undermine workers democratic rights. Total repeal does not mean ballots are wrong and should be abolished. Workplace ballots after a collective discussion are the best way to make decisions about industrial action in most circumstances. There are also arguments for postal ballots on certain issues for example pay. But what is certain is that a Tory law that ties Union organisers in knots, that takes no account of workplace realities, such as the need to take urgent defensive action if someone is victimised, should go. Whoever determines how, when and whom is to be balloted is in control of industrial action. We believe it is up to union members, not the government, to determine how we ballot and when.

The laws on balloting are the cause of the largest number of court actions against Unions by employers, some about pedantic details. The Seafarers union had their action stopped by P&O because of the wording on the ballot paper. NATFHE, the College Lecturers union was taken to court because

they did not supply an accurate list of members balloted. It is a blatant technical use of the law for their own advantage that employers can afford to take. The 1990 Act required voting papers specifying the identity of those authorised to call upon the members. This provision opened up a legal quagmire when there is a walk-out. Its effect was to encourage the use of repudiation, concentrate power in the hands of union head office and destroy rank and file initiative.



ABOVE : TWO POSTAL BALLOTS IN PROGRESS

The right to determine our own rulebook has been destroyed by Tory laws in other ways. The 1988 Employment Act made it unlawful to expel or penalise strike-breakers even in a lawful dispute. The same Act also ended the right to 100% trade unionism by abolishing the post entry Closed Shop.

The right to solidarity

Without a positive right to take solidarity action and the repeal of some of the very first Acts brought in by the Tories we will have a continuation of the Thatcher years where any "secondary" action is deemed unlawful. Not repealing these laws means forever outlawing solidarity strikes with health or other service workers who cannot take effective action because of the nature of their job. The history of disputes in the NHS shows that there is support for solidarity action and it is the Tory laws that stop this. There was massive popular support for strikes against NHS cuts and the Ambulance workers dispute.

In the 1990s the increased casualisation and lack of unionisation leaves a growing number of workers in workplaces where they are unable to defend their own interests within the law. Employers can sack them, hire scabs and there is little that can be done lawfully. The disputes at Timex and on the Mersey Docks in the 1990s show this. A boss can close down a workplace where workers take action, reopen under another name and there is nothing that can be done legally.

The Employment Acts of 1980 and 1982 allowed trade unions to be taken to court for many reasons where we had previously been immune. A significant factor was the ability of individual employers or individual employees to take the union to court. This meant that the focus of a disputed employment law was not the government.

Since 1982 it has been unlawful to:-

- Take action in support of other workers
- Take action deemed to be political
- Take action in a dispute outside the UK (even if you belong to the same multinational company)
- Have "union labour only" contracts or action in support of them.

The introduction of fines on unions reversed an important principle of British law that unions were not liable for damages. Massive fines and the threat of sequestration of all the funds of a union if the fines were not paid has proved, in the long run, able to derail potentially successful action. An example was the action of the POEU against Mercury in 1983 which was judged to be "political" because of its opposition to privatisation.

The argument for a positive right to solidarity is an argument to make the right to strike real. The retention of laws against political strikes and "secondary" action means that the right to take action is denied in a large number of circumstances. And the judgement of what is or is not secondary action, or a political strike is made by the judges.

This must change.

Positive rights at work

There are strong arguments for positive legal rights for working people. This concept of a minimum standard of employment law is accepted in principle by many within the labour and trade union movement. Individual workers need positive rights at work. And the rights to belong, organise and take action are necessary to have effective collective action.

We reproduce below a list of positive rights that, we believe, can be supported by most trade unionists.

- **The Right to belong to a trade union.**
- **The Right to organise ; to have access to workplaces, to have time off for meetings, to have recognition from the employer.**
- **The Right to strike , to picket effectively, and take other forms of industrial action.**
- **The Right to strike without fear of dismissal, fines or sequestration.**
- **The Right to determine our own constitution and Rulebook in accordance with our own democratic procedures and free from state interference.**
- **The Right of trade unions to take political action and collect a political levy.**
- **The Right to job security.**
- **The Right to stop work if health and safety is threatened.**
- **The Right to employment free from discrimination on grounds of gender, race, age, religion, sexual orientation or political persuasion.**
- **The Right of workers and their Unions to be fully consulted and informed by employers on all decisions about work conditions, strategic investments and mergers and takeovers.**
- **Full time rights for part time workers; and rights for short term contract workers.**
- **Rights for homeworkers and financial sanctions on their exploiters.**

The Executive fights back

CWU conference policy clearly instructs the NEC to "Campaign for the repeal of all Tory anti-union legislation" yet in practice, the Executive have not pursued this agenda. Instead, they have put forward a set of proposals that would leave most of the Tory laws intact and would continue to outlaw solidarity strikes, walk-outs and political action. In fact, the NEC's position is so weak that it would not even secure a genuine right to strike without fear of dismissal.

The NEC's proposals for legislative reform amount to this:-

- Abolition of the three yearly re-recruitment sections of the 1993 TURER act.
- Repeal of the repudiation section of the 1990 Employment Act.
- Repeal of the ban on disciplinary powers of the 1988 Act.
- Removal of the discriminatory ruling that allows employers to pay trade union members less than non-union workers for work of equal value.
- Plus a vague "full scale review of other legislation".

This programme would leave intact key planks of the Tory anti-union legislation. *Namely the 1980 and 1982 employment acts would remain entirely untouched.*

These acts are the cornerstone of the Conservative legislation. They define all industrial action as unlawful unless it fits within the a very tight definition of a trade dispute. Under these laws employers can create bogus companies and subsidiaries and thus make it illegal for people who work for the same boss to strike alongside each other because they all supposedly work for a different "employer".

These laws also ban any form of solidarity action and outlaw any form of action that could be defined as political.

It was these laws that were used against the POEU to get the action against Mercury declared illegal. A decision taken by a judge with shares in Mercury!



Transport workers show Solidarity with NHS strikers

The 1984 trade union act would stay on the statute book.

This the law that requires that all trade unions hold a ballot before any strike. Under this law the recent successful strikes against victimisation in the post office at NWDO, Newport, Manchester, Liverpool, St Helens and last but not least Scotland, would remain illegal, and the members involved would still be in breach of contract and liable for dismissal.

The vast bulk of the 1988, 1990 and 1993 acts would remain on the statute book.

Individual trade union reps could still face massive fines and bankruptcy for organising unofficial action. It would still be illegal for a union to even consider organising a strike ballot for the re-instatement of workers sacked for taking part in unofficial action. Light is shed on the NEC's proposals if we look at some of the major industrial disputes over the last 15 years and ask what would have been different if the Executive's legislative reforms had been in place? The answer, sadly, is not a lot.

In 1983 the NGA print union would still have faced fines and sequestration for organising pickets at Eddie Shah's scab printing plant at Warrington.

In 1986 the Wapping strikers would still have been locked out with no legal

dispute as Murdoch had wound up the companies they worked for and replaced them with a new one.

In 1988 the seafarers union NUS would still have been barred from even balloting its members in other ferry companies for solidarity strikes alongside the P&O strikers.

In 1991 four RMT reps at Piccadilly station Manchester were sacked for supposedly organising what was in fact spontaneous action. When their union organised a ballot for a legal strike to win their jobs back, the judge ruled the ballot itself illegal! This would still have happened under the NEC's proposals.

These are just a few examples of the way the dice would still remain stacked against the trade unions under the NEC's supposed "Radical agenda".

Their proposition and ours!!

Here is the Executive's proposition to Labour Party Conference followed by the proposition carried at 1995 CWU conference.

LABOUR PARTY CONFERENCE PROPOSITION 1995

"The Labour Party recognises the need to repeal anti trade union laws and replace them with a fair and balanced framework of law in the UK. While it is necessary for Trade Unions to comply with legislation, the imbalance in power between employers and employees is not consistent with a fair and decent society. Principally the following trade union rights are fundamental in a free society.

1. Right to strike without fear of dismissal.
2. Right to an individual secret ballot when industrial action is called.
3. The removal of unreasonable restraints on working people wishing to take industrial action.

Labour understands that there is a need to abolish anti trade union laws that are profoundly undemocratic. What is required is a strategy that will win widespread support for the removal of this anti trade union government, and the ability to carry out a radical transformation of Employment Laws namely in the following key areas;

1. abolition of the three yearly re-recruitment sections of the 1993 Trade Union Reform and Employment Rights Act;
2. repeal of the repudiation sections of the 1990 Employment Act

3. repeal of the ban on Union disciplinary powers of the 1988 Employment Act;

4. removal of the discriminatory ruling that allows employers to pay trade union members less than non Union employees for work of equal value.

At the same time Labour should be committed to a full scale review of other legislation and the machinery of justice. The purpose of this will be to remove bias against Unions and develop a framework of law based on fairness. A new industrial court with judges drawn from a wider cross-section of society would help this process.

Labour will also approach the issue of legal rights in a positive way, giving workers the protection afforded by;

- a. the signing of the EU Social Chapter;
- b. the regulation of the abuse of temporary and fixed term contracts
- c. introducing protection in law against unfair dismissal to all workers
- d. establishing the right of the individual to join a Trade Union, participate in its affairs and to have their Union recognised; and
- e. strengthening all Health & Safety Laws and retaining the right of recognised Trade Unions to appoint safety representatives
- f. The removal of DSS legislation that has been to the detriment of workers in particular in the areas of Disablement? Injury Benefit and Compensation Recovery Unit (CRU) Rules.

Trade Unions have never sought to be above the law. They do, however, expect protection from dictatorial employers using unfair laws to undermine workers resistance to unjust terms and conditions. To secure such protection, Labour now commits itself to this programme of legal rights. It will also be necessary for a Labour Government to establish effective consultation machinery for the adoption of all such measures as the best route to establishing a fair, effective and balanced framework of employment law in the UK.

CWU CONFERENCE POLICY 1995

PROP 41

Conference instructs the NEC to campaign for the repeal of all Tory anti union legislation, and for the following legal rights:

- Right to join a Union
- Right to Union recognition
- Right for time off for reps and members meetings
- Right to take industrial action, including solidarity action
- Right to take action with immunity from civil action
- Right to take urgent defensive action without legal obstruction

(Thames Central)

At the sharp end



The large amount of unofficial industrial action in the Postal sector contrasts with the minimal unofficial action in other industries. The structures of the CWU allow for powerful Branches with a degree of autonomy. A hard headed approach by Royal Mail management, in the use of the conduct code and the victimisation of staff, has led to confrontation. Walk-outs are the result of a membership that feels that their only recourse is to take unofficial action.

The use of the law by employers is not always consistent as is shown by examples in the North West. In Liverpool there were thirteen walk-outs in a year, yet there were no injunctions. Whilst in Manchester in the same year Royal Mail served an injunction for the distribution of a leaflet! However experience has shown that when walk-outs happen, sooner or later, management will turn to the full force of the law in order to push workers back.

The Tory anti-trade union laws puts pressure upon the Union nationally to be seen to distance itself from the action of its members in order to minimise financial loss. The Tory laws encourage the use of Repudiation, a contentious issue in the CWU, as in many unions, as it leaves local officials vulnerable to

sacking and bankruptcy and members standing alone and unprotected. This calls into stark relief the interests of the rank and file membership and that of the union leadership.

The fact that Tory legislation is all embracing does not stop conflict. In important disputes, a large set piece confrontation becomes inevitable. The current ballot for national action on the Employee Agenda is the culmination of years of local defensive action on conditions of work in Royal Mail.

Tory laws CAN be changed!!

How do we get there? How do we achieve the sweeping away of the Tory anti-union laws? After all, our own leaders seem less than enthusiastic. What their case amounts to is simply that it is politically not on.

We're told that we need to be realistic about what is politically possible. But is trade unionism really such a vote loser?

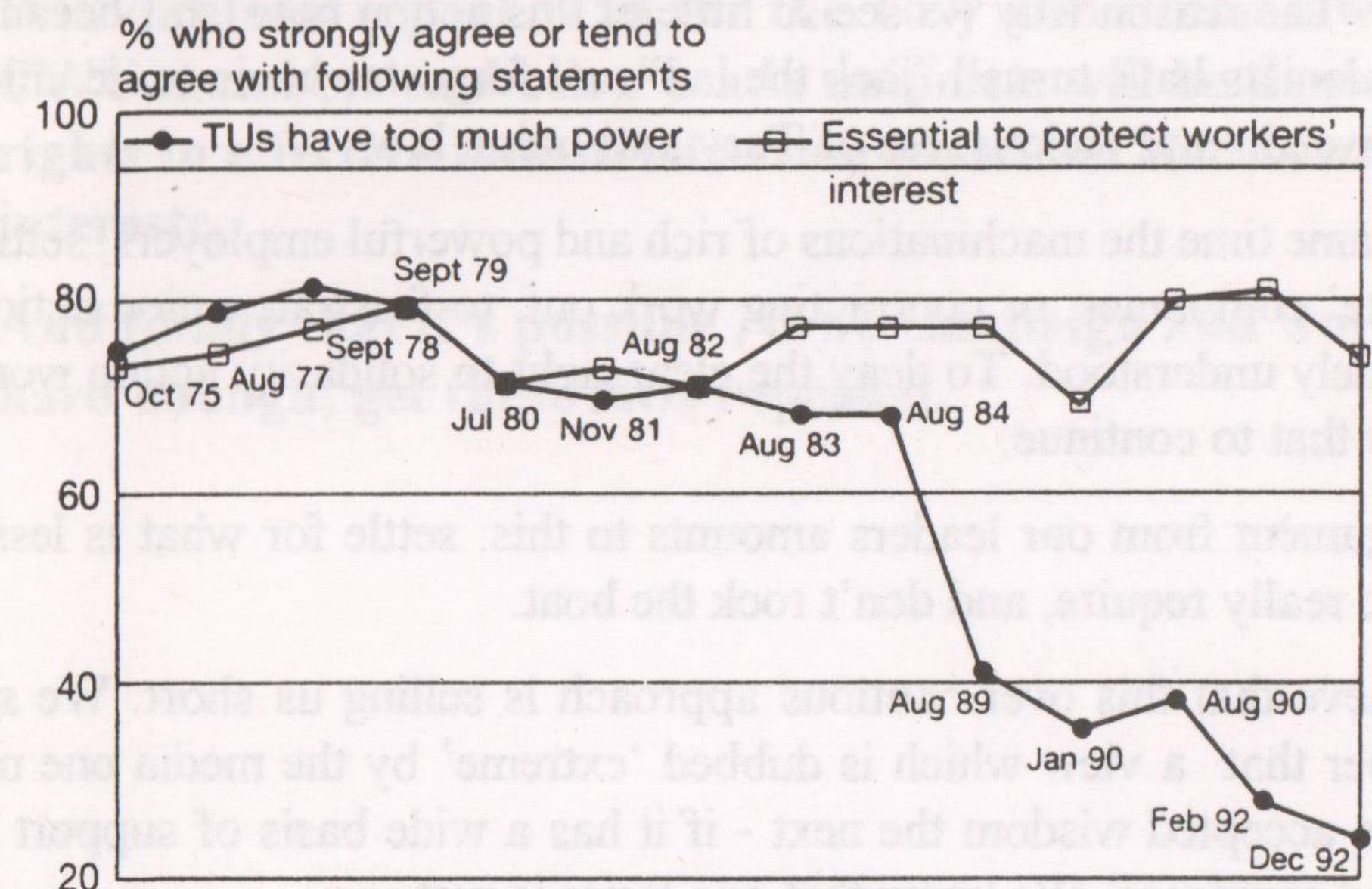


Figure 10.1 Opinion poll attitudes to unions
Source: MORI.

The latest opinion polls reinforce the trend of recent years. Increasingly, people think trade unions have too little power, and are essential to protect workers. After all, millions of Conservative voters have experienced the dictatorship of the employer through redundancy - or the fear of it. This

suggests that far from being an electoral liability, promoting free trade unions could be a big vote winner.

In asking us to accept the laws on balloting, the Labour leadership uses the argument that trade unions have accepted the principle anyway. But our problem is not the principle. In recent years our conference has consistently championed the cause of balloting - witness the debate at rules revision about national agreements being subject to ballots of the members.

A determined campaign is necessary to expose the Tory democracy argument as the hypocrisy that it is - not to support it. After all, what is democratic in allowing the employer, and third parties, to control the internal affairs of the union? Balloting laws have consistently been used by employers to frustrate the will of the members - not to support union democracy.

When it comes to solidarity action, the spectre of 1979 is usually invoked. We are told we should not allow the union to take action in support of others because we would project an irresponsible image. But the solidarity strikes in support of the nurses and other hospital workers in the 1980's were widely popular. The reason why we see so little of this action now isn't because the trade unionists have turned "jack the lad" and forgotten basic trade unionism but the weight and viciousness of Tory anti-union law.

At the same time the machinations of rich and powerful employers, setting up 'separate' companies, or contracting work out, to frustrate union action are now widely understood. To deny the clear right to solidarity action would be to allow that to continue.

The argument from our leaders amounts to this: settle for what is less than what we really require, and don't rock the boat.

We believe that this over cautious approach is selling us short. We should remember that a view which is dubbed 'extreme' by the media one minute becomes accepted wisdom the next - if it has a wide basis of support and a sustained campaign. We know that our cause is just.

Why are some of our leaders afraid to fight for it?

At the end of the day, what is essential is for the CWU to campaign for what is right for its members. If we believe that the anti-union laws should go, then that is what we must say, loud and clear. *No one should silence us - least of all our own leaders.*

Summary

In this pamphlet we have argued that

- **The membership should control the democracy of their union and not the state.**
- **Without the positive rights to be unionised, to strike and to take solidarity action trade unionists will be severely handicapped in taking on the aggressive employers of the 1990's.**
- **Our own leadership have failed to be accountable to union policy. They have developed their own undemocratic alternative strategy that has sold us well short within the wider Labour movement.**
- **Without total repeal of all the the Tory anti-union laws CWU members and other trade unionists will be denied the rights to effective industrial action to defend their own interests.**
- **And finally that it's possible , if we campaign and work hard enough, get these laws repealed.**